

TOWN PLANNING APPEAL
NO.14 OF 1994

IN THE MATTER of the Town
Planning Ordinance Cap.131

and

IN THE MATTER of an Appeal
under Section 17B by R & U
Planning Development Consultants,
on behalf of Sanyear Investments
Limited

D.D.100, Lin Tong Mei, Sheung
Shui, New Territories

Date of hearing : 19th, 20th, 21st, 24th & 25th July 1995

Date of decision : 21st August 1995

Panel : Mr Robert C. Tang Q.C., J.P. (Chairman)
Mr Stephen Lau
Mr Lee Man Ban
Mr Stephen Cheng
Mr Herbert Wong

DECISION

Sanyear Investments Limited, the Appellant, appeals against the refusal by the Town Planning Board to refuse its application to use the appeal site ("the Site") for residential development with ancillary recreation/amenity facilities.

2. The Site is situated at Lin Tong Mei, Sheung Shui, New Territories. It has an area of about 27,780 sq.m. It is irregular in shape but is directly accessible from Fan Kam Road which lies to the South of the site. The Site is presently occupied by fallow agricultural land with one three storey small house and two vacant structures (previously used for residential purpose) at the Eastern edge of the Site. The Appellant proposes to build 50 houses and 91 carparking spaces (77 residential parking spaces and 14 parking spaces for visitors) together with ancillary facilities including a club house, a multi-purpose court, a swimming pool, sewage treatment plant and refuse collection point.

3. The Site is situated within an area zoned for "unspecified use" in the draft Kwu Tung South Development Permission Area (DPA) Plan No.DPA/NE-KTS/1 current at the time of submission of the application. The approved DPA Plan which was renumbered as DPA/NE-KTS/2 was gazetted on 31st March 1994. As far as the site is concerned, there is no difference in terms of land use and the planning intentions between the draft and approved DPA plan. On 3rd June 1994, the approved DPA plan was replaced by the draft Kwu Tung South Outline Zoning Plan (OZP) No.S/NE-KTS/1.

4. The planning intentions for the area where the Site is situated can be gathered from 6.3.5(d) and (e) of the Explanatory Statement of the approved Kwu Tung South DPA Plan.

6.3.5(d) "... for appropriate forms of agriculture and rural activities to take place so as to avoid unwanted urban growth and to enhance the quality of the environment".

6.3.5(e) "For any other large scale developments within this zone, the owners/developers must demonstrate that their proposals would have insignificant adverse impacts on the environment, traffic and drainage of the areas or appropriate measures will be taken to mitigate such impacts to an acceptable level".

5. We note in passing that in the draft Kwu Tung South Outline Zoning Plan, the public site has been re-zoned "agriculture" and that residential developments may no longer be permitted in areas zoned "agriculture". However, we must consider this appeal in accordance with the DPA Plan.

6. In rejecting the Appellant's application on the review, the Town Planning Board on 9th September 1994 gave the following reasons :-

“(a) the proposed development is not in line with the planning intention for the area which is to encourage agricultural and recreational uses which are compatible with the surrounding environment and will not disturb the local communities;

(b) the proposed development is not compatible with the uses of the surrounding land which is mainly agricultural land under active cultivation;

- (c) the traffic impact assessment is not satisfactory in that it has not addressed the traffic impact on the strategic road network and the problem of the junction capacity of Fan Kam Road/Castle Peak Road;
- (d) the traffic generated from the proposed development will have an undesirable impact on the existing narrow Fan Kam Road;
- (e) the proposed vehicular access to the application site and the proposed improvements are not satisfactory and will involve felling mature trees”.

7. On the appeal, Mr. Ngai Sik Keung of R & U Planning Development Consultants Limited argued that the permission sought should be given because the Appellant's proposals would have insignificant adverse impact on the environment or traffic. He argued that any application which satisfies para.6.3.5(e) cannot be said to be inconsistent with the planning intention for the area.

8. The development, if approved, would involve a construction of 50 houses with an average site of about 163.54 sq.m. for a designed population of 175 persons. It would provide 91 carparking spaces (77 residential parking and 14 visitors parking spaces) together with recreational facilities including a clubhouse, a multi-purpose court, swimming pool and outdoor sitting area, as well as ancillary facilities such as a guard house, a sewage treatment plant and refuse collection point.

9. It seems to be common ground that the additional traffic likely to be generated by the developments on the site is less than 30 vehicles per hour during peak hours.

10. According to the evidence of Mr. Lee Yan-ming, Senior Traffic Engineer of the Transport Department, the section of Fan Kam Road fronting the site is expected to reach its capacity in late 1990s/early 2000s. Fan Kam Road is substandard and has a traffic lane of 2.75m. Although there is no available guideline on the saturation flow for a substandard traffic lane of 2.75m, the guidelines on the road capacity for traffic impact assessment in use in Hong Kong shows that the saturation flow of a 3m lane is about 790 passengers car unit (pcu) per hour. It is common sense that the pcu capacity of a 2.75m road will be less.

11. Moreover, even leaving aside the traffic impact of the proposed development, the morning peak hour flow in 2001 would be 690 pcu per hour in

the southbound direction, which according to Mr. Lee would most likely exceed the road capacity. According to Mr. Lee, additional traffic demand generated by the proposed and other developments in the area would result in further cumulative adverse impact on Fan Kam Road.

12. We were told there are five other pending appeals under the DPA for sites along the stretch of Fan Kam Road which, if all approved, would result in at least 150 - 200 pcu per hour.

13. We believe that given the sub-standard nature of Fan Kam Road, the site is not ideal for residential development, however we need to consider whether the Appellant is able to prove that the proposed development would create no significant adverse traffic impact.

14. Mr. Richard Ko who gave evidence on behalf of the Appellant told us that the 790 pcu an hour used by the Transport Department is a desirable figure but that the actual capacity is substantially higher. According to him, for example, in North America, a maximum of 1,800 pcu may be acceptable. 1,800 pcu is arrived at mathematically: allowing for a headway of 2 seconds and there being 3,600 seconds in an hour, the capacity should be 1,800. According to Mr. Ko, a single lane on Fan Kam Road should be able to accommodate 1,600 - 1,700 vehicles per hour. This may be so in an ideal world. We are not satisfied that we should depart from the figures which have always been relied upon in Hong Kong. However, Mr. Ko quite fairly went on to say the capacity may be limited by congestion at intersection. Thus, for example, according to Mr. Ko, the capacity along Conduit Road is about 800 pcu. For that reason, Mr. Ko has proposed the widening of the Castle Peak Road junction to ease of congestion and add to traffic flow.

15. According to Mr. Ko, the traffic volume to road capacity ratio at the Fan Kam Road/Castle Peak Road would be 1.3 in year 1996. And the junction of Fan Kam Road/Tai Po Road Roundabout would be operating close to capacity in year 2001. This is unacceptable in traffic engineering point of view and would result in long queue and delay on the minor road. Thus, the Appellant proposes improvement schemes to improve the situation. This would consist of local road widening and signalisation of the Fan Kam Road/Castle Peak junction as well as pedestrian phase/signals. Local road widening is also proposed for Fam Kam Road/Tai Po Road Roundabout. These, it is said, are planning gains with significant improvements to both vehicle and pedestrian traffic.

16. Another traffic objection to the development voiced by Mr. Lee is that the Appellant has failed

"to address the traffic impact of the proposed development on the strategic road network"

17. There, Mr. Lee relied on a recent North East New Territories Development Strategy Review carried out by consultants of the Planning Department whereby the potential strategic road links which will be overloaded in the long term are identified. This included:-

- (a) the dual 3-lane New Territories Circular Road between Fanling and Tai Po,
- (b) the dual 2-lane section of Tolo Highway between Lam Kam Interchange and Island House Interchange, and
- (c) Tolo Highway between Island House Interchange and Ma Liu Shui Interchange even with the proposed widening to dual 4-lane standard scheduled for completion by 2000.

18. Mr. Lee also said that unco-ordinated developments though small in themselves, will have cumulative adverse impact on Fan Kam Road and other strategic road links in the North East New Territories. Moreover, there is no programme yet for the improvement of Fan Kam Road. Usually, it will take 8 to 10 years from programme to completion.

19. Furthermore, Mr. Lee said that it is imprudent to permit any developments that would add further traffic loadings on these road links, until there are committed highway improvement projects included in the Public Works Programme to provide the requisite additional road capacities.

20. According to Mr. Lee, the proposed widening of the Fan Kam road/Castle Peak Road junction to be carried out are only local improvement works confined to the junction situated 2km north of the subject site. Completion of the work would not help alleviate the capacity constraint and road safety problems on Fan Kam Road itself.

21. Mr. Ngai's retort as well as Mr. Ko's evidence is that it is unfair that an applicant such as the Appellant here should have the burden of preparing a road traffic impact assessment on the strategic road network. It is said with force that it is not correct to look at road network in isolation. Developments on the island may add to traffic burden in the New Territories and vice versa. However, because we are not satisfied that the Appellant can overcome the burden of satisfying us that the proposed development will not have significant adverse impact on traffic on Fan Kam Road, we find it unnecessary to come to a decision. We must not be taken to have accepted what seemed to be implicit in Mr. Lee's evidence, namely,

that in planning strategic traffic network, no account would be taken of possible planning permission being given by the Town Planning Board.

22. We come to consider the reasons given by the Town Planning Board for refusing permission. The first two of which is that the proposed development is not in line with the planning for the area which is to encourage agricultural and recreational uses which are compatible with the surrounding environment and would not disturb the local communities. As we have said above, the site is a fallow agricultural land with a three storey small house and two vacant structures. The surrounding areas are mainly rural in character and comprises mainly of agricultural land under active cultivation albeit with some sporadic domestic structures and open storage uses. To its immediate east are a cluster of domestic structures and a number of open storage activities which have come into existence before the gazettal of the Interim Development Permission Area (IDPA) Plan No.IDPA/NE-KTS/1 (which was gazetted on 17th August 1990) for the area. To its immediate northwest are fallow agricultural land and a cluster of village houses. To its immediate west and southwest across a streamcourse are actively cultivated land with chicken sheds. To its further northeast is the Kin Tak Public School.

23. Moreover, the Site was still under active cultivation until very recently and there is no difficulty in reverting to agricultural use.

24. Mr. Thomas Ng Yeung-shing of the Agriculture and Fisheries Department explained to us that the Site is Grade A agricultural land in that it is situated within an area with substantial amount of land being actively cultivated and that very minor improvements may be required to bring fallow land back to cultivation. According to him, there is demand for agricultural land and that there are at the moment 50 registered applicants looking for suitable agricultural land to establish or re-establish their farms. However, it would seem that such registered applicants would be satisfied with at most 2 or 3 ha of land each whereas the Grade A and Grade B land which are fallow exceed 1,000 ha! In other words, there is much more land than demand. But that does not mean that a person looking for agricultural land will be able to sub-lease arable land to farm since many owners prefer to leave their land fallow.

25. In our opinion, having regard to para.6.3.5(d) and (e) of the Explanatory Statement, we are of the view we would not have refused the application on the basis that it was contrary to planning situation.

26. We are of the opinion that there is much force in the submission of Mr. Ngai that the site when developed will be more or less self-contained since it is bounded by the proposed River Channel in its North and West. The first stage of the river craning work is to commence in 1997. Upon completion of the river training work, the trained river will be 15m wide plus a 6m wide vehicular access

running alongside and thus the Site will be separated from the agricultural land to the North and West of the Site.

27. However, we are of the view that the traffic generated from the proposed development will have an undesirable impact on the existing narrow Fan Kam Road. It is true that the burden will only be less than 30 vehicles per hour. This in itself is not inconsiderable. Moreover, this should not be considered in isolation. As we have said, there are other pending appeals which will add significantly to the traffic burden. We do not think it is the right approach to give approval until just before the last straw is reached. An overall view is often fairer and more appropriate.

28. Mr. Ngai relied on a successful s.16 application on 4th June 1993 just cross Fan Kam Road from the Site. That approval was given notwithstanding traffic objection. However, at that Site there was lawful existing use of open storage and thus the approval would improve the environment. It in itself is not a good reason for permitting residential development for this Site. But the fact that equal treatment should be accorded to all applicants is another reminder that we must not ignore the fact that there are other pending appeals.

29. Lastly, the objection to the proposed vehicular access to the Appellant's site and the felling of mature trees. The latest revised proposed vehicular access is not objectionable from a traffic point of view but would involve felling 12 trees. These are Paper Bark trees which are rather common in Hong Kong. However, it is said that the amenity value of the trees is very good, in view of their mature size, good tree form and healthy condition. Moreover, they form part of a long row of double avenue tree planting along Fan Kam Road. However, it is quite clear from the photographs that are produced to us that trees have been felled further up Fan Kam Road near the Fan Kam Road/Castle Peak Road junction and the road junction leading to the North District Hospital construction site. There are compensatory planting there. It is also proposed that compensatory planting will be done at the proposed site. Again, had this objection stood alone, we would have been inclined to grant the permission.

30. However, we are not satisfied that the proposed development would create insignificant adverse traffic impact on Fan Kam Road and for this reason we dismiss the appeal.