

Unit E, G/F, Haribest Industrial Building,  
Au Pui Wan Street, Fotan, Shatin, New Territories

Panel : Mr Robert TANG Ching, QC, JP,  
Dr John LO Siew-kiong, OBE, JP,  
Dr Nelson CHOW Wing-sun, MBE, JP,  
Mr David C DaSilva, MBE, and  
Mr Stephen CHENG Wui-yau.

Date of hearing : 14th September 1992.

Date of decision : 25th September 1992.

The appellant appealed against the Town Planning Board's decision on Review not to approve the application for renewing the permission under section 16 of the Town Planning Ordinance in respect of Unit E, G/F, Haribest Industrial Building, Au Pui Wan Street, Fotan, Shatin, New Territories.

Appeal dismissed.

V. Patel for the Town Planning Board.  
D.F.L. Turner of Overseas Trust Bank Ltd. for the appellant.

DECISION

1. The Haribest Industrial Building at Au Pui Wan Street, Fo Tan, Shatin, is situated in an area zoned "Industrial" in the draft Shatin Outline Zoning Plan No. 5/ST/5.

2. The Appellants, Overseas Trust Bank Limited, are the owners of Unit E on the ground floor of the Haribest Industrial Building. On 22nd April 1988, the Town Planning Board permitted the Appellants to use Unit E as banking premises for 3 years because at that time there was no suitable commercial space in the vicinity. However, as early as 1983, the space now occupied by the Shatin Galleria was granted by Government to its owners on lease conditions which required the developer to provide no less than 1,500 sq.m. gross floor area for bank use. The Shatin Galleria was completed in late 1989 or early 1990 with no less than 1,500 sq.m. of gross floor area provided for bank use.

3. The Appellants appeal from the Town Planning Board's refusal to permit Unit E to be continued to be used for banking purpose.

4. Mr D.F.L. Turner, the Managing Director of the Appellants appeared before us. He stressed that the Appellants wish to stay in the Haribest Industrial Building because of its convenience to their customers. Indeed, 2 customers were called who confirmed that they find the present location convenient and that a relocation of the branch to the Shatin Galleria inconvenient. However, we note that Shatin Galleria is only about 3 minutes walk from the Haribest Industrial Building so the inconvenience should not be great. Mr Dennis M.K. Cheng, a director of one of the Appellants' customers, whose company is on the 15th floor of Haribest Industrial Building, spoke of the additional risk to which his company would be exposed if cash withdrawals (about HK\$300,000 monthly) had to be made from the Shatin Galleria because it is not in the same building. Few bank user has the advantage of a bank in the same building and we do not believe inconvenience to Mr Cheng's company can justify ignoring the planning for a locality.

5. As for the other customer, Mr Y.L. Lee, his business is at Fo Tan Industrial Centre. He said he found the present location of the Appellants convenient. However, we do not think one can say an extra 3 minutes walk to the Shatin Galleria would make it inconvenient.

6. Moreover, apart from the Appellants, 3 other banks had been given and accepted temporary permission to operate banking business within the same Fo Tan industrial area as the Appellants. These 3 banks have now relocated to the Shatin Galleria. Mr Turner said these 3 banks obviously felt less strongly about the relocation. That may be so, but it may also be that relocation to Shatin Galleria is less of a hardship as is perceived by the Appellants.

7. This is a Town Planning Appeal. As such we think we must have regard to the town planning for the area. Quite obviously the intention was that in this industrial area, there should be one commercial centre. That centre is the Shatin Galleria. No doubt in planning, the likely demand for bank space was taken into consideration. And as we said the developer was required to provide not less than 1,500 sq.m. of banking space. Such space has been provided and there is space available there for the Appellants. Mr Turner said the space available is unattractive. Nor are they exactly the same size as Unit E. We do not believe these are such weighty consideration that we should overlook the planning for the area. Indeed, if the Appellants were not to move to the Shatin Galleria and suppose the developer could not let the available banking space, does it mean that the area now restricted to banking use should be changed to other uses? And if the Appellants should be permitted to remain in an industrial zone what about other commercial users in the area? We believe it is important to preserve the integrity of the planning.

8. Mr Turner argued that there should be flexibility and that the Appellants should be allowed to stay put. He pointed to the fact that 2 small provision stores are allowed to be operated from the ground floor of Haribest Industrial Building. They are small stores occupying less than 100 sq. ft. each, selling soft drinks and such like. We can understand why they should be permitted. No doubt so that people such as delivery workers can have a quick and sweaty drink there. That complements the industrial nature of the building whereas banking use is very different.

9. Although the Appellant owns Unit E, Mr Turner has very fairly accepted that it is not a sufficient reason for granting the application. But he argued that if they had to move to the Shatin Galleria the Appellants would be at the mercy of their landlord. That is why it is the Appellants' policy to own their premises. We believe rental level would be dictated by supply and demand. If demand outstrips supply, no doubt new commercial space would be provided in the area. Banks are normally better able to deal with landlords than other tenants. Indeed, Mr Turner's argument would apply to other tenants in the Shatin Galleria as well. We can hardly allow other commercial users to relocate to the area reserved for industrial use. If we were, we would be throwing planning out of the window.

10. For the above reasons, and with respect, we agree with Miss Patel that the decision of the Town Planning Board is correct. Accordingly, we dismiss the Appeal.