

(Translation)

**IN THE APPEAL BOARD UNDER THE
URBAN RENEWAL AUTHORITY ORDINANCE**

Appeal Case Nos.: 1 and 4 of 2011

BETWEEN

Tung Chor Ying(董楚英), Chan To Ming(陳圖明),

Chan Pui Wah(陳佩華), Chan To Ho(陳圖浩)

and Chan To Yui(陳圖銳)

Appellants (No. 1)

Lam Yee Shim and Lam Yee Ching Selina

Appellants (No. 4)

AND

Secretary for Development

Respondent

Appeal Board: Mr CHAN Bing-woon, S.B.S., J.P. (Chairman)
Mr James KONG Tze-wing, M.H., J.P. (Member)
Mr Stephen NG Kam-chun, M.H., J.P. (Member)
Mr Kenny WONG Kam-shan (Member)
Mr Stanley YIP Cho-tat (Member)
In attendance: Ms Rachel CHAN Ho-ming (Secretary)

Representation:

Appellants (No. 1), Tung Chor Ying(董楚英), Chan To Ming(陳圖明), Chan Pui Wah(陳佩華), Chan To Ho (陳圖浩) and Chan To Yui(陳圖銳), acting in person and authorising Chan Pui Ling(陳佩玲), Chan To On (陳圖安) and Ngan Wai Fong (顏惠芳) as representatives

Appellants (No. 4), Lam Yee Shim and Lam Yee Ching Selina, acting in person and authorising Lam Yee Lai and Ho Sze Chung Joseph as representatives

Barrister Mr Jenkin SUEN, Senior Government Counsel Mr Samuel LEE Chiu-ting and Government Counsel Mr Brian LEU Lap-yau, for the Respondent and summoned witnesses Ms Iris TAM Siu-ying and Mr Gordon HO Siu-shun to give evidence on oath

Date of Hearing: 2 and 4 March 2011

Date of Decision: 29 April 2011

DECISION

Upon careful consideration of the submissions made by the Appellants and the Respondent in respect of the above two appeal cases, the Appeal Board unanimously decides to dismiss the two appeal cases and confirms the Respondent's decision made pursuant to section 24(4)(a) of the Urban Renewal Authority Ordinance (Chapter 563) to authorise the Urban Renewal Authority to proceed with the development project at Ma Tau Wai Road/Chun Tin Street. Nevertheless, the Appellants are not required to pay the costs and expenses incurred by the Appeal Board in hearing and determining the appeal.

Reasons are as follows:

1. On 29 January 2010, the building at 45J Ma Tau Wai Road collapsed and the tragic incident has aroused profound public concern.
2. On 24 February of the same year, the Financial Secretary Mr John TSANG Chun-wah promptly included in the Budget Speech of 2010-2011 that was submitted to the Legislative Council that: *“(Paragraph) 121. In order to resolve the problem of old buildings in disrepair in the vicinity of the collapsed building on Ma Tau Wai Road, and to improve the living environment of the hundreds of households there and relieve their fears and worries, I have agreed to the URA taking forward immediately a*

redevelopment project at that location. It will cover old buildings in 33 street numbers on Ma Tau Wai Road, Hok Yuen Street and Chun Tin Street. The URA will embark on the necessary freezing survey today.” On the same day, the Urban Renewal Authority announced the commencement of the development project at Ma Tau Wai Road/Chun Tin Street (hereinafter referred to as “the Project”) pursuant to section 23(2) of the Urban Renewal Authority Ordinance (Chapter 563) (hereinafter referred to as “the Ordinance”), and published a notice of the Project in the Gazette (G.N. (E.) 5 of 2010). Within the publication period of the Project, public inspection of the following could be made: (a) a description of the general nature and effects of the Project; and (b) a plan delineating the boundaries of the Project. Pursuant to section 24(1) of the Ordinance, any person who considered that he would be affected by the Project and who wished to object to the implementation of the Project might, within the publication period, send to the Urban Renewal Authority a written statement of his objections to the Project. The written statement was required to set out: (a) the nature and reasons for the objection; and (b) where the objection would be removed by an amendment of the development project any amendment proposed. It was estimated that about 540 households and about 35 shops might be affected by the Project.

3. A total of 54 written statements were received by the Urban Renewal Authority, of which 13 were statements of objection and 41 were statements of opinion. Upon deliberating on all the statements of objection and opinion, the Development Project Objection Consideration Committee of the Urban Renewal Authority considered that the objections should not be upheld and decided not to propose any amendment to the Project. On 2 August 2010, the Urban Renewal Authority sent letters to the persons who had submitted

statements of objection/opinion to notify them about the grounds of not amending the Project in connection with their objections/opinions. Such letters also stated that pursuant to section 24(4) of the Ordinance, the Respondent would consider the development project proposed by the Urban Renewal Authority and any objections which were not withdrawn and determine, consequent upon those objections, whether to authorise the Urban Renewal Authority to proceed with the development project, to make an amendment or to decline to authorise the development project. Should the addressees had any opinions on the grounds stated by the Urban Renewal Authority, they could submit the same in written form on or before 16 August 2010. According to the Respondent, she has not received any notice of withdrawal of the statements of objection.

4. Pursuant to section 24(4)(a) of the Ordinance, upon considering the Project and the objections which were not withdrawn, the Respondent decided on 10 December 2010 to authorise the Urban Renewal Authority to proceed with the Project without any amendment, and published a notice of her decision in the Gazette (G.N. 7974) on 17 December 2010. Reference was made in the notice that pursuant to section 28 of the Ordinance, objectors to the Project who were aggrieved by the decision of the Respondent under section 24(4)(a) of the Ordinance might appeal on or before 17 January 2011 (that is, within 30 days after notification of the decision of the Respondent) by lodging a notice of appeal with the Secretary to the Appeal Board Panel with a copy to the Respondent.
5. The Secretary to the Appeal Board Panel received a total of 12 appeals by the deadline for lodging appeal. Among the 12 appeals, 10 were related to the area and boundaries of the Project and the relevant appellants had

abandoned the appeals before the hearing. Hearing was conducted for two appeal cases only, namely Nos. 1 and 4 of 2011.

6. The Appellants of case No. 1 are the owners of G/F of Nos. 6-8 Hok Yuen Street, while the Appellants of case No. 4 are the owners of G/F including the attic of No. 45E Ma Tau Wai Road. The Appellants' main grounds of appeal were that “in-situ shop for shop” compensation should be offered in acquiring the Appellants' properties for the implementation of the Project. Although during their submission, the Appellants of case No. 1 queried whether their shop at Nos. 6-8 Hok Yuen Street should or should not be included in the boundaries of the Project, they agreed that this was not a ground of their appeal (with that ground not being included in their notice of appeal) and that their appeal was lodged in respect of compensation.

7. The Respondent pointed out that pursuant to section 24(2) of the Ordinance, any person objecting to the Project might propose amendments thereto. Besides, under section 24(4)(b) of the Ordinance, the Respondent should consider whether or not to make amendments to the Project to meet the objections raised. Nevertheless, the Appeal Board agreed with the Respondent's submission that the amendments she could make would be limited to those on the boundaries of the Project (that is, whether or not the land concerned should be included in the boundaries the Project) and would not include those relating to compensation for acquiring such land. The Respondent also pointed out that it could be seen in the Gazette notice relating to the Project (G.N. (E.) 5 of 2010) that reference was only made in the notice to the boundaries of the Project, and public inspection of the description of the general nature and effects of the Project as well as the plan

delineating the boundaries of the Project was invited. The notice did not cover the means of compensation for acquiring the relevant land.

8. Pursuant to section 28(14)(a) of the Ordinance, at the completion of the hearing of an appeal, the Appeal Board may confirm, reverse or vary the decision appealed against (that is, the decision of the Respondent pursuant to Section 24(4)(a) to authorise the Urban Renewal Authority to proceed with the Project) as it thinks fit. However, it is obvious that the decision was not related to compensation. The Appeal Board has no power to amend the compensation policies regarding the acquisition of the relevant land, nor has it the power to determine the means of compensation for the acquisition of the Appellants' properties by the Urban Renewal Authority.
9. Although the relevant compensation policies or decisions are not under the authority of the Appeal Board, a major portion of time of the appeal hearing was used on the hearing of the Appellants' grievances and challenges against the current compensation policies. The Appellants opined that given the "people-centred" approach adopted by the Urban Renewal Authority, and that the Project arising from the building collapse at Ma Tau Wai Road was "exceptional circumstances necessitating exceptional handling", the Urban Renewal Authority should not be bound by the current policies when handling the Project.
10. Indeed, the Urban Renewal Authority should adopt the "people-centred" approach (*paragraph 3 of the November 2001 Urban Renewal Strategy issued by the Planning and Lands Bureau and paragraph 7 of the February 2011 Urban Renewal Strategy issued by the Development Bureau refer*). The Respondent explained that in respect of the building collapse incident at

Ma Tau Wai Road and the Project, the “people-centred” approach was manifested by the Urban Renewal Authority's rapid arrangements made for the tenants and owners who had been afflicted mentally and psychologically by the collapse incident, including rehousing and redevelopment. As for “exceptional circumstances necessitating exceptional handling”, the Respondent explained that such was realised in the special arrangements made by the Urban Renewal Authority in the Project arising from the building collapse incident at Ma Tau Wai Road, where the procedures and time normally required for launching a redevelopment project had been simplified or expedited, and the Project being the first redevelopment project that the Urban Renewal Authority will conduct on its own.

11. The Respondent also explained that compensation in the form of “shop-for-shop” was not included in the compensation policies for acquisition by the Urban Renewal Authority (the policies applicable to the Project were based on the acquisition and compensation policies endorsed by the Finance Committee of the Legislative Council in March 2001). The Respondent pointed out that the Urban Renewal Authority had introduced the option of “flat for flat” in the Urban Renewal Strategy in February 2011— “(Paragraph) 27. The URA will offer “flat for flat” in a URA new development in-situ or in the same district or at available sites as an alternative option to cash compensation and ex gratia payment to owner-occupiers of domestic units.” However, firstly, such policy modification does not have any retrospective effect and thus shall not apply to projects already announced (see paragraph 28 of the paper for discussion on 24 June 2008 by the Panel on Development of the Legislative Council on “Review of the Urban Renewal Strategy” CB(1)1951/07-08(03) — ...The results of the review should not affect any URA projects already

commenced). Secondly, such an option of “flat for flat” is only available to owner-occupiers of domestic units and is not available for shops. Therefore, to date, the Urban Renewal Authority does not have a “shop for shop” compensation option or policy.

12. For the avoidance of doubt, the Appeal Board considers it necessary to explain what a “flat for flat” option is. The Respondent clearly expressed that a “flat for flat” option does not mean that an affected owner of a domestic unit can simply choose, as an exchange or compensation, to receive a property unit upon completion of a development project. In fact, the Urban Renewal Authority still offers only monetary compensation to owner-occupiers of domestic units, where the owner-occupiers may choose to use that compensation payment to purchase another domestic unit developed by the Urban Renewal Authority, either in-situ at the redevelopment project site or in the same district or at a suitable site. An owner-occupier may need to top-up in order to purchase a new flat or a balance may be due to him. According to *Chapter 5 of the Public Views and Future Direction Paper for the Consensus Building Stage of the Urban Renewal Strategy Review*, a possible “flat for flat” model and procedure is as follows:

- *Residential owner-occupiers must first accept the amount of cash compensation for their properties. This cash value is the basis for all other related considerations.*
- *If the value of the new flats under the redevelopment proposal is higher than the cash compensation to which the owner-occupiers are entitled, then the owners opting for the “flat for flat” arrangement must pay the*

URA the difference. If the value is lower than the cash compensation, the owners will be refunded the difference.

- *The URA will, at the time of making offers for voluntary acquisition, provide details of the arrangements for the “flat for flat” option and the basic information about the new flats.*
- *If an owner opts for “flat for flat”, the URA will hold part of the cash compensation at a law firm for confirmation.*

13. On page 20 of the *Public Views and Future Direction Paper*, it is stated that such “flat for flat” policy is not applicable to shops. During the course of the hearing, the Respondent also pointed out that the “shop for shop” compensation option would entail many problems that are difficult to resolve. For instance, since each shop differs from another in terms of location, area size and operational needs, and land planning considerations must be taken into account and various building, fire services and safety requirements must be met during the course of redevelopment, it is design-wise practically impossible to guarantee the provision of a similar shop within the completed new project. The Appellants disagreed. Although the Respondent stated that according to the proposed draft plan, there would not be enough street level shops to satisfy demands for “shop for shop” upon completion of the Project, the Appellants challenged that the proposed draft plan had included public open space which they considered unnecessary, and further argued that there must be enough shops to satisfy the Appellants' demands as they were now the only ones demanding “in-situ shop for shop”. However, the Respondent stated that should the “shop for shop” option be made available under the compensation policy, such an option must be offered in a fair and just manner to all the shops to be acquired under the Project, and not only to the Appellants of the two cases.

14. The Appeal Board agrees with the Respondent's submission that the Appeal Board should not deal with the issues of acquisition and compensation relating to the Project. Therefore, the Appeal Board decides to dismiss the two appeal cases and to confirm the Respondent's decision pursuant to the Ordinance to authorise the Urban Renewal Authority to proceed with the Project.
15. At the completion of the hearing of an appeal, not only may the Appeal Board confirm, reverse or vary the decision appealed against, it may also order the Appellants to pay the costs and expenses incurred by the Appeal Board in hearing and determining the appeal, if the Appeal Board is satisfied that it is reasonable and just to make such an order.
16. Under normal circumstances, it would be fair for the Appellants to pay the costs and expenses for the appeal as the appeals are dismissed. However, the Appeal Board considers that:
 - (a) it is understandable and not entirely unreasonable that the Appellants of the two cases insisted on lodging appeals to seek compensation in the form of "in-situ shop for shop" in light of the expression "exceptional circumstances necessitating exceptional handling (特事特辦)", by which they think that the Urban Renewal Authority need not comply with the policies on redevelopment, acquisition and compensation. In particular, the Appeal Board sympathises with the Appellants of appeal case No. 1 on the impact of the Project on them, as the two generations in the Appellants' family have been carrying out cooked food business in their self-owned shop;

(b) during the course of the hearing, the Appellants exhibited general courteousness and self-restraint and heeded to the guidance of the Appeal Board such that they did not waste or prolong the hearing time unreasonably.

Hence, the Appeal Board unanimously determines that the Appellants would not be required to pay the costs and expenses for the hearing and determination of the appeals.

Mr CHAN Bing-woon, S.B.S., J.P.

(Chairman)

Mr James KONG Tze-wing, M.H., J.P. Mr Stephen NG Kam-chun, M.H., J.P.

(Member)

(Member)

Mr Kenny WONG Kam-shan

Mr Stanley YIP Cho-tat

(Member)

(Member)

(If there is any discrepancy between the original decision in Chinese and the English translation, the Chinese original shall prevail.)