

Previous s.16 Application

Rejected Application

	Application No.	Use(s)/Development(s)	Date of Consideration	Rejected Reasons
1.	A/YL-SK/263	Temporary Animal Boarding Establishment with Animal Hospice Services for a Period of 3 Years	22.5.2020 (on review)	R1 – R3

Rejected Reasons:

- R1. The applied development is not in line with the planning intention of the “Agriculture” (“AGR”) zone which is primarily intended to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There are no strong planning justifications in the submission to merit a departure from the planning intention of “AGR” zone, even on a temporary basis.
- R2. The applied development is incompatible with the surrounding areas which are rural in character with clusters of residential structures/dwellings and active/fallow agricultural land. The scale of the applied development is considered excessive as compared to the planting area and the concerns on the environmental impact of the incinerator have not been addressed.
- R3. Approval of the application would set an undesirable precedent for similar applications in the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

**Similar s.16 Applications
 within the same “AGR” Zone
 on the Shek Kong Outline Zoning Plan (OZP)**

Approved Applications

	Application No.	Use(s)/Development(s)	Date of Consideration	Approval Conditions
1	A/YL-SK/235	Proposed Temporary Place of Recreational, Sports or Culture (Hobby Farm) for a Period of 3 Years	4.5.2018	A1 – A10
2	A/YL-SK/241	Proposed Temporary Place of Recreation, Sports or Culture (Hobby Farm) for a Period of 3 Years	21.12.2018	A1 – A10
3	A/YL-SK/244	Proposed Temporary Place of Recreational, Sports or Culture (Hobby Farm) for a Period of 3 Years	7.12.2018	A1 – A15

Approval Conditions:

- A1. No operation between 6:00 p.m. and 9:00 a.m. is allowed.
- A2. No public announcement system, portable loudspeaker or any form of audio amplification system is allowed to be used on the site.
- A3. The submission of tree preservation/landscape proposal.
- A4. The implementation of tree preservation/landscape proposal.
- A5. The submission of drainage proposal.
- A6. The implementation of drainage proposal.
- A7. The implemented drainage facilities on the site shall be maintained at all times.
- A8. The submission of proposal for fire service installations and water supplies for fire-fighting.
- A9. The implementation of proposal for fire service installations and water supplies for fire-fighting.
- A10. Upon the expiry of the planning permission, the reinstatement of the site to an amenity area.
- A11. No medium or heavy goods vehicles exceeding 5.5 tonnes, including container

tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the site.

- A12. No vehicle is allowed to queue back to or reverse onto/from public road at any time.
- A13. The submission of a modification work proposal of the existing public footpath and associated street furniture at the proposed entrance of the site.
- A14. The implementation of the modification work proposal of the existing public footpath and associated street furniture at the proposed entrance of the site.
- A15. Upon the expiry of the planning permission, the reinstatement of the existing public footpath and associated street furniture at the proposed entrance of the Site, at the applicant's own cost.

Rejected Application

	Application No.	Use(s)/Development(s)	Date of Consideration	Rejected Reasons
1.	A/YL-SK/226	Proposed Temporary Animal Boarding Establishment for a Period of 3 Years	10.11.2017	R1 – R3

Rejected Reasons:

- R1. The proposed development is not in line with the planning intention of the “Agriculture” (“AGR”) zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the current submission for a departure from the planning intention, even on a temporary basis.
- R2. The applicant fails to demonstrate that the proposed development would not generate adverse traffic impact on the surrounding areas.
- R3. Approval of the application would set an undesirable precedent for similar applications within this part of the “AGR” zone. The cumulative effect of approving such applications would result in general degradation of the rural environment of the area.

Advisory Clauses

- (a) prior planning permission should have been obtained before commencing the applied use at the Site.
- (b) to note the comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) that:
 - (i) the Site comprises an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government;
 - (ii) according to the prevailing guidelines of LandsD, application for Short Term Waiver (STW) of the undertaking must not be an offensive trade and must not give rise to environmental pollution. Referring to the applicant's proposal, Structure Nos. 2 and 9 would be used for animal cremation purposes; and
 - (iii) the lot owner(s) will need to apply to his office to permit the structure(s) to be erected or regularize any irregularities on site, if any. Besides, given the applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by LandsD.
- (c) to note the comments of the Commissioner for Transport (C for T) that the Site is connected to the public road network via a section of a local access road which is not managed by Transport Department (TD). The land status of the local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- (d) to note the comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD) that HyD shall not be responsible for the maintenance of any access connecting the Site and Kam Sheung Road. Adequate drainage measures should be provided to prevent surface water running from the Site to nearby public roads and drains.
- (e) to note the comments of the Director of Agriculture, Fisheries and Conservation (DAFC) that under the Public Health (Animals) (Boarding Establishment) Regulations (Cap. 139I), any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from his department. The applicant should also be reminded that the establishment and ancillary facilities which is licensed under the Cap. 139I must always fulfil the criteria listed in the Regulations. On the other hand, the animals kept by the applicant should also be properly licensed as in accordance with Cap. 421 Rabies Ordinance and he is reminded to observe Cap. 169

Prevention of Cruelty. Also, importation of owls is generally not allowed in Hong Kong. All wild birds are protected under the Wild Animal Protection Ordinance (Cap. 170) in Hong Kong.

- (f) to note the comments of the Director of Environmental Protection (DEP) that:
- (i) the applicant is strongly advised to properly design and maintain the facilities to minimize any potential environmental nuisance, for example, the boarding establishment should be enclosed with proper soundproofing materials and provision of 24-hour mechanical ventilation and air-conditioning system; the outdoor activity area should be located away from adjacent sensitive receivers and/or provided with necessary mitigation measures, etc; and
 - (ii) the applicant is also advised to (a) follow the requirements stipulated in “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Site”; (b) to provide adequate supporting infrastructure / facilities for proper collection, treatment and disposal of waste / wastewater generated from the applied use. If septic tank and soakaway system will be used in case of unavailability of public sewer, its design and construction shall follow the requirements of Environmental Protection Department (EPD)’s Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the EPD” including percolation test; (c) it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances; and (d) to comply with the requirements stipulated under the Air Pollution Control Ordinance and “A Guide to the Air Pollution Control (furnaces, Ovens and Chimneys) (Installation and Alteration) Regulations” issued by EPD.
- (g) to note the comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) that the applicant is reminded that the location of farm areas and proposed structures should be adjusted to preserve the existing trees as far as possible, and approval of the planning application under the Town Planning Ordinance does not imply approval of tree preservation/removal scheme under the lease. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal where appropriate.
- (h) to note the comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD) that:
- (i) if the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any applied use under the application;
 - (ii) for UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;

- (iii) before any new building works (including containers/open sheds as temporary buildings, demolition, land filling, etc.) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the coordinator for the proposed building works in accordance with the BO;
 - (iv) the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations respectively;
 - (v) the Site does not abut on a specified street of not less than 4.5m wide, and its permitted development intensity of each individual site shall be determined under Regulation 19(3) of the Building (Planning) Regulations at the building plan submission stage;
 - (vi) detailed checking under the BO will be carried out at the building plan submission stage; and
 - (vii) if the applied use under application is subject to issue of a licence, the applicant should be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.
- (i) to note the comments of the Director of Fire Services (D of FS) that:
- (i) in consideration of the design/nature of the proposal, fire service installations (FSIs) are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location where the proposed FSI to be installed should be clearly marked on the layout plans; and
 - (ii) the applicant is reminded that if the proposed structure(s) is required to comply with BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.
- (j) to note the comments of the Director of Food and Environmental Hygiene (DFEH):
- (i) if the proposal involves any commercial/trading activities, there should be no encroachment on the public place and no environmental nuisance should be generated to the surroundings. The proposal should not be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the related commercial/trading activities, the applicant should handle on their own / at their expenses; and
 - (ii) any animal carcass/parts shall be properly wrapped or bagged before disposal and in accordance with the relevant legislation.

