

No. 17 Bowen Road, Mid-levels East,
OZP No. S/H12/2

Panel : Mr Justice Litton, OBE (Chairman),
Mr H.M.G. Forsgate, CBE, JP,
Dr Nelson CHOW Wing-sun, MBE, JP,
Mr Stephen CHENG Wui-yau, and
Mrs Pamela CHAN WONG Shui, JP.

Date of hearing : 21st June 1993

Date of decision : 29th June 1993

The appellant appealed against the Town Planning Boards's decision on review to reject the application for permission to erect an "inclined passenger elevator" on Government Land to the north of the subject site to connect with a carparking area.

Appeal dismissed.

V Patel for the Town Planning Board
Urbis Travers Morgan Ltd. for the appellant

DECISION

1. No. 17 Bowen Road is a substantial two-storey house built in the 1920s. It stands within its own grounds about 27 metres above the level of Bowen Road. Surrounding the lot is an area marked Green Belt in the Mid-levels East OZP S/H12/2. The owner of the lot has been given a right of way, in the form of a winding footpath, over the Crown land linking the house to Bowen Road. Steps were made, some considerable time in the past, cutting out the corners of the winding footpath. Lights have been installed to provide illumination for pedestrians using the footpath. This footpath joins Bowen Road at a point where it narrows to about 2m. Private vehicles are not allowed access to this section of Bowen Road which is a popular spot for joggers and walkers. The area is heavily wooded with mature trees and vegetation. A stream runs down the hill-side near the footpath and then underneath Bowen Road which is foot-bridge at this point.

2. What has been described above is the only means of access to No. 17 Bowen Road.

3. The Green Belt covers a substantial area in the Mid-levels East OZP: 39.69 hectares out of a total area covered by the planning scheme of 62.49 hectares. The Explanatory Statement, regarding the area zoned Green Belt, states:

5.5 Green Belt: Total Area 39.69 ha

5.5.1 This zone comprises the slopes in the central and southern parts of the Area. The difficult topography and steep terrain prevent the area from being used for urban development or active recreational uses. Urban type development within this zone will be strictly controlled and assessed individually on its merits through the planning permission system.

5.5.2 The green belt forms a visually and aesthetically pleasant background of the Area. It also provides additional opportunities for passive informal type of recreational uses.

4. In March 1992 the owner applied to the Town Planning Board ("TPB") under section 16 of the Town Planning Ordinance for permission to erect an "inclined passenger elevator" to connect No. 17 Bowen Road ("the lot") with a carparking area which the owner proposed to have carved out of Crown land. This was in connection with a proposal to redevelop the lot into two town houses. The Crown lease conditions limit the development of the lot to one house of European type. The proposed carpark, to accommodate four vehicles, would have required widening of the narrow bridge-like section of Bowen Road and slope works.

5. The inclined passenger elevator, as put to the TPB in the section 16 application, was to run along a track, ending at lift lobbies at either end. The construction of the track would have involved the destruction of a number of mature trees and the lift lobby, at the Bowen Road end, would of course be a permanent fixture and be, to some extent, visually intrusive.

6. This application was rejected by the TPB under section 16 of the Ordinance.

7. By the time the TPB reviewed the application under section 17 in November 1992, the application had undergone a sea-change. The proposal to run the inclined passenger elevator was no longer put forward as part of a proposal to redevelop the lot. Instead, it was for the convenience of the applicant's family: the applicant was "elderly and found the existing access difficult to negotiate and inconvenient".

8. The section 17 review was rejected. Hence the appeal to us under section 17B of the Ordinance.

9. At the hearing before us, the appellant adduced evidence which tended to show that the structure to be erected over the Green Belt, linking the lot with Bowen Road, was unlikely to have adverse environmental impact in the long-term and that the contention of the Planning Department of considerable destruction of the natural environment was exaggerated. The sales manager of Schindler Lifts (HK) Ltd. was called as a witness and she testified that there are systems

available which will cause little environmental damage and minimal visual intrusion : for example, a funicular system with suspended cables which would leave the trees and shrubs more or less intact: although, obviously, some branches of the trees will have to be cut off. As regards the passenger terminal at the Bowen Road end, this could be a discrete and relatively small structure; once the vegetation, disturbed during the construction, has resumed its growth this would be partially screened. We accept the evidence as summarized in this paragraph.

10. It appears from the papers before us that this alternative system was not put to the TPB: the only proposal put was the system which ran on rails. As far as environmental impact is concerned, we are satisfied that the adverse comments of the Planning Department have been somewhat exaggerated.

11. The case, as we see it, boils down to one narrow point: Is it right, as a matter of principle, that there should be development in the Green Belt, for the purposes proposed, to enhance the amenities of a single private property? The appellant has put his case forward on the basis that he was of advancing years and found the existing access difficult to negotiate and inconvenient. It emerged in the course of cross-examination that the owner is in his 50's and has not lived in the house for many years.

12. The conclusion which we have reached, on a fine balance, is that this proposed "development" in the Green Belt, while slight in its environmental impact, has no benefit whatever to the public at large and should not be allowed to go ahead in order to enhance the amenity of one house. For these reasons we confirm the decision of the Town Planning Board and dismiss the appeal.