

Town Planning Appeal No.
19/1993

Appeal under Section 17B by Ever
Need Company Limited

Lots 368, and other lots in DD106,
Kam Tin South, Yuen Long

Date of hearing : 1st June, 2nd June 1994

Date of decision : 29th June 1994

Panel : Mr Justice Litton, OBE, JP (Chairman)
Prof Nelson Chow Wing-sun, MBE, JP
Mr Lester Kwok Chi-hang
Mr Anthony Roy Upham
Mr Douglas Van

DECISION

The appellant, Ever Need Company Limited, is the tenant of various agricultural lots in DD 106, Kam Tin South, Yuen Long measuring in total about 2916 m². The site is located on the south side of Kam Sheung Road, near its entrance to Shek Wu Tong Village.

2. The site falls within an "Unspecified Use" area in the Kam Tin South Development Permission Area ("DPA") Plan No. DPA/YL-KTS/2, gazetted on 12 July 1991. The area first came under planning control when the interim DPA Plan was gazetted on 5 October 1990, freezing all development in the area.

3. On 5 October 1990 the site was a piece of vacant land, covered with vegetation. Accordingly, any development on the site without permission of the Town Planning Board granted under Section 16 of the Town Planning Ordinance is a criminal offence. Notwithstanding this, the appellant, having leased the site from the owners in June 1991, proceeded to clear it of vegetation and to fill it up to the level of Kam Sheung Road. The site was then fenced off by steel corrugated sheeting. Containers were put on the site and adapted for use as offices. The appellant has since then used the site as a depot for the open storage of construction materials.

4. When enforcement action was taken by the Planning Department for the unauthorised use of the land, the appellant made an application under section 16 of the Town Planning Ordinance for permission for change of use for the storage of building material. The application was rejected. An application was then made under section 17 for a review of the Board's decision. This was heard by the Board on 20 August 1993 and the decision was confirmed. In its letter dated 29 September 1993 notifying the appellant of the rejection, the grounds were stated as follows:

- “(a) the development is not in compliance with the planning intention for the area which is to encourage in-situ reconstruction of temporary structures with permanent materials with a view to improving the local environment;
- (b) the development is not compatible with the nearby village settlements;
- (c) the drainage facilities proposed in the submission are inadequate to demonstrate that the development will not cause drainage and flood hazards to the surrounding areas; and
- (d) the boundary fence of steel corrugated sheets is visually intrusive and the visual impact of the storage has not been suitably addressed.”

This led to the appeal before us brought under section 17B of the Ordinance.

5. As we view the situation, this appeal hinges on the first two grounds of the letter of rejection dated 29 September 1993. Grounds (c) and (d) are technical difficulties which could well be overcome if the fundamental objections from a planning point of view were not upheld.

6. As at 5 October 1990, the date when the interim DPA Plan went into effect, the area south of Kam Sheung Road where the site is located was relatively rural in character. The site is located close to the village of Shek Wu Tong, with the village of Tin Sam San Tsuen lying to the north of Kam Sheung Road.

7. The introduction of the interim DPA plan has unfortunately not stopped unauthorised development along Kam Sheung Road; as the activities of the appellant itself illustrates. There are many others, bordering the road on both sides.

8. The draft Kam Tin South DPA Plan was gazetted on 12 July 1991. The Explanatory Statement, in relation to the area in which the site is located, states :

"6.2.4 Unspecified use (total area: 499.51 ha)

(a) The area broadly divided into four sub-areas.

(i) The sub-area around Yuen Kong San Tsuen there are numerous temporary structures for residential use scattered around the area. In line with the Rural Planning and Improvement Strategy, it is not intended to clear these structures but to allow residents to stay to undertake self-improvement and possibly some public funded schemes where priority for public expenditure permits. The general intention is to encourage the in-situ reconstruction of structures with permanent materials with a view to improving the current situation."

9. The object of the DPA Plan is to provide guidance for planning and to facilitate development control within the DPA during the period required for detailed analysis of land use pattern, study of infrastructural provisions and examination of development options before the formulation of an outline zoning plan.

10. In fact, as the evidence adduced at the hearing shows, the Planning Department's proposals for the area have reached an advanced stage, and the outline zoning plan for the area will shortly be published under the provisions of section 5 of the Ordinance. The "village" zoning for Shek Wu Tong Village and Tin Sam San Tsuen will be substantially extended; if the proposed OZP is approved by the Board, the appellant's site will be included within a "village" zoning.

11. Plainly, the use of the site is not compatible with the planning intentions for the area nor is it in harmony with the village environment of the neighbourhood.

12. The fact that since the publication of the interim DPA plan the area has been substantially degraded by unauthorised development is no argument for allowing the appellant's application.

13. We would dismiss this appeal and confirm the decision of the Board on the first two of the four grounds set out in its letter dated 29 September 1993.