

IN THE TOWN PLANNING APPEAL BOARD

Town Planning Appeal No. 15 of 2014

BETWEEN

LAM SUN TAK

Appellant

and

TOWN PLANNING BOARD

Respondent

Appeal Board : Mr. CHAN Chi-hung, SC (Chairman)
 Mr. Nevin HO Chi-lok (Member)
 Mr. LAM Tak-hing (Member)
 Miss Alice TO Kar-wing (Member)
 Ir. Dr. WONG King (Member)

In Attendance : Ms. Suan MAN (Secretary)

Representation : The Appellant Mr. LAM Sun-tak in person
 Mr. Raymond TAM, Counsel for the Respondent

Date of Hearing : 7 October 2015

Date of Decision : 22 December 2015

DECISION

1. On 24 October 2014, the Town Planning Board (“**TPB**”), upon a review of the application under s.17 of the Town Planning Ordinance Cap.131 (“**the Application**”) by the Appellant Mr. LAM Sun-tak (“**the Appellant**”) for planning permission under s.16 of the Town Planning Ordinance, rejected again the Application. The Appellant appeals to this Appeal Board Panel (“**this Appeal Board**”) against such rejection.

Background

2. The Application was submitted on 19 February 2014 seeking planning permission for temporary shop and services (real estate agency) for a period of three years on Lot 4891 RP (Part), 4892 (Part), 4893(Part) and 4894 in D.D. 116 and adjoining Government Land, Tai Tong Road, Tai Tong, Yuen Long, New Territories (“**the Appeal Site**”). The Appeal Site falls within an area zoned “Village Type Development” (“**V**”) on the approved Tai Tong Outline Zoning Plan (“**OZP**”) No. S/YL-TT/16 at the time of the application which is currently in force. The Appeal Site is subject of two previous applications Nos. A/YL-TT/289 and 302 (“**A289**” and “**A302**”) for the same use submitted by the Appellant which were once approved by the Rural and New Town Planning Committee (“**RNTPC**”) of the TPB on 19 August 2011 and 20 April 2012 respectively but were subsequently revoked on 19 February 2012 and 20 October 2013 respectively due to non-compliance with the approval conditions.

3. Since October 2013, due to the aforesaid revocation, the Appeal Site has been occupied and used as a real estate agency without any valid planning permission. Recently, the real estate agency has ceased operation and on-site structures have been left vacant.

Witnesses

4. The Appellant, appearing in person, gave evidence at the hearing of this Appeal. Miss HO Kim-kam (“**Miss HO**”), Senior Town Planner of the Planning Department, gave evidence as to the concerns of the Planning Department, and its reasons against the Application. These concerns and reasons of objection (in relation to drainage, landscaping, parking and run in/out, which were also subject of previous permissions’ approval conditions not complied with), are considered and analysed as below.

Planning Intention

5. The planning intention of the “V” zone is to designate both existing and recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. At the time when the s.16 application was considered by the RNTPC, the planning considerations and assessments were that “the applied use is considered not entirely in line with the planning intention of the “V” zone. However, it could provide real estate service to the needs of the locals and neighbouring residential developments...there is no Small House application at the site and its vicinity. Approval of the development on a temporary basis would not frustrate the long-term planning intention of the “V” zone.” There is no change in the planning circumstances during the review of this Application by the TPB. This Appeal Board agrees with and adopts this view.

6. Further, this Appeal Board is also of the view that the proposed development is not incompatible with the surrounding land uses. As to whether the potential adverse impacts arising from the proposed development could be adequately mitigated by the imposition of relevant approval conditions, this Appeal Board, after careful consideration, is finally (although with some initial hesitation) able to conclude positively: yes, as analysed and discussed further below.

Drainage

7. The Appellant has applied for planning permission of an adjacent site (the Adjacent Site) under A/YL-TT/301 (“A301”) and A/YL-TT/343 (“A343”). Planning permission for 3 years was granted for A301, but was revoked for non-compliance with approval conditions.
8. However, in the A343 application, the drainage proposal, after much delay (which the Appellant explained was due to, unfortunately, his being unfamiliar with the multi-disciplinary nature of the issue and failure to liaise with all the relevant government departments to resolve the issue), was finally approved by the Drainage Department. The Appeal Site would use the same main drainage as that constructed by the Appellant for the Adjacent Site. From the evidence of both parties, there does not seem to have a difficult or costly obstacle to an acceptable drainage proposal and its implementation.
9. Thus, this Appeal Board is of the view that this issue can be adequately remedied by an appropriate approval condition requiring submission (within 3 months from the date of Planning Approval) of a drainage proposal acceptable to the Director of Drainage Services or the TPB and its implementation to the satisfaction of either of them (within 6 months from the date of Planning Approval).

Landscaping

10. The Appellant had submitted the proposals dated 28 February 2013 (copy submitted at the appeal hearing) and 4 March 2013 for landscaping, to comply with one of the approval condition granted under A302. The Planning Department by a letter dated 8 March 2013 informed the Appellant that the proposal fell short of the requirement of the Department, and requested the amendment of the proposal in accordance with the comments of the Department, which were as follows: “Portable planters/potted plants would not be accepted. All the proposed planting should be planted in ground or fixed/raised planters with open bottom. Sizes of planting pit/planter for trees should be min. 1m (W) x 1m (H) x 1m (L) and for shrubs should be min. 0.6m (W) x 0.6m (H) x 0.6m (L)”.

11. These comments, namely the proposed planting in planters with open bottom, of the specified minimum dimensions for trees and shrubs respectively, apparently have all been incorporated in the present landscape proposal (lay-out plan at Appeal Document Bundle p.1115) in support of the Application. The Respondent’s Counsel Mr. Raymond TAM, and Miss HO, did not suggest any other specific problem which the present landscape proposal did not remedy. Further, the implementation of the landscape proposal is not particularly costly, onerous or difficult, and thus it is unlikely that the Appellant will risk the loss of planning permission again for non-compliance as to an approval condition concerning landscaping, which will mandate approval by the Planning Department of a landscape proposal and its implementation.

12. Thus, this Appeal Board is of the view that this issue can be remedied by an appropriate approval condition as to landscaping.

Parking

13. The concern of the Transport Department was that, in revised run in/out proposal, the driveway between the container office and the designated carparks No. 4 to 6 (amongst a total of 14 carparks designated No. 1 to 14) within the Appeal Site was only 3 m wide, and not 5.5 m (the required minimum). That can clearly be remedied by deleting the designation of No. 4 to 6 as carparks but reserving them as part of the driveway. The Appellant readily agreed at the appeal hearing that he would do so.

Run-in/out

14. The Transport Department and the Highways Department had no comment on the revised run in/out proposal, save that the latter suggested that the construction of the run in/out should be in accordance with the relevant Highway Standard Drawing (“**the Standard**”). Under the proposal the exit was stated to be revised from 5 m to 6 m wide. It was not suggested that the dimension did not meet the requirement. A photograph (Bundle p.1231) shows the exit as completed according to such Standard. The drawing showing the details, including the cross section, under the Standard was shown at p.1181. The Appellant explained (he being also a Chartered Building Surveyor) that the exit had been completed in accordance with the Standard, but was completed late partly due to the delay in reply from PCCW confirming that it had no underground cable in the position of the exit, and finally it was confirmed that there was no underground cables underneath, so that work could be done on that position to build the exit. Miss HO could not elaborate in what way now the completed exit did not comply with the relevant Standard. After careful consideration of the Appellant’s explanation and the evidence of Miss HO, this Appeal Board is of the view that this issue can be addressed by granting approval for a shorter period together with the appropriate approval condition addressing this issue.

Past failures to comply with the approval conditions

15. As discussed above, the issues which the Planning Department were concerned about were not difficult matters which the Appellant is unlikely to be willing or able to remedy. The Appellant has also given credible and reasonable explanations as to why unfortunately the approval conditions of the previous 2 planning permissions under A289 and A302 had not been fully complied with. The Appellant has demonstrated great sincerity in his wish to continue to let the Appeal Site to those young men to run the estate agent business. He also accepted all the suggested conditions and promised to comply with them. In the circumstances, it is very likely that he would remedy the above issues and comply with the approval conditions to be imposed, if the Application is granted for a shorter period e.g. 12 months. The Appellant would realize that the planning permission will be revoked if the conditions are not complied with. Further, the Appellant would also realize that if the aforesaid issues are not remedied by the Appellant properly, he is unlikely to have planning permission again after the expiration of the 12 months.
16. Thus, a shorter period of planning permission should be granted with appropriate conditions to remedy the aforesaid issues. The Appellant accepted at the hearing of this appeal the various approval conditions suggested by the Planning Department.

Decision

17. The Appeal is allowed. Planning permission is granted for a period of 12 months from the date of the appeal decision with approval conditions, valid until 22 December 2016.

18. The approval conditions are those as set out in Annex, which were suggested in paragraph 8.2 (a) to (o) (except the reference to specific dates, which are now outdated, other than periods of time as to deadlines of compliance) of the TPB Paper No.9759, plus the additional condition that: “no car repair business, nor any activity not permitted by this Planning Permission, shall be carried on in the Appeal Site”.

19. There shall be no order as to costs.

(Signed)

Mr CHAN Chi-hung, SC
(Chairman)

(Signed)

Mr. Nevin HO Chi-lok
(Member)

(Signed)

Mr. LAM Tak-hing
(Member)

(Signed)

Miss Alice TO Kar-wing
(Member)

(Signed)

Ir. Dr. WONG King
(Member)

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Paragraph 18: Approval Conditions

- (a) No operation between 6:00 p.m. to 10:00 a.m., as proposed by the Appellant, is allowed on the site during the planning approval period;
- (b) No open storage at the uncovered areas, as proposed by the Appellant, is allowed on the site at any time during the planning approval period;
- (c) No queuing and reverse movement of vehicle are allowed on public road at any time during the planning approval period;
- (d) The provision of boundary fencing on the site within 3 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 22 March 2016;
- (e) The submission of parking arrangement proposal within 3 months from the date of planning approval to the satisfaction of the Commissioner for the Transport or of the Town Planning Board by 22 March 2016;
- (f) In relation to (e) above, the implementation of the parking arrangement proposal within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 22 June 2016;
- (g) The implementation of accepted run-in/out proposal within 3 months from the date of the planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 22 March 2016;
- (h) The submission of drainage proposal within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 22 March 2016;

- (i) In relation to (h) above, the implementation of drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 22 June 2016;
- (j) The submission of tree preservation and landscape proposals within 3 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 22 March 2016;
- (k) In relation to (j) above, the implementation of tree preservation and landscape proposals within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 22 June 2016;
- (l) The implementation of accepted fire service installations proposal within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 22 March 2016;
- (m) If any of the above planning conditions (a), (b) or (c) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (n) If any of the above planning conditions (d), (e), (f), (g), (h), (i), (j), (k) or (l) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice;
- (o) Upon the expiry of the planning permission, the reinstatement of the site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board; and
- (p) No car repair business, nor any activity not permitted by this Planning Permission, shall be carried on in the Appeal Site.
