

IN THE TOWN PLANNING APPEAL BOARD

Town Planning Appeal No. 12 of 2015

BETWEEN

CHAN KIT CHUN

Appellant

and

TOWN PLANNING BOARD

Respondent

Appeal Board:	Mr. Simon LAM Ken-chung	(Chairman)
	Dr. HUI Chun-man	(Member)
	Professor Alexis LAU Kai-hon, JP	(Member)
	Mr. Aaron LAM Ka-fai, BBS, JP	(Member)
	Miss Kelly WONG Yuen-hang	(Member)
In Attendance:	Ms Lesley LEUNG	(Secretary)

Representation:	For the Appellant: Ir. CHEUNG Lap-yan
	For the Respondent: Mr. Brian LEU, Government Counsel

Date of Hearing:	2 November 2016
Date of further written submissions from the Respondent:	21 November 2016
Date of further written submissions from the Appellant:	1 December 2016
Date of Decision:	6 July 2017

DECISION

I. Introduction

This appeal arises from a planning application of the Appellant, made pursuant to section 16 of the Town Planning Ordinance Cap. 131 (“**TPO**”), for the development of a proposed New Territories Exempted House (“**NTEH**”) on a plot of land in Kam Tin, Yuen Long. The application was rejected by the Rural and New Town Planning Committee (“**RNTPC**”) of the Town Planning Board (“**TPB**”). The Appellant then applied under section 17(1) of the TPO to the Respondent for a review of the decision of RNTPC. The Respondent also rejected the Appellant’s said application. The Appellant therefore lodged an appeal with the Appeal Board Panel (Town Planning) (“**this Board**”), pursuant to section 17B(1) of TPO.

II. Background

2. The Appellant is and at all material times was the owner of a piece of land known as Lot 926 S.A ss. 1 S.D ss. 5 in D.D. 109, Tai Kong Po, Kam Tin, Yuen Long (“**the Site**”). It has an area of about 233.5 m².

3. The Site falls within an area zoned “Agriculture” (“**AGR**”) on the approved Kam Tin North Outline Zoning Plan No. S/YL-KTN/9 (“**the OZP**”). The draft of the OZP was first approved on 22 February 2000. It was subsequently amended on a number of occasions, and Plan No. S/YL-KTN/9 was approved and exhibited for public inspection under section 9(5) of TPO on 12 December 2014.

4. Under paragraph (3) of the Notes of the OZP:

“No action is required to make the use of any land or building which was in existence immediately before the first publication in the Gazette of the notice of the interim development permission area plan conform to this Plan, provided such use has continued since it came into existence. Any material change of such use or any other development (except minor alteration and/or modification to the development of the land or building in respect of such use which is always permitted) must be always permitted in terms of the Plan or in accordance with a permission granted by the Town Planning Board.”

5. According to an extract plan (Plan AP-5; Ref. No. A/YL-KTN/461) prepared by the Planning Department based on the land use survey record in 1992, the Site, together with some neighbouring areas, were occupied as “chicken sheds”. The Appellant informed this Board that she purchased the Site in the year 2013. At that time, there was a temporary dilapidated structure of about 1,000 ft² (about 93 m²) erected on the Site. The structure was partly wood, and partly metal and brick. It had a wooden top covered with waterproofing materials. It was used for storage. There was no internal partition inside the structure. The Appellant said that she modified the structure, but refused to inform this Board in what way it was modified, and what use she put to it after modification. In 2014, she was required by the Lands Department to demolish the structure. Since she failed to do so, the structure was demolished by the Lands Department, together with about 10 other houses in the vicinity.

6. During an inspection conducted by Mr. YUEN Shing-yip Kepler, Senior Town Planner/Yuen Long East 2 of Fanling, Sheung Shui and Yuen Long East District Planning Office, Planning Department (“**Mr. YUEN**”) on 11 October 2016, the Site was observed to be paved and fenced with concrete

walls and metal sheets of about 2 metres high. The Site was largely vacant, with construction materials found stored inside.

7. Under the OZP, for areas zoned “AGR”, “Uses that may be permitted with or without conditions on application to the Town Planning Board” include “House (New Territories Exempted House only, other than rebuilding of New Territories Exempted House or replacement of existing domestic building by New Territories Exempted House permitted under the covering Notes)”.

8. On 25 March 2015, the Appellant submitted a planning application under section 16 of the TPO, seeking planning permission to use the Site for the development of a NTEH. At a meeting of the RNTPC on 19 June 2015, the said application was rejected, on the following grounds:

(a) *The proposed development was not in line with the planning intention of the “AGR” zone, which was to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from the planning intention; and*

(b) *The approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would lead to degradation of the rural character and environment in the area.*

9. The “planning intention” mentioned by the RNTPC was basically recited from the OZP, which provides, in relation to areas zoned as “AGR”:

“

Planning Intention

This zone is intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.”

10. On 17 July 2015, the Appellant applied under section 17(1) of the TPO for a review of the RNTPC’s decision. On 16 October 2015, the TPB rejected the Appellant’s application, for reasons identical to that adopted by the RNTPC.

III. The grounds of appeal as set out in the Notice of Appeal

11. On 22 December 2015, the Appellant, represented by her authorised representative, lodged with this Board a Notice of Appeal in which the following grounds of appeal were set out (according to our paraphrasing):

- (a) Part of the Site was in fact “house land” (i.e., land on which residential building lawfully existed, or on which residential building may be lawfully erected). The TPB’s understanding, that the Site is agricultural land, is therefore erroneous.
- (b) The Site had not been used for cultivation for more than 50 years. Residential dwellings are all around in the vicinity of the Site. There is very little agricultural activities in the vicinity, and rehabilitation for cultivation is impossible.
- (c) There has been house built on the Site for more than 50 years. The TPB had disregarded a modification of tenancy licence

issued in respect of the Site in 1990. The TPB's basis of its decision, viz. that the Site was occupied by agricultural structure, was therefore erroneous.

- (d) The Site is situated in Tai Kong Po Chuen, which is a non-indigenous village. Because of the on-going demand for housing, the TPB's rejection of the Appellant's application, on ground of planning intention, is unreasonable and unacceptable.

12. Some other grounds were raised by the Appellant in the Justification of Appeal (with documents attached) submitted on her behalf. These additional grounds have been considered by this Board and discussed in paragraphs 42 to 48 below.

IV. The evidence before this Board

13. A Witness Statement and Documents Bundle was prepared for use in this appeal. The Bundle contains a witness statement from Mr. YUEN. Mr. YUEN gave evidence under oath for the Respondent during the hearing of the appeal. He adopted the content of his witness statement as his evidence in chief, and was subjected to cross-examination by the Appellant's authorised representative, Ir CHEUNG Lap-yan ("Ir CHEUNG").

14. The other documents contained in the Bundle are not disputed.

15. The Appellant, on the other hand, did not give evidence or call any witness to testify on her behalf. She however submitted to this Board a declaration (聲明書). The declaration was signed by Ir CHEUNG and the Appellant, but not in the form of a statutory declaration. The declaration contained mainly contentions that the Appellant never received certain notices or warnings from relevant statutory or government bodies. These contentions

are irrelevant to the appeal herein, and the Appellant has refused to testify to their truthfulness. The Respondent also objected to the production of the declaration as evidence before this Board. After considering it on a *de bene esse* basis, this Board has decided to refuse to accept the declaration as evidence in this case.

16. The Appellant also produced a “Background of the appeal case” and a “Justification of Appeal (English and Chinese)”. They are in their true nature written submissions, and are considered by this Board. The Appellant also produced to the Board certain plans, photographs and other miscellaneous documents. On the day of the appeal hearing, the Respondent further produced to this Board supplementary documents including a modification of tenancy, a deed poll, and some file minutes. They are also accepted and considered by this Board.

17. Upon this Board’s directions made during the hearing on 2 November 2016, the Respondent on 21 November 2016 made further written submissions (with additional documents) about the devolution of certain “house” land (paragraphs 18 to 27 below). The Appellant made reply written submissions (with additional documents) on 1 December 2016. These are also considered by this Board.

V. Whether the Site is agricultural land or house land

18. The Site was carved out from a piece of land known as Lot 926A in D.D. 109 (“**Lot 926A**”). According to extracts from a New Territory Crown Rent Roll: Section A, Lot 926A should consist of 0.12 acre (about 485 m²) of “Class H” land, and 2.35 acre (about 10,239 m²) of agricultural land. It is not disputed that “Class H” land means house land on which residential premises might be built.

19. The Appellant submitted, by reference to certain aerial photographs and “government maps”, that, since telephone and electric poles, as well as access roads were found in the vicinity, the Site and its surrounding were in fact a residential rather than an agricultural area as early as the 1960s.

20. According to the Appellant, Lot 926A was subdivided into Lot 926A1 and Lot 926ARP in October 1977. Lot 926A1 was further subdivided into Lot 926A1RP and Lot 926A1D in March 1987. In 2013, Lot 926A1D was subdivided into multiple lots of which the Site was one.

21. The Appellant submits that “the building right of the mother lot has not been executed for rebuild development so far”, and therefore the Site “is still a mixed lot as at today”¹.

22. The Deed Poll in relation to the partition of Lot 926A into Lot 926A1 and Lot 926ARP cannot be traced now. What can be obtained, however, is an Assignment dated 12 May 1978 (registered in the Land Registry by Memorial No. 208557), by which Lot 926A1 was assigned by a WONG Hin-woon to a WONG Hin-hing. On the top of a plan attached to the said Assignment, the following handwritten figures and words could be seen:

D.D.	Lot	Area	Class
109	926ARP	.12 ac	H
		.12 ac	3 rd
109	926A1	2.23 ac	3 rd

23. It is undisputed that 3rd Class land means agricultural land. It is therefore apparent that, when Lot 926A was partitioned into Lot 926A1 and Lot 926ARP, the former was to consist of 2.23 acres of agricultural land, whereas the latter was to consist of 0.12 acre of house land and 0.12 acre of

¹ Paragraph 1(e) of the Appellant’s “Justification of Appeal”.

agricultural land. The “building right” (using the Appellant’s terminology) therefore went to Lot 926ARP, not Lot 926A1 (from which the Site was eventually carved).

24. The area of land corresponding to Lot 926ARP can be made out from the Division Plan attached to a Deed Poll dated 31 October 1988, by which Lot 926ARP was partitioned into Lot 926A2 and Lot 926ARP, the former sub-divided lot being of an area of only 0.04 acre. In the said Division Plan, the 0.12 acre of Class H land was expressly stated to be included in Lot 926ARP.

25. Lot 926ARP was later developed into a development called In Keen Garden Phase III in about the year 1992, consisting of eight NTEHs.

26. It is thus apparent that, despite the Appellant’s contention, that the 0.12 acre of Class H land was “allotted” in its entirety to Lot 926ARP by the Lands Department without explanation, the “allotment” was in fact carried out by the private land owners concerned, and not a decision made by any Government officials. The Appellant and her representatives had clearly misunderstood this point.

27. The Appellant further submitted that only 7 NTEHs, and not 8, were eventually built on Lot 926ARP because of “the land size limitation”². She therefore says that there is still 74.37 m² of Class H land that has not been utilized. This is a new point that was not raised until the Appellant’s representatives’ letter dated 1 December 2016. This Board in any event does not find it necessary to decide whether there is still unused “building right”. Any such right belongs to the owner of Lot 926ARP, not to the Appellant. It is for the owner of Lot 926ARP to decide whether or not to fully utilize the permitted building capacity of the land. It does not concern the Appellant.

² Paragraph 5 of the Appellant’s representatives’ letter dated 1 December 2016.

VI. The use of the Site and its vicinity

28. The Appellant relies on a “Government Map – Year 1973” to show that, as long ago as the 1960s, the Site and its vicinity were occupied by structures (represented by dotted rectangles in the map). There were also electric and telephone poles, as well as access roads. The Appellant also produced a Modification of Tenancy dated 1990 (“**MOT**”), issued in relation to Lot 926A1D (of which the Site formed part), purportedly to show that residential use was permitted under the MOT. The Appellant further says that the structures that existed on the Site were registered squatters until their registration was cancelled in June 2014 (apparently on the ground that the structures no longer existed) (see Attachment 1b-5 submitted by the Appellant).

29. The Appellant therefore argues that the Site and its vicinity has been used for residential purpose for more than 50 years, and the basis of the TPB’s decision, that the Site was occupied by agricultural structures, was therefore wrong. Further, it was submitted that, by reason of the prevalence of residential structures in the vicinity, it is impossible for the area to be rehabilitated for agricultural use.

30. The Appellant further relies on paragraph (3) of the Notes of the OZP (paragraph 4 above). Although the Appellant concedes that the building of NTEH on the Site amounts to a “material change”, and therefore the permission of the TPB is required, she relies on paragraph 13.2 of the Explanatory Statement of the OZP, which provides that:

“Uses of land or building which were in existence immediately before the first publication in the Gazette of the notice of the IDPA plan and which are not in compliance with the terms of the Plan may have adverse impacts on the environment, drainage and traffic of the Area. Although no action is required to make such use conform to this Plan,

*any material change of such use or any other development (except minor alteration and/or modification to the development of the land or building in respect of such use which is always permitted) must be always permitted in terms of the Plan, or if permission is required, in accordance with a permission granted by the Board. The Board will consider these applications on their individual merits. **Those alteration and/or modification works which may lead to an environmental improvement or upgrading to the Area may be considered favourably by the Board.***” (Emphasis added)

31. Since a lot of ruins and unused land were found in the area of the Site and its surrounding, approval of the Appellant’s application would lead to environment improvement and upgrading of the area, so the Appellant argues.

32. The origin of the “Government Map – Year 1973” is unknown. The nature of the rectangular structures depicted on the map is also unknown. Furthermore, as Mr. YUEN pointed out, electric poles, telephone poles and access roads were quite common in agricultural areas in the 1970s. It is too far fetched to attempt to conclude from the map that residential structures were extensively found in the area in the 1970s. To the contrary, there are evidence that work against such a conclusion, as shall be expounded below.

33. According to the MOT, which was dated 8 January 1990, the then owners of Lot 926A1D (from which the Site was carved out) and Lot 926A2 (carved out from 926ARP (paragraph 24 above)) were granted permission to maintain on the land four structures, namely a “private residential” (6.10m x 6.70m x 3.90m), a porch (4.10m x 6.10m x 3.10m), another porch (3.60m x 1.30m x 2.40m) and a kitchen/bathroom (3.10m x 1.80m x 2.40m). It is also stated in the MOT that these structures were indicated in red on a map marked (18) in file No. MNT 23034.

34. This Board was supplied with the relevant minutes (M. 51) in file no. MNT 23034, together with the map marked (18) in that file. In the said file, the four structures mentioned in paragraph 33 above were stated to be “Domestic T/SS” (meaning domestic temporary structures). They were also marked as structures 1, 2, 3 and 4 in the map. There is therefore no doubt that the MOT permitted the continued existence of the said structures, which were domestic (i.e. residential) in nature, on Lot 926A1D. It is however noted that these four structures fell outside the boundaries of the Site.

35. On the other hand, there was also in existence a Letter of Approval (“LOA”) dated 8 January 1990, covering Lots 926A1D and 926A2. Under the LOA, the erection of a total of 19 *agricultural* structures were approved. The description and size of the structures were listed in a Schedule to the LOA, and included 2 agricultural storeroom, 15 chicken sheds, and 2 agricultural porches. Their locations were also marked in the map (18) mentioned above. It is apparent that two of the said 19 structures (marked 14 and 15 on the map) were erected on the Site, and were marked “chicken shed” and “agricultural storeroom” respectively.

36. The MOT and LOA therefore show that, as at the year 1990, Lots 926A1D and 926A2 were together used as a chicken farm, in which the continued existence of certain residential structures were permitted, no doubt for the purpose of the keeping and operation of the farm. These residential structures were however not situated within the area of the Site. What were erected on the Site were apparently chicken shed and agricultural storeroom.

37. This Board was informed by Mr. YUEN that the above nature of the structures that were found on the Site is consistent with the 1982 squatter control record of the Lands Department, which described the structures that existed on the Site as chicken sheds. Besides, this Board was provided with an extract plan prepared on 14 October 2016 from land use survey record in 1992.

The plan shows that the structures erected on Lots 926A1D and 926A2 were chicken sheds. The areas surrounding the said two lots were also occupied either by chicken sheds or pig sties. There is therefore very little doubt that, as at the 1990s, the locality of the Site was agricultural in nature.

38. On the other hand, the present characteristics of the area surrounding the Site have been described by Mr. YUEN in paragraph 3.5 of his witness statement, which has not been challenged under cross-examination. It is worthwhile setting out these characteristics below:

- (a) The Site is located about 80m to the north of the village environs of Tai Kong Po;
- (b) To its immediate and further east are vacant temporary structures and residential use of the In Keen Garden Phase III respectively;
- (c) To the north of the site are vacant structures, scattered residential dwellings/structures and two open storage/storage yards for storage of vehicles/vehicle parts and construction materials. Some residential dwellings/structures are found to the further northeast. The open storage/storage yards are suspected unauthorised developments subject to planning enforcement action by the Planning Authority;
- (d) To its west and south is a continuous village track branching off Kong Tai Road. An orchard, a parking lot, vacant and unused land, and residential dwellings/structures are found further south and west. The parking lot is also a suspected unauthorised development subject to planning enforcement action by the Planning Authority; and

- (e) Since the rejection of the application upon review, there has been no major change to the surrounding uses, except two sites to the south of the Site are now used for residential and parking of vehicles. The surrounding areas are predominantly rural in character with residential dwellings/structures (mostly converted from temporary structures previously used as chicken sheds and pigsties), ruins, orchard, a few open storage/storage yards and vacant/unused land.

39. It is therefore apparent that, since the 1990s, the Site and its surrounding areas have, just like many rural areas in Hong Kong, ceased to be predominantly agricultural in nature. They have become areas of mixed use including residential, agricultural (e.g., the orchard), open storage yards or carparks. Some of the uses that are put to the land are illegal or unauthorised. Some of the land has become vacant or unused land, with some containing ruins.

40. As for the Site, there is no evidence whatever that it has ever been used for residential purpose. It was apparently occupied by chicken sheds in the 1990s. When the Appellant acquired it in 2013, there was erected on it a dilapidated structure apparently used for storage (paragraph 5 above). During a site inspection by officers of the Lands Department in April 2014, unauthorised alteration works were discovered on the Site. The MOT and LOA were therefore revoked in June 2014, and the unauthorised structure on the Site demolished in September 2014.

41. The significance of the above-described past and present use of the Site and its surrounding will be further discussed in paragraphs 50 to 54 below.

VII. Other grounds mentioned in the Justification of Appeal

A. The proposed development does not contravene the Interim Criteria

42. Whether or not the proposed development contravenes the Interim Criteria for Consideration of Application for New Territories Exempted House / Small House in New Territories, an explanatory document issued by the Lands Department for the benefit of intended applicants of NTEH/ Small House developments, is neither here nor there. The issue in the present case is whether the proposed development ought to be approved under the OZP, not whether these interim criteria are satisfied. Similarly, the fact that some of the Government departments that were consulted about the proposed development have raised no objection to the proposal is irrelevant. These matters will therefore not be further discussed in this Judgment.

B. “Similar” applications were approved

43. A number of previous cases in which residential houses were permitted to be built were cited by the Appellant in support of her argument that, similarly, her proposed development on the Site ought to be allowed. Each case has its own particular facts. It is seldom beneficial to compare the subject case with previous cases. This Board will however consider and discuss the “similar” cases put forward by the Appellant below.

44. Case A/NE-TK/554: Lots No. 187RP, 1204 and 1229RP (part) in D.D. 29, Ting Kok Road, Tai Po: The Appellant submitted that this is *also* a mixed lot entitled to building right. The proposed development on the Site should therefore be similarly permitted.

45. According to Mr. YUEN, one of the three lots involved in Case A/NE-TK/554 was a building lot on which the erection of residential building was permitted under the Government lease. In the present case, it has already

been discussed (paragraphs 18 to 27 above) that all building rights pertaining to Lot 926A have been devolved by the land owners concerned to Lot 926ARP. The Site does not have any building right attached to it, and this case is therefore distinguishable from Case A/NE-TK/554.

46. Case No. A/DPA/YL-KTN/14: Lot No. 750AB in DD 110, Tai Kong Po Village, Yuen Long: The application was at first rejected by the RNTPC on the ground, inter alia, that the development was not in line with the planning intention for the area which is to encourage in-situ reconstruction of temporary structures with more permanent materials with a view to improving environment, and that the application site fell within the Tai Kong Po Agricultural Land Rehabilitation Scheme area in which agricultural activities should be encouraged. The applicant's application for review however succeeded before the TPB, who approved the proposed development with conditions.

47. It was however pointed out by Mr. YUEN that the proposed development in Case No. A/DPA/YL-KTN/14 was the building of a Small House under the Government's Small House Policy, not an NTEH. Furthermore, the relevant applications were made in 1992, when even the draft of the OZP had not yet come into existence. It is therefore not a suitable case for comparison.

48. Case No. A/YL-KTN/35: Lot 926 S.A ss.1 S.D ss.5 in DD 109, Tai Kong Po, Kam Tin, Yuen Long: This is the only case among the three that involved the building of a NTEH and not a Small House. The application was approved by the RNTPC, apparently on the ground that the site concerned was previously occupied by a house that had collapsed. This appears to be a special case, and occurred in 1997, when the draft of the OZP had not yet been approved. This case therefore does not assist the Appellant either.

VIII. This Board's consideration of the Appellant's application

49. From the above analysis, it is plain that the grounds of appeal put forward by the Appellant cannot hold water. Be that as it may, hearings on appeal before this Board are *de novo* in nature, and this Board shall consider below whether this application ought to be approved despite the lack of substance in the grounds of appeal, particularly since neither the Appellant nor her authorised representative were legally qualified.

50. The general planning intention of the OZP is further explained in paragraph 8 of the Explanatory Statement, as follows:

“8.1 The planning intention for the Area is to channel suburban type developments to appropriate areas. The types of suburban developments include private residential development, village housing, and environmental and infrastructural improvements. Also, good quality agricultural land especially those under active cultivation will be retained. ...

8.2 In the designation of various zones in the Area, considerations have been given to the natural environment, physical landform, existing settlements, land status, availability of infrastructure and local development pressures. Moreover, buildings and places of historical and archaeological interest have been preserved in the Area as far as possible.”

51. Under paragraph 9.12 of the Explanatory Statement, the total area of land zoned as “AGR” is stated to be 229.69 ha (about 917,382 m²), and the following explanation is given:

“9.12.1 This zone is intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for

agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The areas under this zoning are generally well served by irrigation and servicing facilities as well as marketing facilities for intensive farming including livestock rearing, fish culture and horticulture.

9.12.2 *The areas under this zoning constitute the largest land use category within the area. A substantial portion is in the eastern and middle parts of the Area. The majority of agricultural land in the Area at present is under active cultivation.”*

52. It is thus apparent that it is the intention of the OZP, first of all, that the Kam Tin North area is to be divided to sub-areas according to the natural environment, physical landform, existing settlements, land status, availability of infrastructure and development pressures of the locality in question. While some of the sub-areas may be earmarked for developments including private residential development, village housing, and environmental and infrastructural improvements, there are substantial areas zoned “AGR” for the purpose of retaining and safeguarding good quality agricultural land/farm/fish ponds for agricultural purposes. In fact, this zoning constitutes the largest land use category under the OZP. This shows the importance that the OZP attaches to the retention of land for agricultural use, and to maintain the suburban nature of the Kam Tin North area.

53. It is also apparent that, under the OZP, the preservation of agricultural land is achieved by two means. First of all, existing agricultural land/farm fish ponds are retained and safeguarded. Secondly, for land that is no longer put to agricultural purpose, fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes are also retained.

There is little doubt that the locality in which the Site is situated falls into the latter category. It is true that, as mentioned in paragraph 39 above, many pieces of land in the vicinity of the Site have ceased to be used for agricultural purposes since the 1990s. Some land has been left vacant, others put to other uses, either legally or illegally. This is an unfortunate phenomenon that has occurred in many rural areas in Hong Kong. It may be that agriculture is no longer a sustainable occupation in Hong Kong. It may be that the housing needs of Hong Kong is so large that agricultural land should give way to meeting such needs. These are however policy matters for the relevant planning authorities to ponder over, no doubt after due consultations and thorough public discussions. They are not matters for this Board to decide or interfere. The function of this Board is to ensure that the planning intention under the OZP is properly and fairly carried into effect.

54. In the present case, the Director of Agricultural, Fisheries and Conservation does not support the Appellant's application from an agricultural development point of view, as the Site, with road access and water supply, is suitable for greenhouse cultivation or plant nursery. It is noted that a piece of land to the immediate south-west of the Site is being used as an orchard. This Board can see no reason why the planning intention under the OZP should be departed from in the present case. It may be that, as the Appellant submits, the Site is suitable for residential use, and that there is an on-going demand for housing in the area. This is however irrelevant. It is the planning intention that prevails in the present case. This Board agrees with the Respondent's submission that, should the Appellant's application be allowed, it would set a bad precedent for other land owners. Very soon, the entire area would be covered by NTEH and the agricultural nature of the area would be gone forever. The planning intention under the OZP would be totally defeated.

IX. This Board's decision

55. For the above reasons, this Board has unanimously decided that this appeal be rejected, and that the relevant decision of the Town Planning Board be confirmed. If any party has any application for costs, such application should be made in writing to this Board within 21 days of the date of this Judgment.

(Signed)

Mr. Simon LAM Ken-chung
(Chairman)

(Signed)

Dr. HUI Chun-man
(Member)

(Signed)

Professor Alexis LAU Kai-hon, JP
(Member)

(Signed)

Mr. Aaron LAM Ka-fai, BBS, JP
(Member)

(Signed)

Miss Kelly WONG Yuen-hang
(Member)