

TOWN PLANNING APPEAL  
NO.16 OF 1993

IN THE MATTER of the Town  
Planning Ordinance Cap.131

and

IN THE MATTER of an Appeal  
under Section 17B by  
NATURALUCK LIMITED

Date of hearing : 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup> February 1994 & 9<sup>th</sup> March 1994  
Date of decision : 21<sup>st</sup> April 1994

Panel : Mr Robert C. Tang Q.C., J.P. (Chairman)  
Mr Chan Pak Keung, O.B.E., J.P.  
Dr Lam Kin Che  
Mr Joseph S.K. Lo

**DECISION**

The Appellant applies for permission to build a petrol filling station ("PFS") at Lots Nos.228, 230 and 231 in D.D.16, Tai Po ("the Site"). The Site has an area of 572 sq.m. and abuts Lam Kam road, Lam Tsuen, Tai Po, opposite Hang Ha Po Village. 121.4 sq.m of the Site is building land.

2. The only other PFS on Lam Kam Road is about 6 km away. The nearest PFS is 1.1 km away at Hong Lok Yuen.

3. Three reasons were given by the Town Planning Board for not approving the application. They are:-

- "
- (a) the proposed development is not compatible with the surrounding rural environment and not in line with the planning intention for the area which is primarily for the promotion of agricultural activities and enhancement of the natural environment;
  - (b) there is insufficient information contained in the application to demonstrate that the proposed

development will not interfere with the integrity of the waterworks water gathering ground. Any possible leakage of petroleum produce can cause water pollution by pollutants which cannot be eliminated in the normal water treatment process; and

- (c) the proposed development is too close to existing village houses"

4. An earlier reason relied on by the Town Planning Board on the s.16 application, namely

"the location of the exit point on the existing village road is not desirable as it may be in conflict with the local traffic to and from the village and from the adjacent refuse collection point"

was not repeated on the Review.

5. The Site is within the Draft Lam Tsuen Development Permission Area Plan. The Site falls within an area which has been zoned "unspecified use".

#### Incompatibility with rural environment

6. The objection is that a PFS is incompatible with what is described as rural or village environment. Mr Stewart L.N. Lee, the District Planning Officer of the District Planning Office/Shah Tin and North East has referred us to the so-called "300 foot-rule".

7. However, para.6.3.1(ii) of the notes to the Draft Plan states that

"consideration has been given to the '300 foot-rule' in delimiting the 'V' zones. The area thus derived, occupying some 38% of the total area of the Area is considered much too large vis-a-vis the forecast small house demand of the respective indigenous villages"

8. Had the "300 foot-rule" been adopted, the Site would have been zoned 'V'. In view of para.6.3.1(ii) of the notes referred to in para.7 above, we believe the "300 foot-rule" to be irrelevant.

9. It was urged upon us that a PFS per se is incompatible with rural environment. We do not agree that is necessarily so. Indeed, even if the Site had

been zoned 'V', it does not mean a PFS would necessarily be incompatible. One sees in the notes that PFS is a permissible (column 2) user for a "V" zoning. Nor do we agree with the suggestion that a PFS is an urban commercial use. All over the world, it is not uncommon to find PFSs in villages.

10. The proposed PFS is small. It will have 2 pumps. It is not intended to serve container traffic. There is little agricultural activity in the immediate vicinity of the Site. The PFS will be located where it is easily accessible to vehicles. It satisfies the criteria for the selection of PFS sites in the Hong Kong Planning Standards and Guidelines.

11. The design of the proposed PFS also satisfies the Hong Kong Planning Standards and Guidelines. Miss Patel concedes that but asserts that it is just above the threshold. She argues that the Site is not ideal for a PFS.

12. But we believe our approach should be that planning permission should be granted unless there are good reasons for refusal.

13. Even if the Site is not ideal, but is merely suitable for use as a PFS we see no reason why permission should be refused in the absence of evidence that permission would cause demonstrable harm to interests of acknowledged importance.

#### Water Gathering Ground

14. The Site is situated in a secondary catchment area. However, the Director of Water Supplies has no objection in principle to the PFS,

"Provided the applicant is prepared to accept the conditions in our letter of 3/8/93 and the conditions could be suitably incorporated into the lease .... " Memo of 14/9/93

15. Those conditions have been accepted by the Appellant.

16. Miss Patel submitted that one of the conditions, namely, condition (viii) cannot be complied with.

17. Condition (viii) requires

"The land lease related to the development of the Petrol Filling Station shall last for 5 years only initially and lease extension is subject to satisfactory compliance with the above conditions"

18. Miss Patel refers to the comments of the District Lands Officer, Tai Po, in his memo of 25/9/93

"However, regarding Condition No.(viii), I would advise that it is not our practice to impose a condition in the Exchange Documents to the effect that the use of the petrol filling station shall last for 5 years only initially and lease extension is subject to satisfactory compliance with the exchange conditions. As a result, I have reservation with respect to the said Condition No.(viii) until the subject application is approved by the Town Planning Board and the lot owner has submitted a land exchange application to this Office"

19. It is obvious to us that instead of a lease for 5 years which may be extended subject to compliance of conditions, the lease can be for the usual term subject to a condition for re-entry in the event of non compliance with conditions. This should not be a problem.

20. We have had the benefit of evidence from Mr K.C. Lee of Ho Tin and Associates which shows that any risk of contamination must be small. For example, interceptors (non mechanical) will be installed which will accommodate 10,000 litres of spilt fuel, almost 3 times the normal capacity of one oil truck! We are not surprised that the Water Supplies Department has no objection in principle.

21. We see no reason to refuse permission on this ground.

#### Proximity to village houses

22. At the s.16 stage, the objection of the Town Planning Board was that the PFS was too close to **an** existing village house and would cause undesirable environmental impact on the residents. This is a new but as yet unoccupied house at Lot No.232 in D.D. No.16. That village house will be acquired by the Appellant and used to complement the PFS. For some technical reason the purchase has not been finalised but there is a letter from the registered owner stating that he has no objection to the PFS.

23. No new evidence was presented at the Review in relation to any other village house. Indeed, in the paper prepared by the Planning Department for the Town Planning Board at the Review, a suggested reason for refusal was that

"the proposed development is too close to **an** existing village house .... "

24. Be that as it may, the reason given on Review is the PFS's proximity to existing village houses.

25. We note that there is no objection to the proposal from the Environment Protection Department on this ground.

26. Many of the nearby village houses are located in Hang O Po Village which is separated from the Site by Lam Kam Road.

27. In San Uk Pai Village, the nearest houses are more than 30 metres away from the Site.

28. In any event, the Appellant is prepared to submit to a condition that the PFS's business hours be restricted to the hours between 7:00 a.m. and 11:00 p.m.

29. We are of the view that this is not a sufficient reason to refuse permission.

### Conclusion

30. For the above reasons, we would allow the appeal but subject to the following conditions:

- (a) The provision of egress/ingress points to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (b) The provision of sewerage and wastewater facilities to the satisfaction of Director of Environmental Protection or of the Town Planning Board;
- (c) The provision of drainage facilities to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (d) The submission and implementation of detailed landscaping proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (e) The design, implementation and management of the storm water drainage system and the

associated petrol interception facilities, to the satisfaction of the Director of Water Supplies, or of the Town Planning Board;

- (f) This approval specifically excludes the operation of a vehicle service bay and related services such as car washing, changing of engine oil and lubrication services;
- (g) The operation hours of the petrol filling station shall be limited to the hours of 7:00 a.m. to 11:00 p.m. only;
- (h) Should the Director of Water Supplies at any time find that the operation of the storm water drainage system and the petrol interceptors is not to his satisfaction, he may require, in writing, that the operation of the petrol filling station cease until such time as he is satisfied that appropriate measures have been implemented. Operation of the petrol filling station could not recommence until permission to do so is given in writing by the Director of Water Supplies;
- (i) That the village house erected on Lot No.232 in D.D. No.16 will be used by the Appellant to complement the petrol filling station; and
- (j) The permission shall cease to have effect 2 years from the date of this decision unless prior to the said date either the development hereby permitted is commenced or this permission is renewed.