

TOWN PLANNING APPEAL  
NO.11 OF 1994

IN THE MATTER of the Town  
Planning Ordinance Cap.131

and

IN THE MATTER of an Appeal  
under Section 17B by WONG  
YEE FAI

Lot No.117, 118 and 119 in D.D.  
108, Fan Kam Road, Ta Shek Wu,  
Yuen Long, New Territories

Date of hearing : 24th May 1995

Date of decision : 14th June 1995

Panel : Mr Robert C. Tang Q.C., J.P. (Chairman)  
Mr Fan Sai-yee  
Mr Kenneth Tan Kok-oon  
Mr Ronny Wong Q.C.  
Dr Wong Kam-din

**DECISION**

Mr. Wong Yee Fai operates a car repairing workshop at Lots Nos.117,118 and 119 in D.D.108, Fan Kam Road, Ta Shek Wu, Yuen Long ("the property"). Such user is unauthorised under the Town Planning Ordinance and was commenced subsequent to the publication of the Pat Heung Interim Development Permission Area Plan No.DPA/YL - PH/1 on 5th October 1990.

2. Indeed, it would seem that such user commenced some time between 17th June 1992 (when aerial photograph showed the land was grassland) and 31st March 1993 when a site inspection revealed open storage of vehicles and vehicle parts and vehicle repairing on the property.

3. On 24th August 1993, a warning letter was issued to the owners of the property by the Planning Authority stating that the user was unauthorised.

4. On 21st October 1993, a s.16 application was made on behalf of the applicant.

5. In the meantime, on 12th July 1991, the draft Pat Heung Development Permission Area Plan No.DPA/YL-PH/1 was gazetted.

6. The property which covers an area of 5200 sq.m. was zoned as "unspecified use" in the Draft DPA Plan.

7. The draft DPA Plan was approved without amendment and was gazetted on 20th May 1994.

8. Subsequently, the draft Pat Heung Outline Zoning Plan ("OZP") No.S/YL-PH/1 was gazetted replacing the approved DPA Plan on 17th June 1994. The site is zoned "Residential (Group D)" on the said OZP.

9. However, as the applicant's s.16 application was made on 21st October 1993, this appeal falls to be considered under the draft DPA.

10. The s.16 application, which was unsuccessful was followed by an unsuccessful s.17 review. The reasons given for rejecting the application on review were

- "(a) the development was not in line with the planning intention for the "Unspecified Use" area which is to encourage agricultural uses and reconstruction of temporary structures with permanent materials with a view to improving the environment;
- (b) the development was not compatible with the nearby residential developments;
- (c) no information had been provided in the submission to demonstrate that the development would not cause adverse environmental impacts on the surrounding areas;
- (d) the access road to the development would affect the adjacent bus lay-by and insufficient information had been provided in the submission to demonstrate that the development would not cause adverse traffic impact on the area; and

- (e) no landscaping proposals had been included in the submission".

11. Mr. Wong appealed to us.

12. Although Mr. Wong was at one time represented by Lanbase Surveyors Limited, he was unrepresented on the s.17 review as well as before us. He told us that he had no difficulty with the last 3 reasons given by the Board. He was advised by his professional advisers that those objections (which are technical in nature) are surmountable. However, he was advised that it would be costly to deal with these objections and the expense may be to no avail because of the first and second objections.

13. For that reason, Mr. Wong wanted clarification. Basically, he wanted to know whether if he can overcome the last 3 reasons, his application will be approved.

14. Mr. Wong questioned Mr. Paul W.P. Ng, the District Planning Officer, accordingly. However, perhaps not surprisingly, Mr. Ng was non committal. Mr. Ng said that if the concerns raised in the last 3 reasons were satisfactorily dealt with, the application may or may not succeed depending on whether the more fundamental objections raised in the first 2 reasons can be overcome.

15. Of course, Mr. Ng cannot speak for the Town Planning Board. It is the Town Planning Board who decides such applications.

16. Whilst we sympathise with Mr. Wong's predicament and understand why he should be unwilling to spend money dealing with the technical objections unless he was confident of ultimate success, there is nothing we can do to help.

17. Mr. Wong had been advised to seek professional advice by the Town Planning Board and we repeated that advice. However, Mr. Wong was not prepared to incur the expense. Quite frankly, he told us he had been advised by a surveyor that if he could not overcome the first 2 objections, he would be wasting his money trying to deal with the other objections.

18. Mr. Wong has put forward no valid reason justifying his appeal. None of the technical objections have been dealt with. Nor has he attempted to deal with the more fundamental objections raised in the Board's first and second reasons.

19. In our opinion, this appeal must fail. Given the clear planning intention, which was to encourage agricultural uses and reconstruction of temporary structures with permanent materials with a view to improving the environment, we have no doubt that a vehicle repairing workshop is not compatible. Moreover, Mr.

Ng's evidence demonstrated quite clearly that active enforcement actions are being taken to realise the planning purpose.

20. The appeal is dismissed.