City Developments Ltd v Chief Assessor
[2007] SGHC 227

Case Number : OS 1975/2006

Decision Date : 27 December 2007

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Tan Kay Kheng and Teo Lay Khoon (Wong Partnership) for the appellant; Liu Hern Kuan and Joyce Chee (Inland Revenue Authority of Singapore) for the respondent

Parties : City Developments Ltd — Chief Assessor

Revenue Law – Property tax – Annual value – Appeals – Whether Chief Assessor exercising discretion fairly in selecting basis for assessing annual value of property – Whether Chief Assessor entitled to apply policy of discouraging land hoarding – Section 2(3) Property Tax Act (Cap 254, 2005 Rev Ed)

27 December 2007

Tay Yong Kwang J:

Introduction

1 By this Originating Summons, the appellant appealed to the High Court against the decision of the Valuation Review Board ("VRB") given on 3 October 2006, pursuant to s 35 of the Property Tax Act (Cap 254) read with O 55 of the Rules of Court (Cap 322 R 5). The grounds for the appeal as set out in the Originating Summons were:

(a) that the VRB erred in law and fact when it decided that it was not *ultra vires* for the Chief Assessor to have regard to wider planning considerations and to treat developers (such as the appellant) differently when determining the annual value of the subject property at No. 5 Balmoral Park, Singapore.

(b) that the VRB erred in law and fact when it decided that the Chief Assessor had not acted unfairly when he exercised his discretion under s 2(3) of the Property Tax Act in determining the annual value of the subject property.

The proceedings before the VRB

2 The VRB in question comprised Ms Valerie Thean, Deputy Chairman of the VRB, and Mr Christopher Lee and Mr Tan Boon Leong, members of the VRB. The appeal to the VRB was in relation to the property tax assessment of a property consisting of 12 apartments situated at Nos 5A to 5H and 5J to 5M, Balmoral Park ("the subject property"). The subject property was freehold land comprising two 3-storey blocks built in July 1984. The land area was 3,517.10 sq m.

3 The subject property was purchased by the appellant, a major property developer in Singapore, in an *en bloc* sale in November 1999 for $42m. Completion of the sale and purchase took place on 15 February 2000.

4 The appellant then applied to the Urban Redevelopment Authority ("URA") for written permission to redevelop the subject property to two 12-storey blocks comprising 37 residential units, with a basement car park, swimming pool and communal facilities. In February 2001, the appellant paid a development charge of some $6.74m to increase the development intensity for the plot of land on which the subject property stood. On 2 March 2001, the appellant was granted written permission to redevelop.

5 Before 1 January 2002, the annual value of the subject property was assessed on the basis of the hypothetical rent for each of the 12 apartments. However, by a notice dated 29 November 2002, the Chief Assessor informed the appellant that the annual value of the subject property would be assessed based on 5% of the estimated market value of the land with effect from 1 January 2002. The Chief Assessor purported to do this in exercise of the discretion conferred on him by s 2(3)(b) of the Property Tax Act. The annual value was proposed at $1,604,000 for the period 1 January 2002 to 31 December 2005. At a tax rate of 10%, the property tax payable per year was $160,400 for the subject property. If the annual value was assessed on the basis of rental for the individual units, using monthly rental of $2,600 or $2,700, the annual property tax payable would have been about $38,000 only, less than a quarter of $160,400.

6 The appellant filed notice of objection to the new annual value. The Chief Assessor disallowed the objection. The appellant then appealed to the VRB against the decision of the Chief Assessor. Its main ground of appeal was that the apartments were tenanted for certain periods from 2002 to 2005, a period of 4 years. 5A to 5H, 5J, 5L and 5M were tenanted to Waterlite Engineering Systems Pte Ltd ("Waterlite") from 1 June 2003 for 3 years. The tenancy was subsequently extended to 31 December 2006. 5K was tenanted to Millennium & Copthorne Limited ("Millennium") from 1 November 2001 to 30 September 2005 and then to Waterlite from 1 October 2005 to 31 December 2006. The appellant contended that the basis of assessment of property tax for the 4 years should be the annual value as defined in s 2(1) of the Property Tax Act.

7 During the hearing before the VRB, which took place over 3 days, it was confirmed that the apartments were rented out at $1,500 per month. However, the appellant and the Chief Assessor had agreed, prior to the hearing, that the hypothetical rent would be $3,000 per month should the VRB decide that the correct basis of assessment ought to be the hypothetical rental method. It was accepted that Millennium was a company related to the appellant. Further, it appeared that one unit in the subject property was tenanted to an individual from 1 October 2001 to 31 August 2002.

8 The Chief Assessor cited various reasons for the use of s 2(3)(b) of the Property Tax Act. Firstly, there were several applications for redevelopment made to the URA in respect of the subject property. On 20 December 1999, prior to the completion of the sale and purchase, the appellant applied for planning approval to redevelop the site. On 7 January 2000, provisional permission to redevelop was granted. Such an early application, as admitted by the appellant, was to "lock in" the development charge (so that the site would not be subject to any subsequent upward revision of the said charge). After completion of the sale and purchase, the appellant made two applications for extension of the provisional approval. These were on 29 June 2000 and 3 February 2001. On 2 March 2001, the appellant applied for written permission to build two 12-storey blocks on the site. This was granted. However, the written permission was allowed to lapse because, according to the appellant, its redevelopment plans were not finalised at that time.

9 The Chief Assessor was not aware of the grant of the various approvals until later. By a letter in March 2001, the Chief Assessor asked the appellant whether it had any development plans for the subject property. On 6 April 2001, the appellant replied that it had no immediate plans. This was despite the grant of written permission and the requirement of s 19(12) of the Property Tax Act. The

Chief Assessor was informed by the URA about the grant of written permission only on 20 November 2002.

10 Secondly, the Chief Assessor argued that the land value of the subject property was significantly enhanced when the gross plot ratio was increased from 1.036 to 1.6 with the payment of the development charge on 23 February 2001.

11 The third reason proffered by the Chief Assessor was that the appellant was an established property developer. This fact could hardly be disputed by anyone.

12 The fourth reason was that the subject property was vacant when the Chief Assessor reassessed it. Although the apartments were subsequently tenanted, the relatively low rentals collected by the appellant confirmed that the subject property was not being held primarily for rental income. The rentals represented only 0.4% returns per annum on the appellant's investment (of $42m for the purchase price and $6.74m for the development charge) compared to the 4 to 5% returns generally expected for local residential tenancies.

13 The Chief Assessor's views were reinforced by subsequent events. In February 2005, the appellant applied to the URA for permission to redevelop the subject property in conjunction with an adjoining parcel of land situated at 40 Stevens Road. The latter property was purchased by the appellant in August 2003. The detached house thereon was subsequently demolished in March 2006 so that a show flat for a new condominium could be erected thereon. The amalgamated plots of land were now being used by the appellant to build a condominium known as the Solitaire, a project comprising two 12-storey blocks containing 70 residential units.

14 The Chief Assessor maintained a policy of encouraging development of land instead of hoarding it until the appropriate time to launch a building project. In invoking s 2(3)(b) of the Property Tax Act, the Chief Assessor wished to accord the same treatment to all developers who were holding land, whether vacant or with buildings thereon. The issue was whether the property in issue was a redevelopment site. With an increase in plot ratio, the value of a parcel of land was enhanced. A developer owning the land could sell it at the enhanced market value (thereby realising quick returns) or redevelop it. If the developer chose the latter course but held back redevelopment until some time in the future, the increased tax burden was merely part and parcel of the holding costs, a factor to consider in the commercial decision to maintain a land bank. The Chief Assessor therefore could not agree with the proposition that it would be unfair to impose the higher tax prior to demolition of the existing structures or the launch of sales of the development project. The objective of the tax authority was to apply s 2(3)(b) fairly to all properties which have been objectively determined to be redevelopment properties and the subject property was, in its view, clearly within that class.

15 The VRB disagreed with the appellant's contention that the Chief Assessor's rationale for invoking s 2(3)(b) was *ultra vires* the purposes of the Property Tax Act because it took into account what was essentially a planning consideration, something within the purview of the Chief Planner and not of the Chief Assessor. The VRB did not share the appellant's view that the statutory purpose of granting discretion to the Chief Assessor should be read so restrictively. It was of the view that it was not unreasonable for the Chief Assessor to look to the use to which land was or could be put, how land value could be enhanced by redevelopment and whether it was appropriate to impose a cost in situations where land value could be enhanced but the owner chose not to do so. This general policy consideration did not make the exercise of discretion *ultra vires* so long as the exercise of discretion in each case was made with reference to the specific facts of the case.

16 Insofar as the arguments on unfairness were concerned, the VRB held that the Chief Assessor's

decision was made by reference to a range of factors and the policy of treating as a group all properties which could be objectively determined as redevelopment properties was not a wrongful interference with commercial decisions. The Chief Assessor's stand on this was consistent and known to all established developers who would factor in the property tax cost in their decisions whether to hold land or not. Although the Chief Assessor would impose the higher tax on homeowners who redeveloped their homes for their own use only at the point of demolition of the former structures, the VRB was of the view that homeowners could be distinguished from property developers who paid development charges to increase plot ratios for commercial purposes. In response to the appellant's contention that it was premature to use s 2(3)(b) before any real gains could be made by a developer intending to develop his property, the VRB held that it was not its role to assess when was the best time or stage of development to impose a higher tax on developers because that was the role conferred on the Chief Assessor by law. The VRB's role was to decide whether, in view of the range of factors considered by the Chief Assessor, the exercise of discretion was an appropriate one in all the circumstances.

17 The VRB was also of the view that the subject property was not tenanted at the prevailing market rental rates. This was confirmed by the appellant's agreement that the hypothetical rental ought to be twice the actual rental charged. In respect of a previous decision of another VRB (in *Oxley Lights Pte Ltd v Chief Assessor*, VRB Appeal No. 41 of 2004, unreported - "*Oxley Lights*") where the Chief Assessor's exercise of discretion under s 2(3)(b) was struck down, the VRB did not think that that decision was a useful guide as the facts thereof were not available and no grounds of decision were written. In any event, the VRB did not think the principles applied in the earlier decision would have been any different from those set out by the High Court in *Lee Tat Development (Pte) Ltd v Chief Assessor* [1995] 3 SLR 855 ("*Lee Tat*").

The decision of the court

18 Section 2(1) of the Property Tax Act has the following definition:

> "annual value" –
>
> (a) in relation to a house or building or land or tenement, not being a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes (other than goods and services tax); and
>
> (b) in relation to a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the tenant paying the expenses of repair, insurance, maintenance or upkeep.

Section 2(3) then provides:

> In assessing the annual value of any property, the annual value of the property shall, at the option of the Chief Assessor, be deemed to be the annual value as defined in this Act or the sum which is equivalent to the annual interest at 5% -
>
> (a) on the estimated value of the property, including buildings, if any, thereon; or
>
> (b) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon.

19 The appellant submitted that the Chief Assessor's powers under s 2(3) must be read subject to s 4(2) which states:

> The Chief Assessor shall be responsible for the assessment of the annual values of properties for the purposes of this Act.

The purposes of the Act could be found in the long title thereof in the following terms:

> An Act to provide for the levy of a tax on immovable properties and to regulate the collection thereof.

The appellant argued that in exercising the option in s 2(3), the Chief Assessor should not depart from its function and role by taking into account irrelevant factors such as planning considerations.

20 The Chief Assessor admitted before the VRB that the rationale for the practice adopted could be explained on two grounds, one of which was a policy reason, that the higher tax rate would encourage redevelopment and that rapid redevelopment of older properties would be beneficial to the country. The Chief Assessor also accepted that assessing properties under s 2(3) even though there was no income derived from the land had a punitive effect and that the hoarding of land by developers for speculative purposes was discouraged. The appellant therefore submitted that the Chief Assessor's intention was to punish and not to properly assess property tax. It also argued that the Chief Assessor was not permitted to base its decision on land planning considerations, which were matters which should rightly fall within the purview of other public bodies such as the URA or the Chief Planner. While the Minister for National Development has appointed the URA, its Chief Planner and the Housing and Development Board as the competent persons and bodies responsible for the operation of the Planning Act (Cap 232), the Chief Assessor was not one of the bodies so appointed. Further, the government was the legitimate driver of the pace of redevelopment and it was the Minister for Finance who would gazette property tax exemptions during a market downturn. The Chief Assessor therefore had no authority to influence the pace of redevelopment by punishing land-hoarding developers and neither was she equipped for that task.

21 While accepting that the Chief Assessor's discretion under s 2(3) was "rather wide", as established by the High Court in *Lee Tat* (see [17] above) and by another VRB decision in *Poh Hee Construction Pte Ltd v Chief Assessor* (1992) 1 MSTC 5100, the appellant submitted that "any discretion on the part of a government official must be exercised judiciously and not capriciously". The same authorities also decided that the Chief Assessor has to act fairly in invoking s 2(3).

22 For instance, in *Lee Tat*, a large piece of land measuring some 129,000 sq feet had two houses in various stages of disuse and disrepair and the land owner had no intention of renting them out. The land owner was in the business of real estate development and had made several applications for approval to develop the land. In those circumstances, the High Court held that there were grounds for the Chief Assessor to choose 5% of the estimated value of the land as the basis to determine its annual value. The approach of the court there, it was submitted, was to consider first whether or not the houses were in a tenantable state and whether there was any intention to let. It was only when the answer was clearly negative that the court should consider the business of the owner and the applications for approval to redevelop.

23 Similarly, in the earlier VRB decision in *Poh Hee Construction Pte Ltd v Chief Assessor*, a large piece of land of some 9,600 sq m in area with an old detached house built on it was assessed using the said 5% method. There was no basis to refer to fair market rental as the house was vacant and there was no evidence of any intention to rent it out. The VRB there held that it was not satisfied

that the Chief Assessor had not exercised his discretion properly or rightly but added (at p 5103):

> If the property is let at a fair market rental and the Chief Assessor insists on using the secondary definition, then we might perhaps have arrived at a different conclusion.

24 The appellant also argued that it was unfair and/or inappropriate for the Chief Assessor to classify land which had buildings that were tenantable as redevelopment sites together with vacant land without buildings and land with buildings that were uninhabitable. The difficulty in finding rental comparables for the last two categories would justify invoking s 2(3) but it would be an easy task finding rental comparables for the first category. The appellant accepted that s 2(3) could be invoked when the buildings were no longer tenantable or when they were demolished.

25 A literal reading of s 2(3)(b) confers on the Chief Assessor the option to assess the subject property as if it were vacant land with no buildings on it. The issue is whether the option should be exercised when there are habitable premises on the land in question and the premises were in fact occupied during the period under consideration. In *Lee Tat*, the High Court observed, referring to the equivalent of the present s 2(3)(b)(at p 861F – 862F):

> Taking the issue as a pure construction point, I am afraid the appellants must fail. The wording of proviso 2(b) is clear. I do not think one can reasonably make it clearer without being pedantic. … Here I think it would be appropriate to remind ourselves of what Chua J said: 'when it is to apply and to what cases it is appropriate, the sole discretion belongs to the Chief Assessor.' The fact that there are two houses on the land does not preclude the Chief Assessor from acting under s 2(b)(ii); it expressly contemplates that kind of situation. I do not see how one can read into that provision the restriction that valuation based on 5% of the estimated value of the land can only be resorted to if it is impossible or impractical to adopt the hypothetical rental basis. To do that is to read more into the provision that what is warranted by the plain words; this court would in effect be usurping legislative functions.
>
> I would agree that in exercising the power under s 2(b), the Chief Assessor has to act fairly, and subject to that, it is for the Chief Assessor to decide in all the circumstances which method of determining the annual value would be appropriate. The issue before me is not whether the Chief Assessor has given due consideration to the objection of the appellants. I need say no more on that. I repeat: what the appellants are saying is that the Chief Assessor is wrong in law to have decided the way he did. For the reasons above, I cannot accept that submission.
>
> The construction which I have placed on s 2(b) is certainly consistent with the purpose and object of that provision. Under s 9(A)(1) of the Interpretation Act, the courts are required to interpret a written law in a way which would promote the purpose or object underlying that written law, irrespective of whether that purpose or object is expressly stated in the written law or not. By s 9(A)(2) and (3), the court may refer to the speech made in Parliament by the Minister, on the occasion of the second reading of the Bill containing the provision, to determine the proper construction. The speech of the Minister on 30 December 1965 at the second reading of the Property Tax (Amending) Bill, which introduced the amendment relating to proviso (b), contained the following statement:
>
> > The amendment will make it clear beyond doubt that the Chief Assessor may adopt an annual value of five per cent of the capital value of any property *whether vacant land, land with buildings erected thereon, or land with buildings being erected thereon*.
> >
> > [Emphasis added]

> In concluding I wish to add that on the facts of the present case, it seems to me clear that there are grounds for the Chief Assessor in deciding to choose 5% of the estimated value of the land as the basis to determine annual value. Both the houses have become de-controlled since 1981. From that time onwards they have not been rented out but have been used by the appellants' caretakers. The buildings are in various stages of disuse and disrepair. There was clearly no intention to rent out the two houses. Furthermore, since 1980 the appellants have made several applications seeking approval to develop the land jointly with lot 111-32. The first provisional approval was granted on 11 September 1980. There is also evidence that lot 111-33 is capable of independent development. The business of the appellant company is a real estate developer. In these circumstances, I do not see how I can fault the Chief Assessor for having decided that an assessment based on 5% of the value of the land is more appropriate. In my judgment, the Chief Assessor has acted entirely within the powers granted to him under the Act.

26 I adopt what was said above in *Lee Tat*. The only fetter on the discretion conferred by s 2(3) is the duty on the part of the Chief Assessor to act fairly in each case. It is clear that the court in *Lee Tat* was not advocating a stage-by-stage test but was applying a holistic view in that all the relevant circumstances of an individual case should be looked at, including the business and the intention of the property owner and the steps taken by him in respect of the property.

27 Although all the apartments in the subject property in the present case were in tenantable condition and were in fact tenanted between 2003 and 2006, the Chief Assessor was justified in holding the view that such rental was merely a temporary or holding measure pending redevelopment. All the factors considered by the Chief Assessor evinced a clear and definite intention on the part of the appellant to redevelop the subject property. It made commercial sense to the appellant to have some rental income while it contemplated the final redevelopment plans for the subject property. The swift application for approval to redevelop and the prompt payment of the hefty development charge showed that the subject property was most definitely a redevelopment site acquired by the appellant for its very substantial property development business. Otherwise, why was there the concern about "locking in" the development charge for fear that it would be increased over the years ahead?

28 It was not a question of whether or not the appellant had the intention to redevelop the subject property. The only issues for the appellant were what the new project on the site would be and when it would be marketed. The only plausible reason for allowing the initial written permission to lapse must be that the appellant, with its commercial wisdom and vast experience, did not think that period was the best time to launch a new residential project in that area. In the meantime, since the new project was not to be launched immediately, the appellant might as well collect some rental income along the way. The intention to redevelop did not dissipate for one moment and it certainly did not exist as a mere wish. Concrete steps were being taken by the appellant to put that intention into reality, even after the lapse of the written permission, as seen in the acquisition of the adjoining property at 40 Stevens Road, which provided another access route to the subject property.

29 The appellant contended that the relatively low rental paid by Waterlite was due to the fact that the tenant rented practically all the apartments, which were already some two decades old, and was therefore given a "bulk discount". The discount of 50% ($1,500 instead of the agreed potential rental of $3,000 per month) could not have been due to these factors alone. After all, the appellant is not a small company with cash flow problems. The more weighty factor is probably that stated in clause 8 of the tenancy agreement dated 31 March 2003 between the appellant and Waterlite. Although the term of the tenancy was specified to be 36 months from 1 June 2003, the said clause 8 (entitled "Redevelopment Clause") reserved to the appellant as landlord the right, at anytime after 30 November 2004, to give the tenant six months' notice to terminate the tenancy "if the landlord intends to redevelop the premises or any unit thereof whereby the tenancy shall expire on the date

stated in the notice and thereafter, neither party shall have any further claims against the other party save for any antecedent breaches …". Although the condition is stated to be "*if* the landlord intends to redevelop", as shown above, the reality should be "*when* the landlord intends to redevelop", not "if". In any event, even if the hypothetical market rent could be easily ascertained for the apartments in the subject property, that does not mean that the Chief Assessor was not entitled to invoke s 2(3)(b), as held in *Lee Tat*.

30 The appellant also contended that the Chief Assessor was not entitled to take into account events occurring after 2002 to justify the invoking of s 2(3). I do not think that was what the Chief Assessor was trying to do. The point being made by the Chief Assessor to the VRB was that her assessment in 2002 that the subject property was clearly purchased for redevelopment was proved correct by the subsequent events which manifested the intention to redevelop from the time the subject property was purchased *en bloc*.

31 As a general policy, the Chief Assessor assesses vacant land and redevelopment sites under s 2(3). The resulting higher property tax payable is thus to encourage development and to discourage land hoarding on our land-scarce island. I do not see this as impinging on the powers and duties of the Chief Planner or any other public authority. There is no evidence that such a policy contradicts any law or policy of any other arm of the government. The Chief Assessor is certainly not dictating to developers what use should be made in respect of any particular piece of land. Instead, the Chief Assessor is looking at the land use and imposing tax on the value of the land accordingly. All relevant factors are considered before coming to the conclusion that a particular site is a redevelopment one. A redevelopment site does not cease to be one simply because its owner decides to have some legitimate extra income pending demolition or actual construction, for example, by letting a short-term tenant house his employees or store his goods or equipment on the site. The Chief Assessor' policy appears to be a legitimate and logical assessment of what is in the public interest and no issue of bad faith, unfairness or unreasonableness can arise. Further, as mentioned earlier, the conclusion that the subject property was a redevelopment site could not be faulted in any way on the facts of this case.

32 The manner in which s 2(3) should be applied by the Chief Assessor need not be spelt out in the law and the policy adopted by the Chief Assessor need not be articulated in regulations or directives (although the evidence before the VRB was that such a policy was well known to established developers). The appellant also argued that even the URA would not force the pace of development because in its grant of written permission, it stated that such permission would lapse if the proposed development was not completed within two years from the date of the grant. I would have thought that giving a deadline for completion is in fact pushing for speedy development. At any rate, the URA probably has good reasons for imposing a validity period in its written permission since circumstances pertaining to land use and buildings may change over time.

33 The Chief Assessor makes a distinction between homeowners rebuilding their homes and developers in that s 2(3) is applied to such homeowners only at the point of demolition of the existing structures. In my view, the VRB was correct in upholding that distinction. Such homeowners are merely rebuilding or upgrading their homes for their own use while developers are holding or hoarding land for commercial reasons. As approved in *Lee Tat* (at [25] above), "when [s 2(3)] is to apply and to what cases it is appropriate, the sole discretion belongs to the Chief Assessor". It should also be noted that the Chief Assessor invoked s 2(3) in respect of the subject property only almost two years after the appellant became its owner and some ten months after the grant of written permission.

34 The appellant also submitted that it was premature and therefore unfair or inappropriate to invoke s 2(3) before any real gains from the subject property were realised, by sale of the land or by building a project and selling the units therein. I need only repeat what I quoted at [33] above from

Lee Tat to dispose of this argument. The application of s 2(3) was also upheld in that case although the land was not redeveloped yet.

35 Since the appellant considered the decision in *Oxley Lights* to be an important one which should be followed in this case, and in the light of the views expressed by the VRB here about that earlier decision (see [17] above), I directed the parties to delve further into the facts and decision of that case.

36 *Oxley Lights* involved a 6-storey industrial building at 66 Kallang Pudding Road. The owner ("OL") of the property was not in the business of property development. OL was a wholly-owned subsidiary of Hor Kew Private Limited ("HKPL") which was in turn a wholly-owned subsidiary of Hor Kew Corporation Limited ("HKC"), a company listed on the Singapore Exchange. HKC is a building construction group involved in property development since 1986.

37 The purchase of the industrial building from DBS Bank at the price of $10.3m was completed in June 2001. Pending the said completion, HKC made a public announcement in MASNET as follows:

> … The purchase price for the Property was arrived at after taking into account various commercial factors including the location and development potential of the Property and recent transacted prices for comparable properties in the vicinity and elsewhere.
>
> …
>
> The acquisition of the Property is in line with the expansion of the property development business of the HKC Group as the Group intends to redevelop the Property in the near future. Pending redevelopment the Property will be rented to external parties to derive rental income.

38 In addition, in the Notes to the Financial Statements of OL's 2002 Annual Report, the following statement appears:

> The freehold land was acquired with an existing six-storey building erected on the site. This building will be demolished to make way for a new building to be erected on the site. Accordingly, no value has been attributed to the existing building.

39 OL's efforts to rent out the building were not successful because of the weak property market at that time. From 1 January 2003, OL rented the first storey and the grounds of the property to its holding company, HKPL. However, this tenancy was a very informal one evidenced merely by a short letter and appeared to have been just an accounting arrangement as it was not clear that rental was paid at all to OL.

40 On 7 January 2002, OL applied to the URA for permission to redevelop the property. In February that year, provisional permission for the erection of a 7-storey industrial building was given. In April that year, written permission was granted for a 9-storey industrial building. The gross plot ratio was thereby increased from 2.1176 to 2.4971. No development charge was payable. In view of the bleak property market then, OL did not act on the written permission which lapsed after two years. No renewal or extension was sought. The Chief Assessor assessed the property using s 2(3) for the years subsequent to the date of purchase. Before that, there were six annual values for the property, one for each floor of the building.

41 Before the VRB in that case, OL's witness testified that "from day 1, we intended to redevelop the property" and that was why permission to redevelop was applied for. OL had also spent some

$75,000 on planning permission and professional fees. OL argued that the building was in a tenantable condition, that part of it was in fact tenanted to HKPL and tenants were still being sought for the rest of the building. It also submitted that "the grant of written permission was too trivial a condition for the application of the section 2(3) option" and even that had not been acted upon.

42 The Chief Assessor adduced evidence that during a joint inspection in November 2004, it was found that the power supply to the building had been disconnected and the entire building was vacant and in a state of disuse. There were some building materials which occupied part of the loading/unloading area. There was no indication that the building was being rented or occupied by HKPL.

43 The legal arguments in *Oxley Lights* ran much along the same vein as those in the present case. At the conclusion of the hearing, the VRB there (with a different panel of members from those in this case) held:

> Board unanimously of the view that appeal should be allowed. *Lee Tat* distinguishable – clearly no intention to rent out compared to clear intention that property would be redeveloped e.g. large land area.

44 The appellant here contended that if the VRB decision in *Oxley Lights* were a bad precedent, the Chief Assessor ought to have appealed to the High Court but did not.

45 The Chief Assessor submitted that *Oxley Lights* could be distinguished on several counts. Firstly, the written permission lapsed in the earlier case while the appellant here made two applications to extend the provisional permission. Secondly, OL had no firm intention or plans for the redevelopment of its property. Thirdly, no development charge was payable by OL while the appellant here paid $6.74m, indicating a firm intention to redevelop, subject only to timing. The Chief Assessor accepted the factual conclusion of the VRB in *Oxley Lights* that the owner did not have the clear intention to redevelop and hence did not appeal.

46 The VRB decision in *Oxley Lights* was given on 18 April 2005. On 26 June 2007, HKC made a public announcement that it intended to redevelop the property into an 8-storey high-tech industrial building, with construction expected to commence in early 2008. It added that "the Group currently intends to lease out the property space for rental income".

47 Unlike the finding of fact in *Oxley Lights*, the VRB in the present case agreed with the Chief Assessor's view that the subject property was and remained a redevelopment site for the tax years in issue. I have already given my reasons why I agreed with this finding. On this ground, *Oxley Lights* has no application to the present case. I would add that I do not necessarily endorse the finding of fact in that earlier VRB decision and might well have taken a different view of the matter if it had come up before me.

48 For all these reasons, I dismissed the present appeal with costs to the Chief Assessor to be agreed or taxed.