

TOWN PLANNING APPEAL  
NO.5 OF 1994

IN THE MATTER of the Town  
Planning Ordinance Cap.131

and

IN THE MATTER of an Appeal  
under Section 17B by TONG  
KAM WONG

Lot No.569 in D.D.82, Ta Kwu  
Ling, New Territories

Date of hearing : 12 July 1995

Date of decision : 27 July 1995

Panel : Mr Robert C. Tang Q.C., J.P. (Chairman)  
Ms Alice Lam, O.B.E., J.P.  
Mr Lam Hoi Ham  
Ms Pamela Chan, J.P.  
Mr John Tong, J.P.

**DECISION**

This is an appeal by Mr. Tong Kam Wong, the registered owner of Lot No.569 in D.D.82, Ta Kwu Ling, New Territories ("the site") against a refusal by the Town Planning Board to approve his application to replace existing structures on the site by a single-storey structure for storage of farm instrument and paraphernalia.

2. The reasons given by the Town Planning Board on review are:

- “(a) insufficient justifications have been provided in the submission to justify the proposed development for the storage of farm instruments and paraphernalia left behind from the previous chicken rearing activities;

- (b) as the proposed storage is considered a general storage and not incidental to active agricultural activities, it is not in line with the planning intention for the area which is to enhance the environment and to identify appropriate forms of agriculture and rural activities that can be sustained to prevent unwanted urban growth;
- (c) no detailed proposals on the provision of vehicular access, parking and manoeuvring spaces have been included in the submission; and
- (d) no landscaping proposals have been included in the submission”

3. Mr. Tong was represented by one Mr. Chung Wan Kong, who gave evidence before us.

4. The draft Ping Che and Ta Kwu Ling DPA Plan No.DPA/NE-TKL/1 is the relevant plan. The site falls within a sub-area of an "Unspecified Use" area. The planning intention for the sub-area is contained in para.6.3.5(a)(i) of the Explanatory Statement:

“In the northern and eastern parts of the DPA on either side of Ping Che Road and Sha Tau Kok Road are large tracts of flat and extensive arable lowland scattered with farms and industrial buildings. The majority of farming households in these areas live adjacent to their farms in small temporary structures that often form extensions to the animal sheds. These structures are either permitted or tolerated. Significant portion of agricultural land in these areas are lying fallow at present. As land in these areas has high potential for agricultural development for agricultural development because of good water supply and local agricultural skill, agricultural uses will be encouraged and considered the most appropriate. Recreational uses (including ancillary facilities) which are generally compatible with the rural environment and are unlikely to adversely affect local communities, may also be permitted. The main planning objectives are 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. Residential development in compliance with the conditions of the

"On-farm Domestic Structure" Scheme may be permitted where the dwelling is necessary to support the agricultural use".

5. The site has an area of about 445 sq.m. According to Mr. Chung, up to about 8 or 9 years ago, it was used as a poultry farm. That was discontinued for environmental reasons. However, the equipment and paraphernalia associated with the poultry farm have been retained. Mr. Chung's evidence is not very clear on this point, but it seems that such equipment and paraphernalia have very little value.

6. According to Mr. Au Wai-kwan, a District Board Member, who gave evidence on behalf of the Appellant, when he last visited the site at the end of 1994 the equipment and paraphernalia were stored in the 2 structures and occupied about 400 sq.ft.

7. However, according to Mr. Chung, they were no longer stored there but are stored free of charge on neighbour's land. According to Mr. David O.Y. Wong, District Planning Officer, the 2 structures are for practical purposes empty (but for a few bamboo baskets).

8. We must say we are not satisfied on the basis of Mr. Chung's evidence that Mr. Tong wants a new building just for his old poultry equipment and paraphernalia. Indeed, Mr. Tong had made 2 previous unsuccessful applications for a more extensive storage user on the site and other lots owned by him.

9. In any event, we are of the view that to permit storage use on the site is contrary to the clear planning intention for the area which is to encourage agricultural use. The first 2 reasons given by the Town Planning Board cannot be faulted. It is unnecessary for us to consider the 3rd and 4th reasons given by the Town Planning Board. Suffice it to say that they are factually correct.

10. Lastly, according to Mr. Au, the 2 structures now on site are delapidated, and they may become dangerous. We want to make it clear that no permission is required for the maintenance, repair or demolition of the 2 structures. The fact that this application is unsuccessful should not preclude the Appellant from effecting necessary repair. What the Appellant cannot do is to build a new structure. Nor can he use the old structures for any purpose other than uses directly related or ancillary to agricultural use.

11. The Appeal is dismissed.