

COMMENTS

OF HONG KONG INSTITUTE OF PLANNERS

(PUBLIC AFFAIRS COMMITTEE)

ON THE TOWN PLANNING BILL

1. Introduction

The revamp of the existing Town Planning Ordinance is long overdue. The public was consulted on the comprehensive review of the Ordinance in 1991 and the White Paper was published in 1996. We do not see any reason why there should be any further delay in enacting the new planning legislation. Whilst we support in general the new planning ordinance, there is still some room for improvement in the Bill so that the law will establish an open, fair and efficient system with sufficient degree of certainty. The problems arising from the relevant provisions are discussed below and we have also made some recommendations for the consideration by the Bills Committee.

2. Appointment of Town Planning Board [Section 3]

The impartiality and independence of the Town Planning Board (“the Board”) has been queried in the past because the Secretary for Planning and Lands (“the Secretary”) and the Director of Planning are appointed the Chairman and Vice-Chairman of the Board. Concern has been expressed that the Board acts as an arm of the Government in performing their functions. In order that the Board is seen to be independent of the Government, it is recommended that there should be express provision in the legislation that both the Chairman and Vice-Chairman should not be public officers.

It is noted that there is no mention of the Town Planning Board Secretariat, which is presently being served by the Planning Department. In order to achieve greater degree of independence, the Secretariat should not be served by the Planning Department.

Whilst one of the objectives of the new Bill is to increase the transparency of the system, no attempt has been made to open up the Town Planning Board meetings. The proceedings of the Appeal Board have been open to the public since its operation. No problems have been encountered by so doing. There is no strong reason why the Board meeting should not open to the public and express provision should be made in the legislation to that effect.

3. Contents of draft plans generally [Section 9(3)]

There is no justification for the Secretary be empowered to designate any class or description of development as designated development by regulations without going through the process of public consultation. The public will be afforded the opportunity to make representations if such designated development is designated by the Board on a draft plan. It is unfair that the public is deprived of this right if the designated development is designated by the Secretary in the form of regulations. It is therefore recommended that section 9(3) should be deleted.

4. Draft development permission area plans [Section 10]

The review and appeal process would be rendered meaningless by section 10(4). This is the situation where at the time of application the site is covered by a Development Permission Area (“DPA”) Plan. When the application is to be reviewed or to be heard by the Appeal Board, the DPA Plan is replaced by an Outline Zoning Plan (“OZP”). The change of the zoning may be so drastic that the original proposal would not be permitted at all under the new zoning, e.g. from “Unspecified Use” to “Agriculture”.

Fairness is built in the present system whereby the Board and the Appeal Board should adhere to the zoning on the DPA plan although it has been replaced by an OZP (section 20(6A) refers). The new provision in section 10(4) requires the Board and the Appeal Board to consider the application on the basis of the OZP not the DPA and the process of review and appeal would be superfluous. It is therefore recommended that section 20(6A) of the existing Ordinance should be maintained.

5. Planning study [Section 11]

Public consultation should not be confined to the planning study for the preparation of the outline zoning plan or an amendment to an outline zoning plan. The Territorial Development Strategy (“TDS”) and Sub-regional Development Strategies provide the framework for the preparation of outline zoning plans. Very often they also form the basis or serve as a reference for the Board to consider planning applications. It is essential that the public be afforded the opportunity to make comments or representations on the studies in connection with the TDS and the Sub-regional Development Strategies and express provision should be made in the legislation to that effect.

6. Publication and inspection of planning study and draft plans [Sections 12 and 16]

The 1 month period for public inspection of the planning study and draft plans is grossly insufficient. It takes the Planning Department or its consultants months to complete a planning study or a draft plan. It may involve technical assessments and/other analyses. The sincerity of the Board to consult the public would be in doubt if the public is given just 1 month to understand the planning study or the draft plan and to study their implications not to mention making alternative proposals. Currently the public has 2 months to inspect the draft plan and lodge objections if necessary. It would be a retrograde that the 2 months are reduced to 1 month. In order that the public be given sufficient time to inspect the planning study and draft plan, it is recommended that the publication period should be 2 months.

7. Inquiry relating to unwithdrawn adverse representations [Section 21(4)]

From past experience, it is unrealistic to require a representer or a commenter to make submissions to the Board in writing not less than 6 weeks before the date fixed for the inquiry. The representer or the commenter is given notice of the date 2 months before the inquiry. That means he has only 2 weeks to prepare the submissions. He should be given more time to prepare the documents properly.

8. Amendment of draft plan by Board to meet unwithdrawn adverse representations [Section 22(4)]

Unless there is positive action on the part of the representer to withdraw the representation, it is unfair to treat that his representation has been withdrawn. This sub-section should therefore be deleted and substituted by the provision in the current legislation where the objection is deemed to be unwithdrawn if the Board has been notified within a specified time.

9. Submission of draft plan to Chief Executive in Council [Section 25(3)]

The 9 month period can be extended if the Board gazettes amendments to the draft before the expiration that 9 month period. This would have tremendous impact on the development process because the Building Authority is required not to approve building plans during the said period under circumstances as set out in section 45. Whilst there may be a need for the Board to make amendments to the draft plan during the said period to meet changing circumstances, the 9 month period for the amendments should not be added to the original 9 months but treated separately.

10. Application for planning permission [Section 32]

It is inappropriate that the Board is given the power to refuse to consider an application which is similar to one refused by the Board within 2 years. This new provision is not commensurate with the pace of development in Hong Kong. The changes in Hong Kong are so rapid that what was unacceptable at one time may be acceptable at a later date. This could happen within the 2 year period.

Further some of the applications may be rejected because of insufficient information. This could be addressed by providing the required information in the new application. The development process will be delayed unnecessarily if the fresh application could be made only after 2 years.

There is no evidence that this is a problem in the current system. The proposed provision is unnecessary and will also slow down the development process. It should therefore be deleted or at least, the period should be reduced to 1 year.

There seems to be a problem with the drafting in section 32(4)(a)(i) which does not reflect the intention of this subsection. It appears that the intention is to enable the Board to consider an application but shall not grant a permission before the expiration of the gazettal period mentioned in section 16(1). The wording of this subsection, as it now stands, suggests that the Board shall not grant permission if the application is made before the expiration of the gazettal period. The fact is that the application may be submitted within the gazettal period but considered by the Board after the gazettal period. Then the Board should have the power to consider and approve the application. This subsection should therefore be amended to reflect the actual intention.

It is not clear under section 32(6) how “that submission” would be treated “as if it were an application under this section”. It is suggested that there should be express provision to state clearly whether a new fee has to be charged; whether the application has to be re-published for public inspection (if it falls within section 34(7)) and the timing within which the Board will consider the application.

11. Requirements for particular types of application for planning application [Section 33]

It is noted some of these are new requirements such as “a report on key environmental and planning issues” and “an urban design plan”. It is essential that the Town Planning Board/Planning Department should issue relevant practice notes before the implementation of these new provisions.

12. Determination of application for planning permission [Section 36]

There is grave concern over the wide discretion of the Board that, in determining an application, the Board is required to have regard to “any statement of Government policy and any planning intention relating to the subject matter of any draft or approved plan in respect of the land or the development or use of the land to which the application relates”.

The problem is that this statement of Government policy and planning intention may not be within the knowledge of the applicant at all, or at the time of application. Presently the Government policy and planning intention are scantily, if any, mentioned in the explanatory statement of the plan. Such statement does not form part of the plan and is not subject to the objection procedure. Therefore, the introduction of this requirement would lead to greater degree of uncertainty and unfairness.

In order to address this issue, it is recommended that the Government policy and planning intention should be clearly stated in the explanatory statement which should become part of the plan and the affected person should have the right to make representations on such statement. This subsection should also be qualified as in section 59(1), i.e. the applicant was or could reasonably have been expected to be aware of that Government policy at the time the application was made.

13. Conditions relating to provision of public facilities [Section 37]

There is concern about the actual jurisdiction of the Board in imposing conditions relating to the provision of public facilities. The discretion of the Board in this respect seems to be very wide. It is not clear whether it would still be subject to the current common law principles pertinent to the Board’s power in imposing conditions and, in particular, whether it would still be subject to the same test of reasonableness.

14. Conclusion

We support the Town Planning Bill in principle and would like to see that the legislation could be enacted as soon as possible. Nevertheless, we have some concern over a number of issues as explained above. We very much hope Members of the Bills Committee will take our views into account in scrutinising the contents of the Bill.