

Town Planning Appeal No.4 of  
1996

IN THE MATTER of the Town  
Planning Ordinance Cap.131

and

IN THE MATTER of an Appeal  
under Section 17B by Container  
System Limited

Date of hearing : 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> October 1996

Date of decision : 29<sup>th</sup> October 1996

Panel : Mr Robert C. Tang, Q.C., JP (Chairman)  
Mr Chan Pak-keung, OBE, JP  
Prof Peter Ronald Hills  
Dr Simon Kwan Sin-ming  
Mr Vincent To Wai-keung

### **DECISION**

This is an appeal by Container System Limited against a decision of the Town Planning Board refusing permission to use a site and certain adjacent Government land at Ping Ha Road, Ha Tsuen, Yuen Long, ("the Site") for open storage of containers for 3 years. The Site has an area of about 21,397 M<sup>2</sup> and comprises Lots 1824 ARP, 1824 BRP, 1824 C and 1849 in D.D.125 which are held under a Block Crown Lease as agricultural land.

2. According to the appellant, the Site will be used as an extension of an adjacent container storage yard ("the Yard"). The Yard is an existing use and has a capacity for about 3,500 TEU. The Site has been used for container storage since 1993. The appellant claims that about 3,500 TEU will be stored at the Yard and the Site. In other words, the storage capacity will not be increased.

3. The Site is zoned "Undetermined" ("U"), in the draft Ha Tsuen Outline Zoning Plan OZP No.S/YL-HT/1 which was gazetted on 10th June 1994.

4. On 23rd February 1995, PlanArch Consultants Limited, on behalf of Container System Limited, made a s.16 application to develop the site for open

storage of containers for 3 years. That application was rejected by the Rural and New Town Planning Committee ("RNTPC") on 11th April 1995. The s.17 review was rejected by the Town Planning Board on 24th November 1995.

5. On 6th March 1996, an appeal was made to us under s.17B.

6. The reasons for rejection of the s.17 review by the Town Planning Board are

"(a) the proposed development was not in line with the planning intention of the "Undetermined" zone on the draft Ha Tsuen Outline Zoning Plan which was to safeguard the proposed railway alignment as suggested by the Railway Development Study as well as proposing appropriate forms of development alongside. There was insufficient information in the submission to demonstrate that the proposed development would not cause significant impacts on the environment and was compatible with the rural characteristics of the area;

(b) the turning movement of long container vehicles in and out of the depot in either direction of Ping Ha Road would interrupt traffic flow of the road and would also pose road safety hazards both to drivers themselves and other road users; and

(c) the approval of the application would set an undesirable precedent and induce similar applications in the vicinity of the subject lots to follow suit which would have significant adverse cumulative effects on noise, road safety and traffic of the area"

7. We need not concern ourselves with reason (b). It was accepted on appeal that a new proposal regarding the entrance to the Yard and Site is satisfactory.

8. The surrounding areas of the Site have the following characteristics

"(a) To the south of the site is a piece of agricultural land still under cultivation and some ponds. Further south and southwest are areas occupied by other open storages and vehicle repairing

workshops, some of which had been in existence before the gazetting of the Ha Tsuen Interim Development Permission Area Plan.

- (b) A container depot, from which the subject container depot is extended, is located to its immediate west. The southernmost portion of this container depot is an unauthorised development whilst the rest is an existing use.
- (c) Further west across Ping Ha Road are villages including to Uk Tsuen, Sik Kong Wai, Sik Kong Tsuen and Ha Tsuen Shi.
- (d) Tin Shui Wai New Town is located to its east across a nullah.
- (e) Some open storages and industrial undertakings are located to its further north and northwest across a drainage channel.
- (f) The site is served only by Ping Ha Road via the open storage to the immediate west”

9. The Site was zoned “U” because

“... this areas would be traversed by a proposed rail link as recommended by the Railway Development Study. The proposed land use in this zone will be subject to the finalisation of the abovementioned project” See 8.12.1, Explanatory Statement ("ES")

10. "Under the 'U' zone, any private developments or developments are required to prepare master layout plans for approval of the Board to ensure that the environment would not be adversely affected and that infrastructure, G/IC, open spaces etc. are adequately provided. The Master Layout Plans should also take into account the possible railway proposal as suggested by the Railway Development Study being finalised. The type of development should be compatible with the surrounding rural characteristics of the area" See ES, 8.12.2.

11. Mr Leslie Au Po Choi, the Managing Director of the appellant gave evidence. He has 26 years' experience in running container depots. He had been the Chairman and is currently the Vice Chairman of the Hong Kong Container Depot and Repairer Association. He had represented the Association in various working

parties or meetings organised by the Government such as the Central Container Handling Safety Committee organised by the Labour Department and the Joint Liaison Meetings organised by the Task Force (Black Spots) of the Lands Department. He said he is eager to improve the container depot working system and the safety of the staff working in the depot. Mr Au tried to create the impression that the appellant paid rent of about \$1 p.s.f. per month for the Site, not to increase profit but because he wanted to have a model container storage Yard.

12. He also claimed that in order to improve the environment and the safety of the workers, the appellant has introduced a container stacker system in the place of the traditional mobile or tower crane in the Yard.

13. He said the container stacker system requires more manoeuvring space and the maximum height is limited to 7 tiers. It is also more expensive.

14. On the other hand, if traditional mobile cranes are used, capacity can almost double as they require little space for manoeuvring and can stack containers up to 11 tiers. The main disadvantage of the mobile or tower crane is safety. Slingers, have to be placed on top of the containers for hooking containers during the operation and accidents involving such workers are not uncommon.

15. However, with the use of container stackers, a higher storage fee, \$9 as compared with \$6 per day per TEU, is payable by the customers.

16. In his evidence, Mr Au also stressed that the inclusion of the Site would not increase the volume of containers stored in the expanded container depot. He said that the increase in the floor area would be set off by the reduction in the storage area and the tiers of containers on the Yard.

17. Also in Mr Au's evidence, as well as the evidence of Betty Siu Fong Ho, a town planner, they emphasized other improvements to the Yard such as drainage, better visual impact and better noise barrier, better surface so as to reduce dust. Also more parking spaces, waiting areas and better room for manoeuvring of the container vehicles would be provided which should reduce the onstreet parking or traffic congestion along Ping Ha Road. However, their evidence is based on the assumption that the total capacity of the combined Yard and Site will remain about the same. We believe the appellant recognised that if capacity were to be increased substantially, it will be difficult for them to overcome the objection that permission to use the Site for open storage is contrary to the planning intention and that it would have adverse impact on road safety and traffic.

18. Mr Au said that it is the appellant's hope to become a model container storage yard. Indeed, according to him, it was a model so that it was visited by the Acting Governor on 1st August 1996.

19. It is quite clear from the appellant's proposed Layout Plan (exhibit BH4) that the proposed expanded container depot, if implemented, would have the containers neatly spaced out and there would be a luxurious amount of manoeuvring space between them. Indeed, from the photograph of the Acting Governor's visit to the Yard, it would seem that, at least on that occasion, layout resembling what is shown on the proposed Layout Plan was actually in use at the expanded container depot, that is to say, the Yard and the Site.

20. However, it is obvious from the photographs taken by the Planning Department in June and August 1996 that neither the Site nor the Yard were being used as envisaged in the proposed Layout Plan. These photographs showed that the Site and the Yard were tightly packed with stacked up containers.

21. When questioned about this, Mr Au informed us that for the last 2 years Chang Wan Container Services Limited were the operator of the Site although Container System Limited own 30% of its shares. Thus, according to him, the Yard and Site were under separate management but he claimed that there is an oral agreement for the appellant to take over the Site if the appeal should succeed. He claimed to have no control over the operation of the Site at the moment because he only has 30% of the shares.

22. The appellant called Miss Betty Siu Fong Ho , a town planning expert, and Albert Siu Lun Kwong , a transport planner. Both Miss Ho and Mr Kwong's evidence were based on the assumption that the total number of containers stored on the Yard and the Site would remain the same. That being the case, as must be obvious, with the area approximately doubled, there should be traffic as well as environmental improvements.

23. However, we cannot proceed on the basis that if planning permission is given, the Site will necessary be used together with the Yard or that the number of TEU stored at the combined Site and Yard will remain the same. Nor do we think we can impose effective conditions which will ensure compliance.

24. Mr Au produced certain average daily number of empty container storage which show, for example, that on Tuesdays, the average daily number was just over 3,600 whereas on Mondays, the daily average number was 3,570. He also produced another chart showing an average monthly variation of empty container storage which shows, for example, between September 1995 and August 1996, an average of just over 3,900 to below 3,200. We did not find these figures helpful. We asked for the daily figures to be produced. The daily figures subsequently produced covered September 1995 to June 1996. They show, for example, that on 23rd September 1995, the number of TEU at the Site and Yard was 5,467 whereas the number on 13th June 1996 was 5,490.

25. When queried about this, Mr Au explained that he had no control over the Site. Also, he seemed to suggest that because the s.16 application was unsuccessful there was no point in keeping the number of TEU to 3,500. We do not find the explanation convincing. We are bound to say that we find Mr Au's evidence highly unsatisfactory. We find that far from being full and frank in his evidence, certain aspects of his evidence were misleading. For example, the average figures which were produced masked the fact that on many occasions the daily TEU substantially exceeded 3,500. Further, it was only when questioned by us that he claimed that the Site was under separate management and that there is an oral agreement to run the site together with the Yard if the appeal succeeds. For these reasons, we do not believe we can proceed on the basis that if planning permission is granted to use the Site for open storage of containers, there will be no increased capacity. We believe we have to proceed on the basis that if the appeal is allowed, it is probable that increased TEU will result.

26. Evidence from the Town Planning Board show that with an almost doubling of the area, the number of TEU stored at the combined Yard and Site can easily double. That was the evidence of Mr Wong Nai Kwong, Senior Traffic Engineer of the Transport Department. Moreover, the evidence of Michael David Geeves, Chief Inspector of Police is that, on the occasions when he visited the Site, he found the Site to be fully utilised as a storage area, with stacks of up to 6 - 7 containers. His evidence is that the condition of the access roads in the Area is such that increased storage capacity which would generate additional container traffic cannot be tolerated. We accept his evidence. We have no doubt that any increase in container traffic is unacceptable.

27. On the other hand, as we have said, the evidence of Mr Albert Siu Lun Kwong is based on the hypothesis that storage capacity will not be increased. A hypothesis, which is based on the evidence of Mr Au and one which we are unable to accept.

28. To conclude, we are of the view that it would be contrary to the planning intention stated in ES, 8.12.2, to permit the Site to be used for open storage of containers, albeit only for 3 years. Given traffic and environmental constraints, we do not believe it was intended that an area zoned "U" should be used for open storage of containers. There are areas specifically zoned for that purpose. The area zoned 'U' is only "undetermined" because of the possible impact of railway development. We believe 8.12.2 made it clear that open storage is not intended.

29. We are also of the view that the additional container traffic will have an appreciable adverse impact on traffic, and for that reason also, the appeal must be dismissed.

30. The Town Planning Board has asked for costs. It has not been the practice of the Appeal Board to award costs to a successful party. This practice is ripe for review. But until a new policy has been adopted, we believe, in the circumstances, we should not order costs against the appellant.