

Lots 72 RP & 73 RP in DD 217 Pak Kong, Sai Kung.

Panel : Mr Justice Litton, OBE (Chairman),
The Hon Howard YOUNG How-wah,
Mr Stephen CHENG Wui-yau,
Dr Margaret NG Ngoi-yea, and
Dr Peter Ronald Hills.

Date of hearing : 10th, 11th and 15th February 1993

Date of decision : 24th February 1993

The appellant appealed against the Town Planning Boards's decision on review to reject the application to use the subject land for storage of building materials and vehicle parking and access.

Appeal dismissed.

V Patel for the Town Planning Board
HO Chun-wing and LAI Pui-yea for the appellant

DECISION

Background Facts

1. The appellants are the owners of two lots of agricultural land located at Pak Kong, Sai Kung. These two lots are separated by an area of Crown land which had been resumed by the Government for the purposes of a water-works reserve. There is no road as such to the lots, but because the land is flat they are accessible via the water-works reserve to Pak Kong Road. These lots were purchased by the appellants in September 1990.
2. The lots are held under a block Crown lease which describes the land as "agricultural" but does not prohibit use for purposes of storage.
3. The Pak Kong Valley has a large proportion of fallow agricultural land with a number of water courses and scattered village development. Some agricultural activity is still taking place.

Pak Kong DPA Plan

4. About one month after the appellants acquired these lots, the Pak Kong Interim Development Permission Area Plan was published. This, in effect, placed a "freeze" on further development in the area, except in accordance with the plan. This was followed by the publication of the draft Pak Kong DPA plan, gazetted on 12 July 1991.

5. Under the plan the appellants' site falls within an area designated for "unspecified use". The Notes to the plan make it clear that use for such purposes as the storage of building material is not permitted, except in accordance with permission given by the Town Planning Board. As stated in the Explanatory Statement, the object of the plan is to provide guidance for planning and to facilitate development control within the area during the period required for detailed analysis of land use patterns, study of infrastructural provisions and examination of development options before the formulation of an outline zoning plan.

Unauthorized Use

6. In August 1991 a site inspection conducted by the District Planning Office revealed the presence of a number of containers and a variety of building material on the site. On 18 November 1991 a warning letter was sent to the appellants regarding the unauthorised use.

Application to TPB under section 16

7. On 12 December 1991 the appellants applied to the Town Planning Board under section 16 of the Ordinance for permission to use the land for "storage of sand, gravel and bricks; vehicle parking and access". The application plainly stated that what was proposed was "change of use". This application was rejected by the Town Planning Board on the following grounds:

- (a) The proposed development is incompatible with the planning intention for the area which is to prevent undesirable uses pending a comprehensive review of the development potential of the area;
- (b) the proposed development is incompatible with the surrounding land use and would cause environmental nuisance to the nearby residents;
- (c) the proposed development would cause environmental pollution and no mitigation measures to reduce the adverse impact had been proposed in the submission; and
- (d) the proposed vehicular access via the water works reserve access road of the Water Supplies Department is undesirable.

Section 17 Review

8. This decision was confirmed on review under section 17. The appellants accordingly appealed under section 17(B) to us.

The Appeal

9. At the appeal, a number of points were put forward on behalf of the appellants based upon environmental grounds: for example, that the storage of sand and gravel on these sites would cause far less nuisance to the inhabitants of the area than the storage of containers upon neighbouring sites. These points, however, were hardly pressed. The main thrust of the appeal was this : even before the Interim DPA Plan was gazetted in November 1990 the two lots had already been used for open storage purposes; hence, such use came within the definition of "existing use" in section 1(A) of the Town Planning Ordinance. This submission is surprising for two reasons:

- (1) If that was, indeed, the case, then the appellant did not require permission for change of use from the Town Planning Board;
- (2) Such evidence as was placed before us indicated that in October 1990 the appellants' lots were lying fallow. Whilst the original dates on the aerial photographs were, unfortunately, not shown in the copies produced, the evidence satisfied us that these photos were taken at the times stated. No evidence was put forward to contradict this.

10. In our view, this appeal has no merit whatever and the Town Planning Board had clearly come to a correct decision. To permit the appellants' lots to be used for storage purposes would be to frustrate the entire statutory scheme, which is to bring the Pak Kong area under some form of rational system of planning control. We accordingly confirm the decision of the Town Planning Board under the provisions of section 17(B)(8)(b) of the Ordinance and dismiss the appeal.