

IN THE TOWN PLANNING APPEAL BOARD

Town Planning Appeal No. 13 of 2010

BETWEEN

METRO-PURSE LIMITED Appellant

and

TOWN PLANNING BOARD Respondent

Appeal Board : Mr. Patrick FUNG Pak Tung, SC (Chairman)

Ms. Alice CHOW Kin Tak (Member)

Prof. HO Kin Chung, BBS (Member)

Mr. Louis PONG Wai Yan (Member)

Mr. WONG Lok Tak (Member)

In Attendance : Ms Suan MAN (Secretary)

Representation:

Mr CHUI Shek Yuen, for the Appellant

Mr Brian LEU Lap Yau, Government Counsel
(Department of Justice), for the Respondent

Date of Hearing : 31st March 2011

Date of Decision : 29th April 2011

DECISION

This Appeal

1. This is an appeal by Metro-Purse Limited (“**the Appellant**”) against the refusal by the Town Planning Board (“**the TPB**”) of an application by it for a minor relaxation of building height and plot ratio restrictions to enable it to construct an ancillary green house (“**the Proposed Green House**”) on its property in Stanley under sections 16 and 17 (1) of the Town Planning Ordinance (“**the Ordinance**”).

The Application Site

2. The applications by the Appellant to the TPB under sections 16 and 17 (1) of the Ordinance and this appeal concern a property known as Flat C (same as Block C) on the 3rd Floor and Roof of Parisian, No 8. Stanley Mound Road, Stanley, Hong Kong (“**the Property**”).
3. The registered owner of the Property is the Appellant and it is occupied by its director, a Mr. Chui Shek Yuen (“**Mr. Chui**”), and his family.

4. Basically, the Appellant applies for permission to build the Proposed Green House on the Roof of the Property.

5. According to Mr. Lam Chi-man, David ("Mr. Lam"), Senior Town Planner/Hong Kong of the Hong Kong District Planning Office, Planning Department, who gave evidence for the TPB, the Property is part of an estate called "Parisian" which has an area of about 1,643M². The existing building on the estate comprises 6 blocks arranged in two rows with a total of 24 flats. The building consists of 4 domestic storeys over a podium with one storey of carport and has a total GFA of 3,303.422M² (a plot ratio of 2.0106). The building plans for Parisian were approved in August 1987, before the gazetting of the first Outline Zoning Plan for Stanley on 27th May 1988, and was completed in 1989. The appeal site has been zoned "Residential (Group C)" ("R(C)") and has been subject to the same plot ratio (PR), site coverage (SC) and building height (BH) restrictions since the first Outline Zoning Plan.

6. The surrounding developments along and in the vicinity of Stanley Mound Road are all low-rise and low-density residential buildings.

Zoning Of The Site

7. The relevant town plan is the approved Stanley Outline

Zoning Plan No. S/H19/10 (“the OZP”). The Property and its site falls within an area zoned “R(C)”.

8. According to the Notes to the OZP, residential development in the “R(C)” zone is restricted to a maximum building height of 3 storeys in addition to 1 storey of carport, PR of 0.75 and SC of 25% or that of the existing building, whichever is the greater.

The Application under the Ordinance

9. By an application dated 15th January 2010 made under section 16 of the Ordinance, the Appellant applied to the TPB for permission to erect the Proposed Green House with a GFA of 25.335M² and a height of about 2.517M.
10. According to the Buildings Department, the 3 existing staircases leading from the Appellant’s Flat to the Roof which have a total GFA of 31.717M² would also have to be taken into account.
11. Thus, the proposal would lead to an increase in the total GFA by about 57.052M² (i.e., a PR of 0.034 based on the site area of the appeal site) and the building height by one storey.
12. The Metro Planning Committee (MPC) of the TPB deliberated upon the Appellant’s application and decided to reject it. By

a letter dated 19th March 2010, from the TPB to the Appellant, it was informed of the rejection of its application. The reasons therefor were set out as follows : -

“(a) there are no planning and design merits to justify the proposed relaxation of plot ratio and building height restrictions for the proposed development; and

(b) approval of the application would set an undesirable precedent for similar applications in the area. The cumulative effect of approving such applications would jeopardize the intention of imposing the development restrictions for low-rise and low-density residential development in the area.”

13. The Appellant subsequently applied to the TPB under section 17 (1) of the Ordinance for a review of the MPC’s decision to reject its application.

14. Having considered the submissions by the Appellant at a review hearing, by a letter dated 9th July 2010, the TPB informed the Appellant that its application for review was rejected for the same reasons of the MPC.

15. On 3rd September 2010, the Appellant lodged the present appeal.

The Appeal

16. Mr. Chui conducted the appeal on behalf the Appellant and gave evidence himself. He had obviously spent a lot of time and effort in preparing and presenting the appeal in a

systematic and helpful manner.

17. The points made by Mr. Chui can be summarized as follows :

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- (i) He and his family moved into the Property in 2006.
- (ii) He is very interested in horticulture to the extent that he intends to take a university course on the subject. He has been using the Roof for the growing of plants and the rearing of turtles.
- (iii) Unfortunately, the Roof is subject to quite strong wind, especially in the winter months, heavy rainfall and salty moisture which have a harmful effect on the plants grown by him. He therefore needs to build the Proposed Green House for the protection of the plants, especially the species which he likes, such as orchids and staghorn ferns.
- (iv) The Proposed Green House will be of the same height as and will blend in with the existing staircase hood leading from his flat to the Roof.
- (v) He also intends to apply a thin-film material to the top of the Proposed Green House which will help to tap solar energy.

- (vi) The utilisation of roof tops for the growing of plants should generally be encouraged in Hong Kong.

- (vii) The relaxation applied for is really very minor and does not affect anybody else. It should be granted either on a permanent basis or at least on a temporary basis for, say, 5 years. The latter course will assist him in making progress on his intended study course in horticulture; it is anticipated that he and his family will move out of the Property after a few years when his daughter goes abroad to study.

Our Findings

- 18. Having considered all the evidence adduced by Mr. Chui on behalf of the Appellant and his submissions on the one hand and all the evidence given by Mr. Lam and the submissions made by Mr. Leu on behalf of the TPB, we have decided to dismiss the appeal. We set out our reasons below.

- 19. To begin with, we note that the development Parisian already enjoys an advantage which it would not have been able to enjoy if the development had been carried out under the OZP in that it has 4 domestic storeys instead of 3 above the carport podium and that it has a plot ratio of 2.0106 instead of the maximum plot ratio of 0.75 permitted under the OZP. Thus,

the development is already “excessive”, although not in the derogatory sense of the word. We believe that the degree of the ‘minor relaxation’ applied for should be viewed in such context.

20. Furthermore, even without such a context, we do not think that the relaxation asked for is really ‘minor’. As said above, the Proposed Green House itself has a GFA of 25.335M² and a height of about 2.517M. The 3 existing staircases which have to be taken into account have a total GFA of 31.717M². The resultant GFA increase should the application be allowed will have a total of 57.052M².

21. So far as the planning intention relating to the OZP is concerned, our attention has been drawn to paragraph 7.3.3 of the Explanatory Statement of the OZP which by settled law we have to take into consideration. It reads :

“7.3.3 Minor relaxation of the stated restrictions may be considered by the Board on application under section 16 of the Ordinance. The purpose of this provision is to allow the Board to consider proposals for building layout and design which, whilst not strictly complying with the stated restrictions, meet the planning objectives. **Thus, it is hoped to encourage designs which are adapted to the characteristics of particular sites, and in particular, imaginative designs which overcome the need for stilting or allow for the conservation of environmentally important natural features or mature vegetation. Each proposal will be considered strictly on its own merits.**”

[emphasis added]

22. We are of the view that, although the Proposed Green House looks quite decent, its design is pretty standard and certainly cannot be classified as one of “imaginative designs which overcome the need for stiling or allow for the conservation of environmentally important natural features or mature vegetation” within the meaning of paragraph 7.3.3 of the Explanatory Statement in all the circumstances.
23. So far as the point about the plants grown by Mr. Chui needing protection from the elements is concerned, we are not really convinced that the need is all that great. From the photographs and images produced by Mr. Chui in evidence, we can see that the vegetation on the Roof is quite lush and green, notwithstanding that we have only just gone through quite a cold winter in Hong Kong. If there are really some particular species which do need extra protection, we would suggest that Mr. Chui should consider growing other equally attractive species which need less protection.
24. We further need to take into account the local objections by the neighbours in the vicinity of the Property which are quite numerous. Out of a total of 13 public comments received by the TPB, there are 12 objections. We believe that the Proposed Green House will have the effect of obstructing the views of the neighbours.

25. Last but not least, we believe that the Appellant may also face difficulty from other co-owners who have property rights in the development Parisian regarding their plot ratio entitlements and excessive plot ratio considerations. In other words, the Appellant's application, if granted, may affect the rights of the other co-owners in the development.

26. Regarding the second reason put forward by the TPB for refusing to accede to the application by the Appellant, namely, that approval of the application would set an undesirable precedent, without deciding on the point, we have at least reservations as to the soundness of such a reason. After all, paragraph 7.3.3 of the Explanatory Statement does say that each proposal is to be considered strictly on its own merit.

Conclusion

27. In all the circumstances stated above, although the efforts and good intention on the part of the Appellant and Mr. Chui are to be lauded, we do not think that there is sufficient justification for us to differ from the TPB.

28. We therefore dismiss the Appellant's appeal.

Mr. Patrick FUNG Pak-tung, SC
(Chairman)

Ms. Alice CHOW Kin Tak
(Member)

Prof. HO Kin Chung, BBS
(Member)

Mr. Louis PONG Wai Yan
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