

Town Planning Appeal No.26 of
1995

IN THE MATTER of the Town
Planning Ordinance Chapter 131

and

IN THE MATTER of an Appeal
under Section 17B by Mr. Wong
Yee Fai

Date of hearing : 22nd March 1996

Date of decision : 12th April 1996

Panel : Mr Robert C. Tang Q.C., J.P. (Chairman)
Mrs Alice Piera Lam, O.B.E., J.P.
Mr Stephen Lau Man-lung, O.B.E., J.P.
Mr Lee Man-ban, M.B.E., J.P.
Mr Fan Sai-yee

DECISION

This is an appeal by Mr. Wong Yee Fai who, on 12th October 1994, submitted an application to the Town Planning Board ("the Board") for permission to continue the use of the Site for a car repairing workshop and open storage of spare parts for a period of twelve months.

2. The Site is being used as a car repairing workshop in breach of s.21 of the Town Planning Ordinance Cap.131.

3. The Site covers an area of about 5,200 m². The development consists of a single storey structure with an area of 720 m² i.e. a site coverage of 14% and a building height of about 6.7 m for site office use and repairing activities. About 50 open air lorry parking spaces were also proposed within the Site.

4. The Site was the subject of a previous application (application No.DPA/YL-PH/23) submitted by the appellant to use the same Site for the same purpose. At the time of that application, the Site was within an "unspecified use" area on the draft Pat Heung Development Permission Area (DPA) Plan No.DPA/YL-PH/1.

5. That application was rejected both by the Town Planning Board and by the Town Planning Appeal Board. The Town Planning Appeal Board delivered its judgment on 14th June 1995.

6. At that time, the Appeal Board said

"In our opinion, this appeal must fail. Given the clear planning intention, which was to encourage agricultural uses and reconstruction of temporary structures with permanent materials with a view to improving the environment, we have no doubt that the vehicle repairing workshop is not compatible. Moreover, Mr. Ng's evidence demonstrated quite clearly that active enforcement actions are being taken to realise the planning purpose"

7. On 10th May 1994, the draft DPA Plan was approved without amendment by the Governor in Council. The approved DPA Plan No.DPA/YL-PH/2 was gazetted on 20th May 1994.

8. On 17th June 1994, the draft Pat Heung OZP No.S/YL-PH/1 replacing the approved DPA plan was gazetted. At the time of the application under appeal, the Site falls within a "Residential (Group D)" R(D) zone on the draft Pat Heung Outline Zoning Plan (OZP) No.S/YL-PH/1.

9. The proposed use is not a use which can be permitted under the R(D) zoning. Hence the application is made under para.(vi)(b) of the Notes, where temporary use or development not exceeding a period of 12 months may be permitted by the Board notwithstanding that the use or development is not provided for in terms of the Plan.

10. The application was rejected on s.17 review on 4th July 1995. The reasons given by the Board are as follows:-

"(a) the development is not in line with the planning intention for the area which is to improve and to upgrade the existing domestic accommodations. Although the development is temporary in nature, no strong justification has been submitted to merit a departure from the planning intention;

(b) the proposed development is not compatible with the nearby residential developments;

- (c) there is insufficient information in the submission to demonstrate that the development will not cause environmental impact on the surrounding areas;
- (d) the vehicular access to the development will affect the adjacent bus lay-by and there is insufficient information in the submission to demonstrate that the development will not cause adverse traffic impact on the area; and
- (e) the approval of the application will set an undesirable precedent for other applications which will lead to general degradation of the area"

11. Given that this application is made under para.(vi)(b), what we have to consider is whether temporary permission to continue to use the Site for its existing purpose should be given.

12. Mr. Wong, who gave evidence before us, said that the reason why he wanted a year's extension is because he has been unable to relocate. If he were forced to close down, it would cause him great hardship. His business, at the moment, employs some 30 workers. He acknowledged that there is no certainty that he would be able to relocate within a year but he is willing to terminate his business in that event.

13. Mr. Wong also complained that he has not been given help in finding an alternative site. However, Mr. Ng, who gave evidence for the Board, said that Mr. Wong should approach the District Office for help as well as the Planning Department, if he so desires.

14. On an application under the Town Planning Ordinance, the fact that the applicant has been unable to find an alternative site is only one of the matters that we should take into consideration.

15. We cannot grant this application. The Site is being used for car repairing purposes illegally. We cannot condone the continued illegal use by granting permission under para.(vi)(b).

16. Moreover, Mr. Wong cannot show that the Board in refusing his application was wrong.

17. We note that no enforcement action has been taken so far.

18. Again, Mr. Ng has told us that enforcement action will soon be taken against the appellant. The reason why no enforcement action has been taken so far is because of the lack of resources.

19. The Town Planning Ordinance will lose credibility unless timely enforcement action is taken. Town planning will not work, unless Government is willing to commit sufficient resources to enforce the Town Planning Ordinance. The fact that no enforcement action has been taken since the Town Planning Appeal Board's decision of June 1995 will only encourage infringement of the Town Planning Ordinance.

20. The appeal is dismissed.