

Town Planning Appeal No. 14/1993

Yiu Cho Investment Co. Ltd.

and

Rich Country Enterprises Ltd.  
Appellants

Re: No. 6 to 12 Leighton Road  
Hong Kong

Date of hearing : 31<sup>st</sup> January, 2<sup>nd</sup> and 3<sup>rd</sup> February 1994  
3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> March 1994

Date of decision : 8<sup>th</sup> April 1994

Panel : Mr Justice Litton, OBE (Chairman),  
The Hon Man Sai Cheong,  
Mr Jason Yuen  
Mrs Pamela Chan, JP, and  
Mr Douglas Van

### **DECISION**

The Appellants are owners of 6, 8, 10 and 12 Leighton Road, Happy Valley, a row of residential buildings. 6 and 8 are four-storeyed, used entirely for residential purposes; 10 and 12 are six-storeyed, with shops on the ground floor. They are located on the south side of Leighton Road, near its junction with Wong Nai Chung Road. The adjoining No. 2 and 4 Leighton Road are located at the corner. As regards the properties on the other side of the site in question, the land use is mixed; some have been redeveloped to the maximum density allowed for predominantly residential purposes, but planning consent for office use has been given for No. 14-16, and No. 26; No. 38 has been redeveloped as a large office block with parking spaces called East Exchange Tower. In the Wong Nai Chung Outline Zoning Plan (No. S/H7/4) all the properties on the south side of Leighton Road and its continuation into Wong Nei Chung Road are zoned Residential Group A ("R(A)") which means that in addition to residential use the lower three floors of any development can be used (as of right) as retail shops, restaurants, fast-food shops etc. The Notes to the OZP also state that the floors above the lower three floors can be used for office purposes with permission from the Town

Planning Board (“TPB”). At the back of the properties is Leighton Hill and this is zoned Green Belt. The top of Leighton Hill is zoned Residential Group B which has severe height restrictions on residential development. The properties are close to the Wong Nai Chung Recreation Grounds and Happy Valley Race Course. On the other side of Leighton Road the developments are predominately commercial, including the large Leighton Centre near to the properties in question.

2. In October 1992 the appellants, through their consultants, submitted to the TPB proposal under s16 of the Town Planning Ordinance to redevelop the site by the construction of a 25-storeyed commercial building with a plot ratio of 15 and a total floor area of 6,692m<sup>2</sup>. Two spaces for loading and unloading within the ground floor space were provided, with a mechanically propelled turn-table for turning the delivery vehicles within the building. The proposed development was categorised by the consultants as a “Grade B” office development. In essence the appellant's case was this:

- (i) Although the even-numbered properties on Leighton Road are predominantly residential, the zoning R(A) in the OZP clearly signals the possibility of change to commercial use.
- (ii) The pressure to change the even-numbered properties on Leighton Road to commercial use has been considerable: thus, No. 14-16 Leighton Road have been given approval to change to commercial use in October 1981 by the TPB and, earlier, in December 1978, No. 26 likewise, although developments have not in fact taken place as yet on these properties. No. 38 has been redeveloped as an office building.
- (iii) The residential properties at Wong Nai Chung Road round the corner from the site offer little attraction for commercial development: they face the Happy Valley Race Course and are too remote from Leighton Road to be attractive for shops; thus, the 'knock-on effect' of a commercial development at No. 6 to 12 Leighton Road will probably be confined to Leighton Road, and will not spread over to Wong Nai Chung Road. The consultants accept that the properties zoned R(A) in Wong Nai Chung Road should, from a planning point of view, remain residential.

- (iv) As regards Leighton Road, all the odd-numbered properties have already been developed for commercial purposes; from a planning point of view there can be nothing objectionable if all the even-numbered properties were re-developed for commercial purposes as well.
- (v) A conforming residential development at 6-12 Leighton Road will in any case allow the lower three floors to be used for commercial purposes: retail shops and the like. To have the upper floors re-developed for residential purposes will be to subject the occupants to unacceptably high levels of noise and air pollution. An acoustic-proofed centrally air-conditioned office development would be the best option for the site from the environment point of view.
- (vi) The Causeway Bay district is extremely deficient in Grade B office space and the proposed development will fill a known need.

3. On 8 February 1993 the application to the Town Planning Board was rejected. Two grounds were stated:

- (a) the proposed vehicular access onto Leighton Road was too close to the signalised junction between Leighton Road and Wong Nai Chung Road;
- (b) the feasibility of using the rear-lane at the back of the site for vehicular access (for the purposes of loading and unloading) had not been demonstrated.

4. It is accepted by the appellants that the difficulties referred to in (b) above cannot be overcome and that alternative solution to the traffic problem was not pursued.

The matter therefore boiled down to one point: Are the traffic objections to commercial development so overwhelming that the appellant's proposals should, having regard to all the other relevant circumstances, be rejected? We put the issue in this way because the view of the District Planning Office, as expressed by the District Planning Officer Mr David O.Y. WONG in evidence, is that the commercial development is not incompatible with the surrounding land use, and the view of the Director of Environmental Protection ("EPD") is that the site is undesirable for residential development because of its

exposure to traffic noise from Leighton Road. The EPD supports a commercial development on the site.

5. Upon reviewing the appellant's application on 15 June 1993 under s17 the TPB again rejected the application. In his letter dated 20 July 1993 communicating the TPB's rejection the Secretary stated:

“ .... the TPB decided on review not to approve your application on the ground that the proposed vehicular access onto Leighton Road is not acceptable as it is too close to the signalised junction between Leighton Road and Wong Nai Chung Road”.

6. The matter accordingly comes to us on appeal under s17B of the Ordinance.

#### Traffic considerations generally

7. Assuming that the appellants were to develop the site for residential purposes, with the first three floors designed for retail/commercial use, (that is to say, a "conforming residential development") the permitted plot ratio would be 9.4, as compared with a plot ratio of 15 for the commercial development: some 1½ times less in terms of total floor area.

8. Moreover, having regard to the location, and the unattractive environment, a conforming residential development is likely to cater for the lower middle-class; the occupants are therefore likely to use public transport, not private cars, and may well work in the vicinity, thus able to get to work on foot. The appellants, at the hearing, adduced evidence, not challenged by the respondent, showing that a conforming residential development would have this profile:

Gross floor area retail:	1338 m <sup>2</sup> (3 floors of retail space)
Gross floor area residential:	2856 m <sup>2</sup> : 20 floors with 3 flats each of average GFA 47.6 m <sup>2</sup> . Total of 60 flats.

This is to be compared with the proposed commercial development having 485.9 m<sup>2</sup> of retail space and 6205.5 m<sup>2</sup> of office space.

9. Public transport is readily available in the vicinity. The respondent submits that as a matter of commonsense a conforming residential development is likely to generate far less additional vehicular traffic to-and-from the site, as

compared with a commercial development; and as regards servicing traffic, that is, delivery of goods and material to and from the site, a residential development would likewise generate less traffic. The appellants dispute this. We find ourselves unable to decide this, one way or the other; the matter will depend, to some extent, upon how the buildings will ultimately be used. We are not prepared to adopt the respondent's "common-sense" view-point in this regard.

10. The evidence adduced at the hearing, which we accept, shows this:

- (1) Opposite the site there is an island in the middle of Leighton Road which forms a tram-stop; this divides the traffic going westwards into two streams;
- (2) the traffic along Leighton Road going westwards is very heavy, and tends to back-up because of congestion at the Canal Road flyover, but the traffic branching off past the site to Wong Nai Chung Road is relatively light;
- (3) surveys conducted on two week-days in March 1993 and again on a weekday in January 1994 show a slight build up of traffic in the intervening period at the signalised junction between Leighton Road and Wong Nai Chung Road, but traffic queuing up at the traffic lights would not be a major hindrance to vehicles entering and leaving the site: this is because Leighton Road forms two lanes at the junction, and unless all the vehicles waited for the change of lights in the inside lane, there is likely to be room for vehicles entering and leaving the site despite its proximity to the junction: at least, for substantial periods of time during the day. Obviously, on special occasions such as Race Days at Happy Valley there will be congestion, but one would expect delivery vehicles to avoid those occasions.

#### TPB guidelines

11. The TPB has laid down guidelines for considering applications for office development in R(A) zones. One of the criteria is that there should be

adequate provision of parking and loading/unloading facilities within the site. This the appellants have provided in their plans. The problem is that the proposed vehicular entrance, at the extremity of the site furthest away from the signalised junction, is still within 20 metres of the stop-line. It is the respondent's case that this will cause congestion and disruption to the traffic flow and for this reason a residential development is preferred.

In response, the appellants say this:

- (i) The servicing vehicles could use the kerbside for loading and unloading; and
- (ii) a residential development on the site would in fact generate even more servicing traffic than the proposed commercial development; they have the right to put up a high-rise residential block on a three-storeyed retail podium; from the servicing traffic point of view the commercial development would put less stress on the infrastructure of the area.

12. We should say right-away, in relation to point (i) above, that in our judgment there can be no question of relaxing the requirement for on-site loading and unloading. This is clearly an important planning requirement. Of course, there is no guarantee that with on-site facilities provided, servicing vehicles will not in fact use the kerbside for loading and unloading. Nonetheless, we would reject point (i) above out-of-hand, in so far as the appellants are suggesting that the development should rely only upon kerbside loading and unloading. This then brings us to point (ii) above.

Would a commercial development generate less servicing traffic?

13. It is the appellants' case that the proposed office building would generate about 30% less servicing traffic than a conforming residential development. This is based upon a report produced by the consultants Messrs Ove Arup and Partners which was put before the TPB for the purposes of the s17 review. In essence, what the consultants concluded was this: the peak servicing demand of the proposed office development is likely to be 5 vehicles per hour, whereas the peak servicing demand for a conforming residential building is likely to be 7 vehicles per hour.

14. To reach this conclusion, the methodology used by the consultants was this:

- (i) They conducted a traffic survey of an office building in the Western District of Hong Kong, at 28 Connaught Road West, called Wayson Commercial Building. This was done on Wednesday, 19 August 1992. Wayson Commercial Building has a total gross floor of 14,846m<sup>2</sup>, of which 2,121m<sup>2</sup> is retail: that is, 14.3%.
- (ii) The person doing the survey started at 8 a.m. and divided the vehicles going to Wayson Commercial Building into four categories: cars, vans, goods vehicles shorter than 8m, goods vehicles longer than 8m. The surveyor assumed that cars and some vans were not "servicing vehicles" and the rest were, and then noted the vehicles hour-by-hour. Thus, between 1 p.m. and 2 p.m. there were noted the follow: 1 car, 5 vans, 2 goods vehicles shorter than 8m, 2 goods vehicles longer than 8 metres (10 vehicles in all). The surveyor assumed that 8 of them were servicing vehicles. Presumably, he eliminated the one car and one of the vans. The figures were then resolved into "trip rates", that is, the number of vehicles per 100 m<sup>2</sup> GFA, and this gave a figure of 0.054.

On the basis of the one-day survey at Wayson Commercial Building, the consultants concluded that the trip rate at the peak servicing hour for that building was 0.07.

- (iii) Using the figure of 0.07 as the relevant trip rate, the consultants then applied it to the proposed commercial development at Leighton Road, having a total GFA of 6690m<sup>2</sup>. The computation was accordingly as follows:

$$\frac{6690\text{m}^2}{100} \times 0.07 = 4.68, \text{ say } 5$$

They thus concluded that, at the peak servicing hour, the proposed commercial development was likely to generate 5 servicing vehicles per hour.

- (iv) They conducted a similar exercise for the conforming residential development at Leighton Road. A residential block at Causeway Bay, Tat Son Lau, having 41 occupied flats of an average of 67m<sup>2</sup> GFA and 362m<sup>2</sup> of retail floor space was selected. Residential servicing vehicles were surveyed on Friday, 11 December 1992 and retail servicing vehicles were surveyed on Monday 8 March 1993. The trip rates for the residential segment were expressed as vehicles/flat/hour and for the retail segment as vehicles/100m<sup>2</sup> GFA/hour.
- (v) The person doing the survey again started at 8 a.m. and counted the vehicles assumed to be servicing vehicles. At the "peak" servicing hour there were 2 servicing vehicles (or vehicles assumed to be servicing vehicles) for the residential block and 2 servicing vehicles for the retail floors. In terms of trip rates this therefore worked out as follows:
- (a) residential servicing vehicles/flat/hour = 0.048  
say 0.05
- (b) retail servicing vehicles/100m<sup>2</sup> GFA/hour =  
0.55

The trip rate of 0.55 for the retail floors at Tat Son Lau was arrived at by using the figure of 362m<sup>2</sup> (the GFA of the total retail floor space). The consultants thought that to apply this trip rate (0.55) for servicing vehicles to a conforming residential development at Leighton Road would be wrong because the retail portion of the conforming residential development would be much larger – 1338m<sup>2</sup> - and since trip rates tend to diminish when the size of the retail space increases, they halved the figure of 0.55, and applied a figure of 0.275 to the 1338m<sup>2</sup> to work out the likely number of vehicles servicing the retail floors at Leighton Road. The computation was therefore as follows:

$$\frac{1338\text{m}^2}{100} \times 0.275 = 3.68 \text{ say } 4 \text{ vehicles per hour}$$



As regards the residential servicing vehicles, as there would be a total of 60 flats in the conforming residential development, it was simply a matter of applying the trip rate of 0.05 for Tat Son Lau to that figure:

$$0.05 \times 60 = 3 \text{ vehicles per hour}$$

- (vi) This is how the consultants eventually arrived at the figure of 7 vehicles/hour for the residential development at Leighton Road - which, they say, proves that a residential development would generate 30% more servicing traffic than the proposed commercial development: 7 vehicles/hour is 30% more than 5 vehicle hour.

15. We do not accept the consultant's conclusions. In our view, their methodology is flawed. Take, for instance, the trip rate of 0.05 for the residential servicing vehicles for Tat Son Lau, which was used to calculate the likely number of servicing vehicles at a conforming residential development at Leighton Road at the peak servicing hour: this was arrived at by the surveyor observing 2 vehicles at Tat Son Lau during the time slot 10 a.m. to 11 a.m. on Friday 11 December 1992. He never went back the following day to see if the "pattern" repeated itself. Assuming, for instance, that only 1 vehicle arrived at the "peak servicing hour" the next day, what would he have concluded? Arithmetically, the trip rate would have been 0.024, say, 0.02. Applying that rate to the 60 flats at Leighton Road, the result would have been:

$$0.02 \times 60 = 1.2 \text{ say 1 vehicle per hour}$$

When this is added to the 4 vehicles per hour for the retail floors at the conforming residential development at Leighton Road, it gives a figure of 5. Would this then have "proved" that the conforming residential development is likely to generate the same amount of peak servicing traffic as the proposed commercial development?

Further, the retail area for the conforming residential development is nearly 4 times the retail space at Tat Son Lau; for this reason the consultants halved the trip rate of 0.55. This was an arbitrary exercise. Assume that they reduced it by 2/3 the computation would have worked out as follows:

$$\frac{1338\text{m}^2}{100} \times 0.18 = 2.4 \text{ say 2 vehicles per hour}$$

If this was added to the figure of 1 vehicle per hour for the residential servicing traffic, as computed above, this would have given a total of 3 vehicles per hour: 40% less servicing traffic for the conforming residential development than the proposed commercial development.

16. When the results can vary so drastically by a small change in the basic data the conclusions are unsound. Moreover, whether vehicles arriving at the buildings surveyed constituted "servicing vehicles" was simply a matter of judgment on the part of the surveyor. We do not know who he is. We note that in the example given in para. 14(ii) above, two vehicles including a van were eliminated: what if that van were in fact a servicing vehicle? Because the numbers were so small, the variation of one vehicle would have greatly changed the result. Such statistical bases are in our view unsound, and the conclusions suspect.

17. The respondent also adduced "expert" evidence, the effect of which was to demonstrate that the servicing activities of the proposed commercial development would be at least 2 to 3½ times that of a conforming residential development. That, too, in our judgment was flawed.

18. As comparables for the retail element of the conforming residential building the respondent's expert Mr Yeung took survey figures for Great Eagle Centre and Lok Fu Shopping Centre at peak traffic hours - not at peak servicing hours. Moreover those two centres are huge retail complexes: very different from the 1338m<sup>2</sup> of retail space at the conforming residential development at Leighton Road. The survey at Great Eagle Centre was done on one day in March 1989 and the survey at Lok Fu Shopping Centre was done on one day in November 1987. The result was a trip rate of 0.1 vehicle/100m<sup>2</sup>/hour. No adjustments were made for the fact that these two retail centres are very much larger than the 1338m<sup>2</sup> of retail space at the conforming residential development at Leighton Road, nor for the fact that the surveys were not done at peak servicing hours: arguably, peak morning and evening hours (when the two surveys were conducted) would not have been the hours chosen by servicing vehicles to deliver goods: they would have been the precise time slots the servicing vehicles would have avoided. This makes the use of the figures as comparables for Leighton Road rather questionable.

As regards the residential element, Mr. Yeung's assumed a trip rate of 0 to 0.035 vehicles/100m<sup>2</sup> GFA/hour: the 0.035 figure was arrived at by taking the appellants' figure of 0.07 for a commercial development (see para. 14(ii) above) and halving it. He checked this figure against surveys conducted in Hung Hom Bay in August 1986 and in Tsimshatsui in October 1987 and found it broadly comparable: the calculations based on those surveys gave a trip rate of 0.0378 vehicles/100m<sup>2</sup> which Mr Yeung felt was not too far out of line from his figure of 0.035. This seems to us to be a rather haphazard way of estimating the servicing

traffic for a conforming residential development at Leighton Road. In our view the trip rate of 0 to 0.035 vehicles/100m<sup>2</sup> is no more than a very broad estimate: not enough to base firm conclusions on.

19. We are not persuaded by Mr Yeung's evidence that the servicing activities of the proposed commercial development would be at least 2 to 3½ time that of a conforming residential development.

20. Being unconvinced by the expert evidence from either side we have to fall back on the material before us generally. Whatever the methodology used, both sides seem agreed that the proposed commercial development would not generate more than about 5 servicing vehicles per hour at peak servicing hours. This is unlikely to have much impact on the traffic along Leighton Road approaching the signalised junction. Moreover, the proposed access is to only two parking spaces (with a machine-operated turn-table inside). The evidence, which we accept, is that, based on the present traffic figures, there will be many time slots during which the servicing vehicles will be able to move in and out without disturbing the flow of traffic.

### Conclusion

21. Whilst the case for the appellants, based upon the opinion evidence of their traffic consultants, has been over-stated, it seems to us nevertheless that the impact of the proposed commercial development on the traffic along Leighton Road is not as great as the respondent's expert has made out. It is clear that the matter hung on a fine balance when it went before the TPB, for there were many factors favouring a commercial development. The matter has been explored much more fully before us and the experts on both sides have been extensively cross-examined by counsel.

22. We bear in mind this factor: Any decision we make would have impact not only on 6-12 Leighton Road, but on other even-numbered sites in Leighton Road. The cumulative impact of commercial development could be considerable. Nevertheless, we have reached the conclusion, with considerable hesitation that, overall, the merits of a commercial development outweigh those of a residential development, even though the former will result in a taller building and a higher plot ratio.

23. We would accordingly allow the appeal, vary the decision of the TPB by allowing the application for development as set out in the appellants' application for permission dated 8 October 1992, subject to the condition that there should be no variation of plans to delete the on-site loading and unloading facilities shown in the drawings accompanying the application. Our understanding is that this condition would bind not only the appellants but also any other

developer of this site as this condition would be enforceable under the provisions of s16(1)(d) of the Buildings Ordinance.