

Town Planning Appeal No. 10 of  
1994

IN THE MATTER of an Appeal  
under Section 17B Town Planning  
Ordinance by Sun Link Properties  
Limited

Date of hearing: 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 16<sup>th</sup> May 1995  
Date of decision: 14<sup>th</sup> June 1995

Panel : Mr Justice Litton, OBE (Chairman)  
Prof Nelson Chow Wing-sun, MBE, JP  
Mr David C DaSilva, MBE  
Mr Wong Kai-man  
The Hon Howard Young, JP

### **DECISION**

The appellant, Sun Link Properties Limited, is the owner of various lots of land in DD221, Sha Kok Mei, Sai Kung, New Territories. It wishes to use the land for a residential development and has put together a proposal on a site measuring 12,877m<sup>2</sup> (1.29ha): 11,833m<sup>2</sup> of agricultural land held under a block Crown lease with the remainder of the site consisting of two small "old schedule" lots and an area of Crown land.

2. The proposal is to put up 42 houses and a club-house, using a plot ratio of 0.4 and a site coverage of 20%; there is a tennis court on the roof of the club house and a swimming pool together with a playground within the site. 68 carparking spaces are provided. There is no doubt that the development, if it materializes, will be very attractive.

3. The site falls within an area designated "unspecified use" in the Sha Kok Mei Development Permission Area (DPA) Plan No. DPA/SK-SKM/2. The draft DPA plan was first published on 12 July 1991 and, in accordance with section 20(5) of the Town Planning Ordinance, was effective for a period of three years.

4. In December 1993 the appellant applied under s16 of the Ordinance for planning permission in respect of the development. This was rejected. A s17 review took place on 24 June 1994. The grounds for the rejection are as follows:

- "(a) The proposed development intensity of a plot ratio of 0.4 is excessive and will have adverse impact on the infrastructural provision (particularly, it will overload Hiram's Highway);
- (b) the design of the proposed vehicular access is unsatisfactory as footpaths should be provided on both sides of the proposed access road; and
- (c) the approval of the proposed development will set a precedent for similar applications leading to adverse cumulative effects on traffic conditions in the area."

5. The appellant, being dissatisfied with this decision, has appealed to us under s17B(1) of the Ordinance.

#### The Sha Kok Mei DPA Plan

6. As stated in para 2.2 of the Explanatory Statement the object of the plan is:

“2.2... to provide guidance for planning and to facilitate development control within the Area during the period required for detailed analysis of the land use pattern, study of infrastructural provisions and examination of development options before the formulation of an outline zoning plan”.

7. It follows from this that a proposal for a private residential building development in an area designated "unspecified use" must be studied with great care, to ensure that the development will not unduly hamper the planning options available for the area: were it otherwise, ad hoc private development would in effect dictate the land use pattern; the subsequent formulation of the outline zoning plan might be prejudiced.

8. The DPA plan envisages a total of 4.39ha of Residential (Group C) use, comprising no more than 1.41% of the total area of the DPA. Under the plan, Residential (Group C) comprises two sub-groups: "R(C)1" with a plot ratio of 0.6 and site coverage of 30%, and "R(C)2" with a plot ratio of 0.4 and a site coverage

of 20%. These designations follows, generally-speaking, existing use. No areas of agricultural land, such as the lots owned by the appellant, have been designated in the DPA plan for residential development, unless they immediately adjoin an existing structure (or, perhaps, the site of an old structure). The appellant's proposals for development, if allowed, would have the effect of increasing the R(C) use within the area covered by the plan by approximately 30%.

The sub-area shown in the DPA plan

9. The site falls within a sub-area of the "unspecified use" zone which is described thus in para 6.3.5(b) of the Explanatory Statement:

"6.3.5. Unspecified Use (Total Area: 61.15 ha)

(b) Kap Pin Long San Tsuen and Kap Pin Long sub-area

- Due to the lack of planning control in the past, the areas have resulted in a fragmented and uncoordinated development pattern with poor infrastructural facilities. The planning intention of this sub-area is to encourage the improvement of the area to become rural development area through developments by private initiatives in order to prevent the proliferation of haphazard and polluting uses, such as container and open storage, and car breaking and dumping. However, transport infrastructure is the major development constraint which must be improved before any large-scale development would be permitted to take place."

10. The expression "rural development area" in the above paragraph is a term of art used by the planners to designate broadly an area for comprehensive low-density residential development, in accordance with a master layout plan. In other words, low density residential development within the area of the appellant's site is consistent with the broad intention.

11. Paragraph 7 of the Explanatory Statement also helps to throw light on the planning intentions. Where relevant, it reads:

"7. Implementation of the plan

- 7.1 ... residential developments will inevitably increase the population and thus the traffic flows to and from the Area. Such developments are constrained by the conditions and capacities of local vehicular accesses and their junctions with the major highway, as well as by the existing and future overall capacity of the major highway linking with external areas."

Traffic constraints

12. The appellant's site is located about 300m west of Tai Mong Tsai Road, a continuation of Hiram's Highway. This eventually leads into Clear Water Bay Road, at a T-junction. This is the major traffic link with urban Kowloon.

13. The Transport Department conducted a survey on 17 January 1995 for the section of Hiram's Highway near Ho Chung. This revealed that for the morning peak-hour the traffic flow was 1100 vehicles per hour in the Kowloon-bound direction, and 562 vehicles per hour in the Sai Kung-bound direction. Translated into "passenger car unit" terms this gives 1375 pcu/hr in the Kowloon-bound direction and 703 pcu/hr in the Sai Kung-bound direction, making a total of 2078 pcu/hr.

14. The traffic consultant employed by the appellant, who gave evidence before us, suggested that these figures are unreliable, being based only on a survey conducted on one day and at one spot. Obviously, the results would have been more accurate if more surveys had been conducted. There was nothing, however, to indicate that it was not a typical week day. The appellant's consultant conducted no survey at all, but attempted to extrapolate figures from the "CTS-2" (Second Comprehensive Transport Study) model, which was a territory-wide survey. The CTS-2 model did not, of course, focus upon the unusual features of traffic flow along Hiram's Highway, being a territory-wide model. We are not impressed by the evidence of the appellant's expert. He appeared more inclined to argue the case for the development than to assess the situation objectively from the good traffic-management point of view.

15. Taking the morning peak-hour flow as a total of 2078 pcu/hr, this suggests considerable overloading already on the carrying capacity of Hiram's Highway. The opinion of Mr Sin Kwok-keung, Senior Traffic Engineer, Transport Department, which we accept is that the carrying capacity of Hiram's Highway is about 1800 pcu/hr. This means that there is already an over-capacity of about 15%. This conclusion is consistent with the anecdotal evidence before us to the effect

that Hiram's Highway is already very congested at week-day peak-hours and on public holidays and week-ends. We reject the appellant's figure of 2,000 pcu/hr as the carrying capacity for Hiram's Highway: this figure was in fact extrapolated from a Transport Department paper dealing with design flow characteristics of roads generally. The paper says: "on single carriageways, up to 2 times the design flow" shown in a table can be envisaged. This is no warrant for saying that Hiram's Highway can accommodate such a traffic flow.

16. There is a stretch of Hiram's Highway with a steep gradient and sub-standard curves. This aggravates the unsatisfactory traffic condition. There are tentative proposals to improve Hiram's Highway, at different locations, but none of them have got beyond category B in the public works program. The prospect of substantial improvement of this traffic link with urban Kowloon lies in the distant future.

17. Whilst the additional traffic to be generated by a development such as that proposed by the appellant will not be enormous, it cannot be dismissed as insignificant.

#### Town Planning Board's decision

18. Reverting to the Town Planning Board's decision on the section 17 review, the primary objection, as we understand it, is that the proposed development with a plot ratio of 0.4 is excessively intense, having regard to all the circumstances. We should add in parenthesis that as far as ground (b) in the letter of 3 August 1994 is concerned - the objection based upon the design of the proposed vehicular access - this is no longer an issue.

#### Intensity of development

19. Is the Town Planning Board correct in concluding that the development intensity with a plot ratio of 0.4 is too great? The appellant argues that there is much pressure on the area for high-class residential development. This proposition, as a general proposition, is not denied by the respondent. The question is simply this: Is the development as proposed too intense, having regard to the broad planning intentions for the area and the traffic constraints? In our view, the Town Planning Board was right to conclude that the proposed development is too intensive. We are reinforced in this view when we consider the draft outline zoning plan, published about one week after the s17 review. There, we see that the portion of the site which has temporary structures on it, and comprises the "old schedule" lots, is zoned "Residential (D)" and the rest of the site "Green Belt". For Residential (D) the limitation on development is as follows: two-storeys with a plot ratio of 0.2 and a site coverage of 20%. As regards "Green Belt", there is a

general presumption against development, but limited developments may be permitted if justified on strong planning grounds.

### Conclusion

20. We conclude that the Town Planning Board has reached the right decision in this case. For the reasons given above, the Town Planning Board's decision is confirmed and the appeal is dismissed.