

Retail Shop, UG/F and G/F, 13-15 Village Road,
Happy Valley, Hong Kong.

Panel : Mr Robert C. TANG, QC, JP (Chairman),
Mr CHAN Pak-keung, OBE, JP,
Mr H.M.G. Forsgate, OBE, JP,
Dr Nelson CHOW Wing-sun, MBE, JP, and
Mr Jason YUEN King-yuk.

Date of hearing : 3rd and 4th March 1993

Date of decision : 18th March 1993

The appellant appealed against the Town Planning Boards's decision on review to reject the application for the conversion of car parking spaces on upper ground floor and ground floor of the subject site.

Appeal dismissed.

V Patel for the Town Planning Board
CHAN Wai-chung for the appellant

DECISION

1. On Luk Tong Limited is the owner of Nos. 13-15 Village Road, Hong Kong, a building with 24 residential flats and 24 car parking spaces. The site is zoned "Residential (Group B)" in the draft Wong Nai Chung Outline Zoning Plan No. S/H7/3 which was gazetted on 25th September 1992. At the time of the s.16 application, it was similarly zoned under the draft Wong Nai Chung Outline Zoning Plan S/H7/2. As such, retail shop use is not permitted as of right though it may be permitted with or without conditions on application to the Town Planning Board.

2. The site also falls within an area West of Shan Kwong Road, Happy Valley, which is classified as a Special Control Area ("SCA") No. H7/5. Because of this classification, development or redevelopment is restricted to a greater extent than is normally required. However, this classification is administrative and has no statutory effect. As far as SCA H7/5 is concerned, car parking at the rate of one space per 140 sq.m. gross floor area is required on account of the high car ownership rate and limited on-street parking spaces in the vicinity. Incidentally (though it is irrelevant to our decision) the Crown Lease relating to the

site requires the provision of car parking spaces at the rate of not less than 1 space per flat.

3. The owner applied to the Town Planning Board for permission to convert a portion of existing car parks (a total of 10 spaces) on the upper ground floor of the building to retail use for the sale of vegetable and flower seeds and regularise the current use of 2 car parking spaces on the ground floor at street level facing Village Road, as a shop for the sale of car stereo and car anti-theft device. The ground floor shop has been in operation for over one year. The proposed retail shop on the upper ground floor will occupy about 290 sq.m. and the ground floor about 37 sq.m.

4. Both the s.16 application and the s.17 review were unsuccessful. The reasons given were

"(a) the existing and proposed retail uses are incompatible with the planning intention to retain the residential character in upper Happy Valley; and

(b) the existing and proposed retail uses will reduce the provision of off-street parking spaces, attract more cars to Village Road and exacerbate the problem of illegal on-street parking in the area"

5. The owner has appealed to us. In the appeal, it is represented by Miss Chan Wai Chung.

6. The appeal is supported by two statements. One by a Mr Tang Kwok Kwong, who resides at Shan Kwong Road. The other by a Mr Thomas Woo, a Director of TAC Automobile Limited, the tenant, of the retail shop on the ground floor of the building. Essentially they asserted that contrary to the evidence from the Traffic Department, illegal parking is not rampant on the section of Village road near or outside the building although it is rampant outside Park'N Shop at 32 - 40 Village Road. They also claimed that it was unfair to refuse their application because the Board had approved 2 applications in 1991 in the same upper Happy Valley area.

7. The Board was represented by Miss Patel who called 2 witnesses. Mr David O.Y. Wong, a District Planning Officer of the Hong Kong District Planning Office and Mr Min Yeung, a Traffic Engineer with the Transport Department.

8. Mr Wong's evidence shows that 3 applications were successful in 1991. They all related to 7 - 7B Shan Kwong Road. Two of them regularised uses which commenced more than 10 years ago. They were a barber shop and a fruit store. Their uses were considered to be compatible with the residential character of the neighbourhood. The third application relates to a laundry also at 7 - 7B Shan kwong Road. This is a relatively new laundry and we are told that it was approved because the use was considered to be compatible and that no adverse traffic impact was expected. We note that in 1986, an application for a Dry Cleaner at 7 - 7B Shan Kwong Road was also successful.

9. On the other hand, an application to change car park use to retail shop at 30 Village Road was rejected on 6th December 1991. A similar application in relation to 7 - 9 Tsui Man Street was rejected on review on 12th August 1988.

10. As for Park N'Shop, which is situated at 32 - 40 Village Road, it was established in 1973. At that time no planning permission for retail use was required. Such requirement was introduced subsequently. However, as the Explanatory Statement to the Wong Nai Chung Outline Zoning Plan No. 2/H7/3 explained

"9.1 all existing uses not conforming to the statutory zoning are tolerated".

11. It is notorious that the presence of Park N'Shop has attracted substantial vehicular traffic to Village Road. Park N'Shop is a stone's throw from the building.

12. We also note that Village Road provides an important access to the Hong Kong Sanatorium. Hence it is important that it should be kept accessible at all times.

13. Miss Chan informed us that there is no demand for car parking spaces at the site so much as that 17 car parking spaces have not been used as such for more than one year. Many of them are now used for storage purpose. Miss Chan is unable to tell us whether any attempt has been made to advertise the availability of car parks. We believe that if the availability of these car parking spaces is known, there should be a demand for them.

14. In any event, as a photograph produced at the hearing showed, there were illegal parking outside the building. Miss Chan frankly admitted that two of the 3 cars belonged to Directors of On Luk Tong and the other belonged to TAC Automobile Limited! If car parking spaces were readily available at the building, it is difficult to see why they were illegally parked. Other photographs showed illegal parking (though unconnected with the building) at other times as well.

15. We are familiar with this area and know parking is very often a problem there, especially for visitors.

16. We agree with Mr Min Yeung that the presence of retail shops at the building will attract substantial traffic leading to illegal parking. There will also be difficulty in vehicular manoeuvring for loading/unloading purposes inside the ground floor. Thus, some loading/unloading may well take place illegally in the street.

17. A shop for the sale of car stereos and anti-theft devices is bound to generate more traffic to the area which is likely to lead to illegal parking outside the premises and exacerbate the situation.

18. Perhaps to a lesser extent, the conversion of 10 car parks into a store selling vegetable and flower seeds is also bound to attract traffic to the area.

19. We also agree with the Town Planning Board that the proposed uses are incompatible with the residential character of the neighbourhood in upper Happy Valley. The approvals in 1991 were for users which are compatible, thus the owner has not been treated unfairly at all.

20. In all the circumstances, we are of the view that the decision of the Town Planning Board is correct and the appeal must be dismissed.