

(Translation)

IN THE APPEAL BOARD UNDER THE
URBAN RENEWAL AUTHORITY ORDINANCE

Appeal Case No.: 1 of 2022

IN THE MATTER OF Urban Renewal
Authority Development Project at Kim
Shin Lane/Fuk Wa Street (SSP-017)

BETWEEN

IU Kuen-fung

Appellant

and

Secretary for Development

Respondent

Appeal Board: Mr James Mathew FONG (Chairman)
Ms CHAN Pui-ying (Member)
Mr LEE Man-lung, Joey (Member)
Dr LEE Wai-ling (Member)
Mr YUEN Siu-bun, Edward (Member)

In attendance: Mr Oscar CHAN (Secretary)

Representation: Mr TAM Che-wai, Raymond, Senior Government Counsel, and Mr POON Sze-chai, Louis, Government Counsel, from the Department of Justice for the Respondent and summoned witnesses Mr Mike KWAN, Mr Peter WONG and Ms Michelle TONG to give evidence on oath

Mr WONG Yung-shing for the Appellant

Date of Hearing: 14 September 2022 and 7 October 2022

Date of Written
Decision: 24 February 2023

DECISION

Upon due consideration of the submissions made by the Appellant and the Respondent, the Appeal Board (“**Board**”) unanimously decides to dismiss this appeal and confirms the Respondent’s decision made pursuant to section 24(4)(a) of the Urban Renewal Authority Ordinance (Cap. 563) (“**Ordinance**”) to authorise the Urban Renewal Authority (“**URA**”) to proceed with the development project SSP-017 at Kim Shin Lane/Fuk Wa Street (“**Project**”). Notwithstanding the fact that an order may be made under the Ordinance against the Appellant in respect of the costs and expenses incurred in relation to the hearing and determination of the appeal, the Board decides not to make such an order.

The reasons for the Board’s decision are as follows:

A. Background

1. URA published a notification of commencement of the Project in the Gazette (G.N. 5872 of 2021) under sections 23(1) and 23(2) of the Ordinance on 24 September 2021. The Project covers a gross site area of about 7,377 m² (“**project boundary**”)¹, which is bounded by Fuk Wing Street to the northeast, Cheung Wah Street to the southeast, Fuk Wa Street to the southwest and Castle Peak Road to the northwest. The buildings within the project boundary were completed in 1959. It is estimated by URA in Stage 2 Social Impact Assessment that about 1,497 households and 123 business operators will be affected by the Project.
2. In accordance with section 23(3) of the Ordinance, URA shall make available (a) a description of the general nature and effects of the Project; and (b) a plan delineating the boundaries of the Project at the designated places and URA’s website for public inspection within the two-month publication period for the Project (up to 24 November 2021).
3. According to section 24(1) of the Ordinance, any person who considers that he will be affected by the Project may send to URA a written statement of his objection to the Project within the publication period.
4. A total of 14 statements of objection (including the one from the present Appellant) and 70 comments to the Project were received by URA. After deliberation, the Development Project Objection Consideration Committee (“**DPOCC**”) of URA decided not to support the objections. URA subsequently informed the objectors of the decision with the analysis and deliberation on their objections by letter. The objectors were also asked if they wished to withdraw their objections.
5. URA received the Appellant’s reply on 23 January 2022. After deliberation, the DPOCC decided not to support the Appellant’s objection. URA sent a letter to the

¹ The Appellant had questioned about a discrepancy between the project boundary and the land lease record in terms of the site area. Mr Mike KWAN, a witness called upon by the Respondent, explained in the hearing that the discrepancy was because the project boundary covered the areas of the road sections at Kim Shin Lane, and the public road sections and pavements surrounding the site.

Respondent under section 24(3) of the Ordinance on 22 February 2022, requesting him to authorise URA to proceed with the Project.

6. On 13 June 2022, the Respondent decided to authorise URA to proceed with the Project without any amendment under section 24(4)(a) of the Ordinance. On 24 June 2022, URA published a notification of the Respondent's decision in the Gazette (G.N. 3096 of 2022). Pursuant to section 28(1) of the Ordinance, an objector to the Project who was aggrieved by the decision of the Respondent might lodge a notice of appeal with the Secretary to the Appeal Board panel within 30 days after notification of the decision (i.e. on or before 25 July 2022), with a copy to the Respondent.

B. Appeal

7. The Secretary to the Appeal Board panel received the one and only appeal (i.e. the present appeal) to the Project on 25 July 2022. The Respondent served a notice of opposition on the Appellant and the Secretary to the Appeal Board panel on 24 August 2022. On 29 August 2022, the Secretary to the Appeal Board panel informed the Appellant and the Respondent that a hearing of the appeal was scheduled for 14 September 2022. The Appellant and the Respondent were also requested to lodge with the Secretary to the Appeal Board panel a copy of witness statements, relevant documents, etc., and serve on each other a copy of the same to be given in evidence at the hearing not less than 7 days prior to the date of hearing (i.e. on or before 7 September 2022). The Appellant and the Respondent submitted the relevant documents to the Secretary to the Appeal Board panel on 7 September 2022.
8. On 14 September 2022, the Respondent submitted a supplementary witness statement to the Board on the spot right before the hearing of the appeal. The Appellant also submitted a supplementary document to the Board on the spot upon commencement of the hearing. As explained by the Appellant, there was insufficient time to prepare the documents submitted on 7 September 2022, so he wished to make allegations of maladministration and others against the Respondent through this supplementary document. According to the explanation of the Respondent, the supplementary witness statement was made in response to the statement of expert witness submitted by the Appellant on 7 September 2022 which gave a mention of the references made by the Managing Director of URA to the Project in his blog posts published in 2019 and 2021, with the hope that the Board could have a better grasp of the background behind those blog posts.
9. Taking into account the fact that both parties had submitted supplementary documents they considered important on the day of the hearing, the Board decided to adjourn the hearing to 7 October 2022. Both parties were ordered to provide each other with their responses to the supplementary documents submitted on 28 September 2022.
10. Pursuant to section 28(3) of the Ordinance, the Secretary to the Appeal Board panel shall fix a date, time and place for the hearing of the appeal, which shall be a date not sooner than 30 days but not more than 60 days of receipt of such notice and shall give at least 14 days' notice to the Appellant and the Respondent. According to section 28(5) of the Ordinance, the Appellant and the Respondent shall lodge with the Secretary to

the Appeal Board panel a copy of witness statements, relevant documents, etc., and serve on each other a copy of the same to be given in evidence not less than 7 days prior to the date of hearing.

11. The Board considers it highly undesirable for the Appellant and the Respondent to submit supplementary documents right on the spot on the date of the hearing.
12. The Board recommends that in future cases the Secretary to the Appeal Board panel should, if circumstances permit, give an early notice and reminder to appellants in respect of preparation of documents and witness statements in relation to the hearing, so that the appellants will have sufficient time to make preparation (giving a 21-day period is most desirable), notwithstanding the fact that the adjourned hearing was conducted and other arrangements were made in accordance with the requirements of the Ordinance.

C. The Appellant and his grounds of appeal

13. The grounds of appeal raised by the Appellant can be summarised as follows:
 - (1) There was something wrong with the implementation procedure taken by URA in relation to the Project. As pointed out by the Managing Director of URA in his blog posts, implementation of the Project as one single redevelopment project could not break even, and it would be viable only when it could be combined with Cheung Wah Street/Cheung Sha Wan Road Development Scheme SSP-018 (“**project SSP-018**”) for joint planning and redevelopment. However, only the Project being the subject project in G.N. 5872 of 2021 will be considered in the hearing, while the details of project SSP-018 are not covered. There was maladministration in that the Respondent restricted the Appellant from referring to project SSP-018 and only allowed the Appellant to raise objection in relation to the Project in the notice of opposition submitted on 24 August 2022.
 - (2) The grounds for URA’s implementation of redevelopment are insufficient. The Buildings Department (“**BD**”) has intervened to carry out building maintenance for the buildings within the project boundary. The buildings over there remain structurally sound. Dilapidation of individual flats does not reflect the actual situation of Kim Shin Lane. It is not in the public interest to develop private residential units rather than Starter Homes units under the Project.
 - (3) The Appellant and his family members are the title owners of seven flats within the project boundary. Given that implementation of the Project as one single redevelopment project cannot break even, and that the compensation to be offered to the Appellant and his family members under the prevailing compensation package provided by URA will be lower than the real value as referred to in Article 105 of the Basic Law, the Appellant is deeply aggrieved.
14. The Appellant and his authorised representative attended the hearing in person. The Respondent’s authorised representatives and the witnesses called upon by the

Respondent attended the hearing in person or remotely by videoconferencing. All of them gave evidence on oath.

D. Maladministration

15. The Appellant submitted that there was maladministration in that the Respondent restricted the Appellant from referring to project SSP-018 and only allowed the Appellant to raise objection in relation to the Project in the notice of opposition submitted on 24 August 2022, but URA made known to the public the redevelopment of the Projects and project SSP-018 would be implemented together, thereby causing confusion to the Appellant and members of the public.
16. The Respondent clarified that the Appellant had never been forbidden from making references to project SSP-018 as a ground of appeal in his justification for appeal. However, the Respondent submitted that the Appellant needed to substantiate the husk upon which he felt aggrieved due to the Respondent's decision to make the authorisation. The Ordinance does not stipulate that any development project should be proceeded on an individual basis, and that no adjacent development projects or schemes should be planned together for redevelopment purposes. The Respondent cited the case of *葉國成 對 懲教署署長 [2021] HKCFI 2908*, in which His Honour Judge Lee Wan-tang of the Court of First Instance of the High Court pointed out that a decision-maker should be given a wide margin of appreciation where appropriate in a case involving "a matter of discretion".
17. When making the authorisation, the Respondent knew that URA would commence the implementation of project SSP-018 next to the Project, and agreed that joint implementation of the aforementioned two redevelopment projects under a "planning-led" approach in urban renewal works could enable URA to formulate a comprehensive land-use restructuring and enhance connectivity so as to create more planning gains and synergy at the district level, which was consistent with the purposes of URA specified in the Ordinance and the objectives of urban renewal set out in the Urban Renewal Strategy ("URS").
18. According to section 5(b) of the Ordinance, one of the purposes of URA is to "improve the standard of housing and the built environment of Hong Kong and the layout of built-up areas by replacing old and dilapidated areas with new development which is properly planned and, where appropriate, provided with adequate transport and other infrastructure and community facilities".
19. Under the revised URS, urban renewal is not a "slash and burn" process. A comprehensive and holistic approach should be adopted to rejuvenate older urban areas by way of redevelopment, rehabilitation, revitalisation and heritage preservation. The main objectives of urban renewal include "restructuring and replanning of concerned urban areas" and "rationalising land uses within the concerned urban areas".
20. Concerning the allegation of maladministration on the part of the Respondent, pursuant to section 23(5) of the Ordinance, URA may implement redevelopment projects by way of a development scheme or a development project, as the case may be. As a matter of fact, on 24 September 2021, URA announced that the implementation of the Project and

project SSP-018 would commence together. The arrangement for joint development of the Project and project SSP-018, the underlying considerations and the advantages of joint development had been made known to members of the public through the publicly available planning information and URA Managing Director's blog posts without anything withheld. However, these two projects are implemented in different ways subject to the requirements of the Ordinance. The Project was implemented by way of a **development project** under section 26 of the Ordinance. The Respondent authorised URA to proceed with the Project and publish in the Gazette notice of authorisation of the Project under section 24(9) of the Ordinance. On the other hand, project SSP-018 has been implemented by way of a **development scheme** under section 25 of the Ordinance, the implementation mechanism of which is different from that of the Project (implemented by way of a development project) and no authorisation from the Respondent is required to proceed with project SSP-018.

21. At the hearing, the Appellant reiterated time and again that he would not have lodged the appeal if the Project had been developed together with project SSP-018. Obviously, the Appellant has no objection about the joint development of the two projects.
22. In view of the above, the Board considers URA's joint development of the Project and project SSP-018 is consistent with the objectives of urban renewal set out in the URS and the purposes of URA specified in section 5 of the Ordinance. There was no maladministration on the part of the Respondent, given that the Respondent knew that URA would develop these two projects together and took this into consideration when making the authorisation, and authorised to proceed with the Project according to the procedures set out in the Ordinance.

E. Insufficient grounds for redevelopment

23. The Appellant submitted that the BD had intervened in carrying out building maintenance for some of the buildings within the project boundary of the Project, and the buildings over there remained structurally sound, but URA failed to provide anything like a report on building conditions, an investigation report on building structure or a valuation report in support of its redevelopment programme. The Appellant also pointed out that his flats had met the fire safety requirements for buildings, and that it was not in the public interest to develop private residential units rather than Starter Homes units under the Project. As such, the Appellant considered the grounds for redevelopment were insufficient.
24. Mr Peter WONG, a witness called upon by the Respondent, made an assessment of the buildings within the project boundary. His assessment is set out as follows:
 - a. The existing buildings within the project boundary were completed in 1959, with building age of 63 years;
 - b. According to the information about building conditions as shown in URA's Building Care Management Information System, 35 out of 90 buildings within the project boundary are identified as "Varied" with the structure and other portions of these buildings deteriorating. These buildings are found to be in dilapidated

conditions, with the problem lying from the external walls to the common areas inside the buildings. In some of the buildings, signs of ageing can also be spotted both at the exterior and the interior, and dilapidated and deteriorated conditions such as structural cracks, spalling of concrete, corrosion and exposure of steel bars can be seen in the internal portions of the buildings;

- c. All the buildings within the project boundary are not installed with elevators. In many of these building, non-domestic structures and water leakage have been found at the rooftops. Besides, the original flats of the buildings were subdivided into small “subdivided units”, thereby jeopardising the structural safety of the flats, constituting potential fire hazards and causing hygiene problems;
- d. The experience in “Operation Building Bright” in 2009, the “Operation Building Bright 2.0” and the “Fire Safety Improvement Works Subsidy Scheme” in 2018 and the “Building Drainage System Repair Subsidy Scheme” in 2021 showed that most of the owners within the project boundary lacked the initiative to organise building maintenance works and ignored the orders issued by government departments, which gave rise to the need of the BD to intervene in the building maintenance works;
- e. Some of the repaired external walls are damaged with water seepage again. Concrete cracking starts to emerge in nearby areas without repairs.

25. Under the revised URS, the vision of urban renewal should embrace the concepts of sustainable development and building a quality city (including appropriate development intensity, land use planning, urban design, greening, local culture, heritage preservation and harbour beautification, etc.) and be forward-looking to support the development of Hong Kong in the long run. The main objectives of urban renewal include “redeveloping dilapidated buildings into new buildings of modern standard and environmentally-friendly design”.

26. In the decision of Appeal Case Nos. 1, 2, 4 & 10 of 2016, the Board pointed out that:

in paragraph 35, “...the URA projects must logically qualify as being for a public purpose. One of the objectives of URA is to address the problem of urban decay and to improve the living conditions of residents in dilapidated urban areas. The community at large would also benefit from urban renewal...”

in paragraph 37, “URA must adopt a comprehensive and holistic approach to rejuvenate older urban areas by way of redevelopment, rehabilitation and heritage preservation. It cannot... wait for a tragedy like the collapse of the building at 45J Ma Tau Wai Road, to take action.”

27. The Board shares the view of the Respondent that it is the owners’ responsibility to maintain their buildings, and that the BD’s intervention in building maintenance for dilapidated buildings as a result of the failure of the owners to organise maintenance works on their own is never a desirable way to deal with dilapidated buildings. As regards the Appellant’s statement that the owners had not taken the initiative in carrying out maintenance works for fear that contractors would cheat them out of their money, and that they simply waited for the BD’s intervention when their buildings became

structurally unsafe, it is considered that the owners have failed to take their responsibilities. Although the properties of the Appellant and some individual owners have met the statutory requirements, it is not sufficient to override URA's comprehensive assessment of all the buildings (including the common areas therein) within the project boundary.

28. The redevelopment project implemented by URA under the URS qualifies as being for a public purpose and serves the purposes specified in the Ordinance, and thus the public interest has been served. In view of this, the Board considers that the Appellant's allegation against URA in respect of insufficient grounds for redevelopment is unsubstantiated.

F. URA's compensation package unfair to owners

29. The Appellant submitted that it would be difficult for him and his family members to be offered compensation in respect of their seven flats at a more reasonable and higher rate, given that implementation of the Project as one single redevelopment project could not break even as pointed out by the Managing Director of URA in his blog posts. The Appellant felt greatly aggrieved as the amount of compensation he might receive under the prevailing compensation mechanism adopted by URA would be lower than the "real value" (the "real value" as defined by the Appellant referred to the full market value calculated on the basis of maximum utilisation and highest value) of the properties concerned as referred to in Article 105 of the Basic Law.
30. The Respondent explained that the Project had not reached the stage of negotiating compensation, nor had URA made any acquisition or compensation offer in respect of the Project. Ms Michelle TONG, a witness called upon by the Respondent, made an explanation of the acquisition policy adopted by URA. Her explanation is set out as follows:
- a. The prevailing acquisition policy adopted by URA is based on the policy endorsed by the Finance Committee of the Legislative Council in March 2001.
 - b. The acquisition price of each flat is the market value of the flat plus an allowance. The market value of the flat is assessed by two surveyors engaged by URA with reference to the transaction prices of the properties in the same locality (whichever is higher). As regards the allowance, the assessment is based on the occupancy status of the flat. For owners residing in their properties, the amount payable is the difference between the open market value of the flat in question and the value of a seven-year-old flat in the same locality (i.e. the Home Purchase Allowance). The value of the seven-year-old flat in the same locality is assessed by seven surveyors engaged by URA and the averaged value will be used .
 - c. For tenanted or vacant flats, the allowance payable is a percentage of the Home Purchase Allowance (normally 25% to 75% of the Home Purchase Allowance).
 - d. As such, whether a redevelopment project can break even shall have no bearing on the acquisition and compensation policies adopted by URA for affected occupiers.

31. As regards the compensation issue, the Board made it clear in the decisions of Appeal Case Nos. 1 & 4 of 2011, Appeal Case Nos. 1-10 of 2012, Appeal Case Nos. 1, 2, 4 & 10 of 2016 and Appeal Case No. 1 of 2021 that the Board should not and had no power to deal with acquisition and compensation issues regarding projects. The details are not repeated here.
32. Under the revised URS, while URA should be self-financed fiscally, it will continue to be supported by the Government through various measures. In implementing urban redevelopment projects, URA will be exposed to financial risks arising from volatility in the property market, and URA did experience fiscal deficits in earlier years.
33. In light of this, even factoring in the development of the Project as one single project, whether the Project could break even or be economically viable should not be one of the considerations of the Respondent when deciding to authorise URA to proceed with the Project. Besides, the Managing Director of URA has explained in his blog posts that the proposal for implementing redevelopment the Project and project SSP-018 together was made out of considerations such as fiscal balance of the projects and gainful use of land through the “planning-led” approach.
34. In the premises, the Board considers that the Appellant’s ground that the implementation of the Project as one single project cannot break even and will affect the compensation to be offered to the Appellant is unsubstantiated.

G. Costs and expenses

35. Under section 28(14) of the Ordinance, at the completion of the hearing of an appeal, the Board may not only confirm, reverse or vary the decision appealed against, but also make an order against the appellant in respect of the costs and expenses incurred in relation to the hearing and determination of the appeal as it thinks reasonable and just.
36. As the three grounds of appeal raised by the Appellant are unsubstantiated, it would be just for the Appellant to bear the costs and expenses of the appeal under normal circumstances. However, the Board considers that:
 - a. there is reasonableness in the question raised by the Appellant in that members of the public and the affected owners might feel confused about the arrangement under which the Respondent only authorised the implementation of one single project, notwithstanding the fact that URA will have to carry out the planning of two development projects together. This is the first time the Board has dealt with such issue. The clarification made through this appeal can serve as a useful reference for similar cases in the future;
 - b. during the course of the hearing, the Appellant was generally sincere and had engaged professionals to carry out thorough research to support his grounds.

Hence, the Board unanimously decides not to require the Appellant to pay the costs and expenses incurred in relation to the hearing and determination of the appeal.

(signed)

Mr James Mathew FONG
(Chairman)

(signed)

Ms CHAN Pui-ying
(Member)

(signed)

Mr LEE Man-lung, Joey
(Member)

(signed)

Dr LEE Wai-ling
(Member)

(signed)

Mr YUEN Siu-bun, Edward
(Member)

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