

Case no. 08/92

No. 27 Mok Tse Che, Ho Chung, Sai Kung, New Territories.

Case no. 09/92

No. 32 Mok Tse Che, Ho Chung, Sai Kung, New Territories.

Panel : Mr Justice Litton, OBE (Chairman),
Mr David C DaSilva, MBE,
The Hon Marvin CHEUNG Kin-tung, JP
Mrs Pamela CHAN WONG Shui, JP, and
Mr FAN Sai-ye.

Date of hearing : 7th, 8th and 9th December 1992

Date of decision : 16th January 1993

The appellants appealed against the Town Planning Boards's decision on review to reject the application for development of two parcels of land which fall within the Ho Chung Development Permission Area Plan No, DPA/SK-HC/1.

Appeals dismissed.

V Patel for the Town Planning Board
POON Shiu-chor for the appellant of case no. 08/92
Godfrey WONG Sui-lit for the appellant of case no. 09/92

DECISION

Introduction

1. This appeal concerns two applications to the Town Planning Board ("TPB") made by the applicants Yuen Shu-Ling, (No. 8/92) and Yuen To-Shing (No. 9/92) for permission to develop two parcels of land which fall within the Ho Chung Development Permission Area Plan No. DPA/SK-HC/1. The site in Appeal No. 8/92, comprising 3 "agricultural" lots, measures 668 sq.m. The site in Appeal No. 9/92, comprising 4 "agricultural" lots, measures 630 sq.m. The two lots are almost touching, and lie close to a zone marked "Village Type Development" in the Ho Chung DPA plan, but being of "unspecified" in the plan cannot be developed unless with the permission of the TPB. The two

applications were dealt with together by the TPB and the appeals have been heard together. It is common ground on this appeal that they stand or fall together.

2. It is the appellants' intention to develop their lots by the erection of a total of 6 New Territories Exempt Houses, with 3 units in each "house", making a total of 18 domestic units.

3. The Ho Chung DPA plan was gazetted on 12 July 1991. The plan shows 3 areas marked "Village Type Development" ("V") within the vicinity of Mok Tse Che village; two of these are in fact the existing Mok Tse Che village (which is an old settlement) and the new Mok Tse Che village, a more recent addition. A third area marked "V" was delineated in the plan for further growth, to give effect to the New Territories Administration policy, which has been in existence since 1972, whereby an indigenous villager is allowed to build a "small house" for his own occupation within the village environs: this can be done either on his own agricultural land, free of premium, or on government land granted at a concessionary rate of premium. For the purpose of this policy an "indigenous villager" is a male person at least 18 years old descended through the male line from a resident in 1898 of a recognized village. The aim of this policy is to provide better living conditions for the villagers of the New Territories.

4. Neither of the 2 applicants on this appeal objected to the boundaries of the "V" zones in the Ho Chung DPA plan when it was published, nor did they seek any amendment of the boundary to bring their agricultural lots within the "V" zoning. The issue whether each of the applicants, or the respective owners of the agricultural lots whom they represent on the appeal, would have qualified as "indigenous villagers" had their lots been situated within the "V" zone was simply not explored in the course of this appeal. This issue would in any case have had no relevance to an appeal under s.17B of the Town Planning Ordinance.

The Ho Chung DPA plan

5. It is worth emphasizing at the outset that we are concerned here with a plan drawn up under the Governor's direction given under s.3(1)(b) of the Ordinance. The area had been subjected to fragmented and uncoordinated development in the past, until the publication of an Interim DPA plan No. IDPA/SK-HC/1 in August 1990, pursuant to the amendment of the Town Planning Ordinance in the same year. Detailed analysis of land use patterns and study of infrastructural provisions are now being undertaken by the government, with a view to the formulation of an outline zoning plan: see para. 2.2 of the Explanatory Statement to the Ho Chung DPA plan. Thus, any ad hoc development outside of the categories expressly permitted in the Notes to the plan would, in the meanwhile, have the effect indirectly of pre-empting the options open to the planners. This, in principle, must be regarded as undesirable from the planning point of view. This said, it must also be borne in mind that the TPB is given a wide discretion to allow development which promotes the "health safety convenience and general welfare of the community": see section 3(1) of the Ordinance.

Access to Appellants' sites

6. Mok Tse Che village is over 400 metres from Hiram's

Highway. The track loops around Wo Mei village. In parts it is barely 2.5 metres wide and is immediately adjacent to some houses, with no clearance between the track and the outside walls of these houses. Since the nearest bus stop is over 1/2 km from the appellants' sites, residents and visitors are likely to use cars or taxis for access if the proposed developments should go ahead - aggravating the nuisance to the inhabitants of Wo Mei village, who have already complained of the use of this track by the villagers of Mok Tse Che.

7. Government is at present examining the feasibility of constructing a new road link which would by-pass Wo Mei village altogether, enabling the present track to be used as a footpath. But the evidence adduced before us indicates clearly that it would be many years before this scheme can become a reality. The TPB in examining the appellants' proposals came to the view that "the cumulative effect of [the] developments proposed would overload the substandard Mok Tse Che access road". We agree with this conclusion and cannot see how, upon the evidence adduced before us, such a conclusion can be faulted.

8. Mr. Poon, counsel for the appellants, submitted that the TPB should have "made inquiries" of the relevant government departments concerning the progress of the proposed new road link before concluding that the new developments would overload the present access. We cannot agree with this submission. There is no suggestion whatever that the new road link is likely to eventuate in the near future. Improvements in the infrastructure of the entire Ho Chung area generally have to be considered, and there is no guarantee that highway services will take precedence over other services in a contest for limited financial resources. It seems to us that on this ground alone the TPB would have been justified in refusing permission to develop.

Proximity to Stream-course

9. There was in fact another reason given by the TPB for refusing permission : this was the proximity of the sites to two streams. Whilst objections regarding discharge of sewage could perhaps be overcome by imposing a condition that any development must be subject to satisfactory proposals for sewage treatment being in place, before any Certificate of Exemption would be granted, there is a more fundamental objection which cannot be resolved. It is this. The streams are important features of the valley. In considering the future lay-out of the area, it might be advantageous from the community point of view to have the stream-courses changed. Any development undertaken now on the appellants' sites would pre-empt that option.

Conclusion

10. In the course of the hearing we were told that in the area covered by the Ho Chung DPA plan, there was, up to September 1992, a total of 20 applications to the TPB for residential development outside of designated "V" zones : 15 were rejected, 1 was deferred and 4 approved. We know nothing of the circumstances of the 4 approvals. But viewing the present two cases alone, we see the need for a general and systematic approach to applications for redevelopment made by owners of "agricultural" land lying within "unspecified" zones in the DPA, for otherwise the whole object of the amendment of the Town Planning Ordinance and the introduction of Development Permission Areas might be frustrated by fragmented ad hoc residential developments: developments which might bear no relationship to

the available infrastructure and unfairly overload the existing resources.

11. For the reasons above these 2 appeals are dismissed and the decisions of the TPB on the section 17 review are confirmed.