

Building Authority Conference
Minutes of the 8/01 Meeting
held on Monday, 22 October 2001 at 3:45 pm
in DB's Office

Present	:	Chairman	
		Mr C M LEUNG	BA
		Members	
		Mr H W CHEUNG	DD
		Mr K M MO	AD/NB1
		Mr C K AU	AD/Sup
		Mr K M CHEUNG	AD/NB2
		Secretary	
		Mr N K WAT	BS/TS1
External observer	:	Prof. Alex C W LUI	
In attendance	:	Mr K K LING	DPO/HK
		Mr K P CHOW	CBS/HKE
		Mr S YIP	CBS/L(Atg)

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Meeting No.: 8/01 (22.10.2001)
Case No.: BAC 9/01
Address: Sai Wan Ho Ferry Concourse
File Reference: BD 2/3002/01
Subject Matter: Exclusion of the proposed Public Transport Terminus and Marine Police Operational Area from GFA calculation

Public Transport Terminus (PTT) – Background

1. At the last BAC meeting 5/01 held on 1.8.2001, it was decided that legal advice should be sought on the application of B(P)R 23(3)(b) in this case before making a decision on whether the PTT could be excluded from GFA calculation.
2. CBS/HKE briefed members on the legal advice received. The gist of the legal advice was that :
 - (a) Public transport terminus fell within the meaning of the term “parking motor vehicles, loading and unloading of motor vehicles” in B(P)R 23(3)(b).
 - (b) BA must first be satisfied that any floor space was constructed or intended to be used solely for parking motor vehicles, loading and unloading of motor vehicles. This was a question of fact and could be established and supported by documentary submission of plans or designs.
 - (c) BA should then consider whether or not to disregard such floor space from GFA calculation. In the exercise of this discretionary power, each case must be considered on its own merits and be decided as the public interest required at the time.
 - (d) There was no reference of any consideration of lease restrictions in refusing approval of plan under the BO.
 - (e) The exercise of development control under the BO was independent of the lease conditions in every case.
 - (f) BA should consider the circumstances of the case and exercise his discretion according to his guidelines and policy. However, consistency should not be pursued at the expense of the merits of the individual cases.
3. CBS/HKE also briefed members on several past cases which revealed that in the past, BA had allowed some PTT to be excluded from GFA calculation but required some others to be included.

4. DPO/HK opined that as the PTT was required to be provided under the lease, the exclusion of the PTT from GFA calculation would not generate any additional benefit to the public. Whilst the planning intention for this site was to leave the control of the building bulk to B(P)R, he was concerned that if the PTT was allowed to be excluded from GFA calculation, the proposed building bulk/height would be increased causing additional visual impact in view of its waterfront location. This might also set a precedent having implication on the calculation of GFA for other public facilities required by the Government.
5. Having noted the additional information given by CBS/HKE, members had the following observations :
 - (a) According to legal advice PTT fell within the ambit of floor space for parking motor vehicles, loading or unloading of motor vehicles.
 - (b) Members were satisfied that the proposed PTT as shown on the plans submitted was constructed or intended to be used solely for parking motor vehicles, loading or unloading of motor vehicles.
 - (c) B(P)R 23(3)(b) provided an explicit discretionary power for the BA to disregard such floor space from GFA calculation. In the circumstances, when exercising the discretion, the BA should examine if it would be against the public interest to exclude the PTT in question from GFA calculations.
 - (d) The provision of a PTT in this case was definitely in the public interest. The exclusion of the PTT in the case from GFA calculation would also not have adverse effect on the public interest. Otherwise, Transport Department and Planning Department would not have recommended the provision of a PTT in this site in the first place.
 - (e) As advised by D of J, the exercise of the discretionary power under B(P)R 23(3)(b) should be independent of the lease conditions. Therefore, when considering the question of public interest, it might be unreasonable to consider it as not serving public interest to allow the PTT to be excluded from GFA calculation simply because the developer had contracted to provide a PTT in the lease.
 - (f) There was at present no statutory town planning control over the GFA and bulk of the development on this site. In the case of GFA, the control was left to the provisions of the B(P)R. In the circumstances, the permissible GFA should follow that allowed by the First schedule to the B(P)R and the area which might be included should be dealt with under B(P)R 23(3)(b). If there was any planning intention to further restrict the GFA or the bulk, this should have been spelt out in the lease conditions when the land was granted to the developer. In the circumstances, it was not appropriate now to address PlanD's concern under the BO.
 - (g) Although there were internal guidelines dealing with the exclusion of car parking spaces from GFA calculation, no clear guidelines on how BA would deal with exclusion of PTT had been issued both internally and to the industry.
 - (h) The past cases dealing with the exclusion of PTT from GFA calculations were inconsistent and thus no guidelines nor policy had been or could be established.

6. Prof. Alex C W LUI was of the view that developers might be confused on whether PTT could be excluded from GFA calculation as there was inconsistency in the treatment of PTT under the lease and under the BO. He was inclined to give the developer the benefit of the doubt.
7. Having considered all the relevant factors, members advised and the Chairman **agreed** to exclude the PTT in this case from GFA calculation.
8. The Chairman directed that in the light of the current legal advice and the principles established in this case for considering the exclusion of carpark and loading and unloading areas from GFA calculations under B(P)R 23(3)(b), the present internal guidelines and PNAP dealing with the subject should be reviewed and re-issued as soon as possible.

Marine Police Operational Area (MPOA)

9. Members noted that the MPOA was not ancillary to the principal use of the proposed development.
10. There were already clear guidelines that car parking spaces provided other than for the occupants of a building should be included in GFA calculations. Therefore, in line with the present guidelines which were known to the industry and applied consistently, members advised and the Chairman **agreed** that the MPOA should be counted for GFA.