

193, Castle Peak Road, Cheung Sha Wan, Kowloon.

Panel : Mr Robert C. TANG, QC, JP (Chairman),  
Dr Nelson CHOW Wing-sun, MBE, JP  
Dr Peter Ronald Hills, and  
Mrs Alice Piera LAM LEE Kiu-yue, JP

Date of hearing : 6th and 7th January 1993

Date of decision : 15th January 1993

The appellant appealed against the Town Planning Boards's decision on review that the planning application for 'Commercial/Office' development at the subject site was rejected.

Appeal dismissed.

V Patel for the Town Planning Board  
E T Kennard for the appellant

DECISION

1. Good Luck Development Limited ("the owner") is the owner of 193 Castle Peak Road, a small and narrow site with a frontage of only 5 meters. A Chinese tenement house was erected thereon with a total floor area of approximately 300 square metres.

2. The property is situated in an area zoned as "Residential (Group A)" under the Cheung Sha Wan Outline Zoning Plan S/K5/7. As such, the owner is entitled to erect on the site a composite building with e.g. shops and/or restaurant in the lower 3 floors and residence above the lower 3 floors. Uses that may be permitted with or without conditions on application to the Town Planning Board include office on any floor above the lower 3 floors. The owner applied for permission to the Town Planning Board to build a 14 storey office/commercial building over a basement with restaurant and/or retail facilities on the basement, ground and first floors. The s.16 application as well as the review was unsuccessful.

3. Two reasons for rejection were given in a letter dated 29th July 1992 by the Town Planning Board. They are:

"(a) the subject site is too small for a properly designed commercial/office building; and

(b) the application has not proposed any provision of on-site parking and loading/unloading facilities"

4. In December 1990, The Town Planning Board published guidelines relating to application for office development in Group A Zone. Guidelines are issued for the assistance of applicants and are not binding on the Town Planning Board. They are helpful to owners and professionals and they also help to promote consistency in the approach of the Town Planning Board.

5. The relevant guidelines state:-

" Main Planning Criteria

(a) The site should be sufficiently large to achieve a properly designed office building. The minimum site area requirement for office development varies with site configuration and loading/unloading requirements in particular localities.

(b) There should be adequate provision of parking and loading/unloading facilities within the site in accordance with the Hong Kong Planning Standards and Guidelines and to the satisfaction of the Transport Department. For sites with narrow frontage, where on-site loading/unloading requirement cannot be met, the applicant should demonstrate that there are alternative locations for loading/unloading facilities to the satisfaction of the Transport Department"

6. Mr Kennard appeared for the owner. He argued convincingly that the proposed office/commercial building is preferable to a residential/commercial building. He produced a plan (Document G) which shows that the site is capable of supporting a pencil thin 14 storey residential building (with the lower 3 floors commercial). The individual flats will be rather unattractive, each having a saleable area of only 22 square metres. The total plot ratio for such a building will be 6.6814.

7. On the other hand, the proposed office building (the lowest 3 floors for commercial use) will have a plot ratio of 10.5 and each of the office will be substantially larger. Moreover, the office building will be fully air-conditioned from a central plant.

8. We have little doubt that an office building will be more desirable than a residential building on the site.

9. Miss Patel has informed us that since the publication of the guidelines, 8 applications have been rejected essentially for lack of on-site parking, loading/unloading facilities. She argued that if the application succeeds here, it may lead to many more such applications and the cumulative adverse effect on traffic will be substantial. Mr Ping-Chung Cho, Senior Engineer, Traffic Engineering (Kowloon) Division, told us that loading and unloading activities generated by offices will be higher than those generated by a residential development and the current

standards require 1 loading/unloading bay for every 800 flats (say, 40,000 square metres assuming an average flat size of 50 square metres) whereas 1 similar bay will be required for every 5,000 square metres of gross floor area for office use. While Mr Cho readily conceded that, given the smallness of the site, the additional impact on loading/unloading facilities in the neighbourhood by the proposed office building as compared with a residential building will not be substantial, he is concerned that a successful appeal here will result in a proliferation of similar applications.

10. Although the Town Planning Board gave 2 reasons for rejecting the application, it is clear that they were different ways of expressing the same concern, namely, the lack of on-site parking and loading/unloading facilities. Indeed para (a) of the Guidelines quoted above made it quite clear that the minimum site area requirement varies with loading/unloading requirements in particular localities.

11. Mr Kennard argued that it is unfair that on-site parking and/or loading/unloading facilities are "required" for Cheung Sha Wan when they are not required in the Central District. He drew our attention to small as well as big developments in Central where no such facilities are required. However, we think the answer to that complaint is that, we are concerned with an application for an office development in a Residential (Group A) Zone. In the Central District, no planning permission is required and we are not concerned with the wisdom or otherwise of it.

12. The reason for any zoning is that there should not be indiscriminate development. In considering whether to grant permission, it is legitimate to look beyond the confines of the subject site and consider what impact permission on the instant application as well as similar applications which are likely to follow will have on, amongst other things, traffic.

13. Mr Kennard also took issue with a suggestion by Mr Raymond Chiu that approval here will act as a disincentive for comprehensive redevelopment. We believe Mr Kennard made a valid point when he said comprehensive redevelopment is difficult for this site, given that its only neighbour was redeveloped in 1982. Indeed, amalgamation of sites is notoriously difficult. Nor do we think developers need any incentive for amalgamation. The mere fact that the development will be more attractive and hence more profitable is enough incentive.

14. After Mr Raymond Chiu indicated that absence of on-site parking can be tolerated, Mr Kennard produced a plan showing the provision of a turn-table on site which would provide loading/unloading facilities on-site. He has asked us as a second option to allow the appeal subject to the provision of a turn-table.

15. The first option is to allow the appeal unconditionally. Mr Kennard urged us do so because he said the Town Planning Board's decision was unreasonable. With respect, we are unable to agree. We believe the Town Planning Board was rightly concerned about the effect of absence of on-site loading/unloading facilities and that they were correct to have regard to the cumulative effect of similar applications. Consistency in approach is important. If approval is given here, it would be difficult to refuse similar applications. Cheung Sha Wan seems ripe for redevelopment and we can expect many similar

applications in the future. The 8 unsuccessful applications since December 1980 gives us a hint of what may come.

16. Nor will we adopt the second option. Rather we would leave the owner to make a fresh application to the Town Planning Board where the viability of the turn-table can be fully considered.

17. Mr Kennard further suggested that there are such loading/unloading facilities in the neighbourhood, e.g. in Pratas Street. We cannot agree as the section of Pratas Street between Castle Peak Road and Un Chau Street which is closest to the site is only about 50 metres long and is subject to peak hour loading/unloading restrictions. Loading/unloading outside those hours will add to the already heavy burden.

18. In all the circumstances, whilst we are sympathetic to the owner who may be "forced" to build an inefficient residential building on this unattractive site, we cannot say that the decision of the Town Planning Board is wrong. The appeal is accordingly dismissed.