

Town Planning Appeal No.19 of
1995

IN THE MATTER of the Town
Planning Ordinance Chapter 131

and

IN THE MATTER of an Appeal
under Section 17B by Mr Lo
Kwok-wai

Date of hearing : 16th May 1996

Date of decision : 4th June 1996

Panel : Mr Robert C. Tang Q.C., J.P. (Chairman)

Mr Chan Wing-kee, O.B.E., J.P.

Mr Henry Chiu Sin-sing

Prof Nelson Chow, M.B.E., J.P.

Mr Jason Yuen King-yuk, M.B.E.

DECISION

An application by the appellant, Mr Lo Kwok-wai to use Lots Nos.1368A and 1368B R.P. in D.D.82, Ping Che Road, Ta Kwu Ling, New Territories ("the Site") for open storage of steel materials and workshop for repairing tools and steel works was rejected by the Rural and New Town Planning Committee ("RNTPC") of the Town Planning Board on 15th July 1994 for the following reasons:-

- “(a) the development was not in line with the planning intention for the area which was to identify appropriate forms of agriculture and rural activities that could be sustained to prevent unwanted urban growth and to enhance the quality of the environment;
- (b) the development was incompatible with the surrounding land uses, which were predominantly agricultural and rural in character;

- (c) the development would cause noise nuisance to the nearby village houses and no mitigation measures had been included in the submission;
- (d) no provision of parking facilities had been included in the submission;
- (e) insufficient information on the proposed vehicular access and the proposed arrangement of loading / unloading and manoeuvring of vehicles within the site had been included in the submission;
- (f) no proposal on the provision of drainage facilities had been included in the submission;
- (g) no landscaping proposals had been included in the submission; and
- (h) the approval of the application would set an undesirable precedent for similar applications".

2. An application for review was dismissed by the Board on 3rd May 1995 for the same reasons.

3. On 30th April 1995, the appellant appealed to us.

4. On appeal, the appellant did not seek permission to use the appeal site for workshop for repairing tools and steel works. He sought permission for open storage of steel materials.

5. From the photographs supplied to us, it is clear that a workshop for repairing tools and steel works, which were originally on the site had been removed.

6. In the Notice of Appeal, the appellant also requested alternatively that permission be given to him on a temporary basis.

7. The Site comprises two old schedule agricultural lots and is directly accessible to Ping Che Road.

8. The Site falls within a flood plain and is close to the frontier close area.

9. The surrounding area is predominantly rural and agricultural in character, and comprises a large amount of cultivated land and domestic structures.

To the immediate north of the Site is an open storage of construction machinery, containers and iron pipes which is partly an existing use tolerated under the Ordinance (i.e. used as such before the gazettement of the Ping Che and Ta Kwu Ling Interim Development Permission Area Plan No.IDPA/NE-TKL/1 on 17th August 1990) and partly an unauthorised development which came into being after the gazettement of the said IDPA Plan. To its further North on the opposite side of the van track are two large open storage yards and a car repairing workshop which are unauthorised developments in respect of which enforcement actions have been taken. To its East is Ping Che Road and beyond is a large tract of agricultural land partly under active cultivation and partly lying fallow. To its South are active agricultural land and domestic structures. To its immediate West are domestic structures and vacant chicken sheds.

10. The Site is paved and fenced off. It fell within an area designated as "unspecified use" on the Ping Che and Ta Kwu Ling Interim Development Permission Area ("IDPA") Plan No.IDPA/NE-TKL/1 gazetted on 17th August 1990. The IDPA Plan was subsequently replaced by the draft Ping Che and Ta Kwu Ling DPA Plan No.DPA/NE-TKL/1 gazetted on 17th July 1991.

11. At the time of the application, the Site fell within an area designated as "unspecified use" on the approved Ping Che and Ta Kwu Ling Development Permission Area Plan No.DPA/NE-TKL/2 which was gazetted on 31st March 1994 ("the DPA Plan").

12. On 1st July 1994, the approved DPA Plan was replaced by the draft Ping Che and Ta Kwu Ling Outline Zoning Plan ("OZP") No.S/NE-TKL/1. The site is zoned "agriculture" on the OZP.

13. Under the DPA Plan, open storage and workshop uses on the site required planning permission from the Town Planning Board.

14. The site falls within the Ta Kwu Ling sub-area i.e. the northern part of the DPA near Ping Che Road which consists of large tracts of flat and extensive arable lowland. The planning intention for the area as stated in paragraph 6.3.5 (a)(i) of the Explanatory Statement of the approved DPA Plan,

"is to identify appropriate forms of agriculture and rural activities that can be sustained to prevent unwanted urban growth and to enhance the quality of the environment"

15. According to paragraph 6.3.5(c) of the Explanatory Statement

"For any other developments (i.e. other than low rise, low density residential developments) within this area, the

owners/developers must demonstrate that their proposal would have insignificant adverse impacts on the environment, traffic and drainage of the areas or appropriate measures would be taken to mitigate such impacts to an acceptable level"

16. Unless the appellant can overcome the fundamental objection that this application is not in line with the planning intention of the DPA Plan, the appeal must fail.

17. As is shown on a land use plan produced to us, the agricultural land in the vicinity is substantially under active cultivation and the domestic structures adjoining the site are still in use.

18. It is clear that apart from the open storage of machinery, containers and iron pipes to the immediate North of the site which is partly an existing use tolerated under the Ordinance, most of the open storage yards and workshops in the vicinity are unauthorised developments and are subject to enforcement action by the Planning Authority. We are told that in the past four years, active enforcement action has been taken to terminate these unauthorised developments and to improve the rural environment.

19. Indeed, we were told by Mr Lo Kwok-wa who appeared on behalf of Mr Lo Kwok-wai that enforcement action has been taken against the appellant in respect of the Site.

20. No valid reason has been advanced why granting permission as sought would not be inconsistent with the planning intention under the DPA Plan. We have no doubt that the Town Planning Board's decision to refuse permission on this ground cannot be faulted.

21. Since the appellant cannot overcome this fundamental objection, there is no need for us to deal with other grounds relied on by the Town Planning Board.

22. The appeal is dismissed.