

RNTPC Paper No. A/YL-KTS/807A
For Consideration by
the Rural and New Town
Planning Committee
on 22.3.2019

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/807

- Applicant** : Li Fu Yung
- Site** : Lot 1652 in D.D. 106, Kam Sheung Road, Pat Heung, Yuen Long
- Site Area** : 1,081m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
[Draft Kam Tin South OZP No. S/YL-KTS/14 at the time of submission. The zoning of the application site remains unchanged on the approved OZP.]
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Animal Boarding Establishment for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary animal boarding establishment for a period of 3 years. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use in “AGR” zone which requires planning permission from the Town Planning Board (the Board) (**Plans A-2 to A-4b**). The Site is being used for the applied use without valid planning permission.
- 1.2 The Site is subject to 3 previous applications submitted by the same applicant for the same applied use as the current application which were all approved with conditions by the Rural and New Town Planning Committee (the Committee) from 2009 to 2014 for a period of 3 years. All the approval conditions of the last approved application (No. A/YL-KTS/633) have been complied with and the planning permission lapsed on 15.4.2017.

- 1.3 According to the applicant, the temporary animal boarding establishment involves four single-storey structures with a building height of about 3.1m and a total floor area of 431.8m² for dog kennel, staff quarter, pet beauty room and storage of pet supplies and food uses. Two septic tanks are installed on the Site. All animals are kept inside the enclosed structures at all times. The structures are installed with mechanical ventilation and air-conditioning system, double-glazing windows and soundproofing insulation. No public announcement system or whistle blowing will be used at the Site. The development can accommodate a maximum of about 34 dogs. The operation hours are between 9 a.m. and 5 p.m. daily including public holidays with 24-hour animal boarding services. No parking space will be provided within the Site. The Site is accessible to Kam Sheung Road via a footpath. The location and site layout plan submitted by the applicant are at **Drawings A-1 and A-2**.
- 1.4 The current application is the same as the last approved Application No. A/YL-KTS/633 in terms of applied use, site area/boundary and development parameters, with a similar site layout.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form with supplementary information and plans received on 31.10.2018 **(Appendix I)**
 - (b) FI received on 22.11.2018 providing response to departmental comments **(Appendix Ia)**
 - (c) FI received on 27.11.2018 providing information on the operation arrangement **(Appendix Ib)**
 - (d) FI received on 4.12.2018 providing response to departmental comments **(Appendix Ic)**
 - (e) FI received on 7.12.2018 providing response to departmental comments **(Appendix Id)**
 - (f) FI received on 14.2.2019 providing response to departmental comments **(Appendix Ie)**
- 1.6 The application was originally scheduled for consideration by the Committee on 21.12.2018. Upon the request of the applicant, the Committee agreed to defer making a decision on the application on 21.12.2018 to allow more time for the applicant to address departmental comments. After the deferral request, the applicant submitted FI providing responses to departmental comments. The application is scheduled for consideration by the Committee at this meeting.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the attachments in **Appendices I to Ie**. They can be summarized as follows:

- (a) The Site was approved for temporary animal boarding establishment in 2011 and renewal approval was also obtained in 2014. The applicant stated that due to oversight the planning permission was not renewed.
- (b) The facilities at the Site have been well maintained and there were no adverse environmental impacts on the surrounding area and residents nearby. Proper fire services installations, landscaping and drainage facilities have also been provided at the Site.
- (c) There is no parking provision and direct vehicular access to the Site. No adverse traffic impact is anticipated.

3. **Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is currently not subject to outstanding enforcement case. Should there be sufficient evidence to confirm that the use for place for animal boarding establishment takes place on the Site, enforcement action would be taken.

5. **Previous Applications**

- 5.1 The Site was involved in 3 previous applications (No. A/YL-KTS/480, A/YL-KTS/532 and A/YL-KTS/633) submitted by the same applicant for the same use as the current application. Details of these applications and their locations are shown in **Plan A-1** and **Appendix II**.
- 5.2 Application No. A/YL-KTS/480 was approved with conditions by the Committee on 18.12.2009 for a period of 3 years, instead of permanent permission sought, for the reasons that the proposed development was not incompatible with the surrounding land uses; no adverse comment from the relevant departments except the Director of Environmental Protection (DEP) and the Director of Agriculture, Fisheries and Conservation (DAFC); and the environmental concerns could be addressed by temporary instead of permanent approval and appropriate approval conditions. However, the permission was revoked on 18.12.2010 due to non-compliance with approval conditions related to installation of sound-insulating materials and double-glazing windows, submission and

implementation of landscape and drainage proposals, and provision of fire fighting access and fire service installations.

- 5.3 Application Nos. A/YL-KTS/532 and 633 were approved with conditions by the Committee on 15.4.2011 and 21.3.2014 for a period of 3 years for similar reasons as mentioned in paragraph 5.2 above. The approval conditions of application No. A/YL-KTS/532 including those related to the installation of sound-insulating materials and double-glazing windows, landscape, drainage and fire safety aspects have been complied with. The planning permission lapsed on 16.4.2014. All the approval conditions for application No. A/YL-KTS/633 have also been complied with and the planning permission lapsed on 15.4.2017.

6. Similar Applications

There are two similar applications (Nos. A/YL-KTS/780 and 789) for temporary animal boarding establishment within the same “AGR” zone. Both applications were approved with conditions by the Committee on 4.5.2018 and 2.11.2018 respectively for a period of 3 years for similar reasons that temporary approval would not jeopardize the long-term planning intention; the development was not incompatible with the surrounding land uses; there was no adverse comment from the relevant government departments except DAFC; and there were similar approved applications in the vicinity. Details of these applications are summarized in **Appendix III** and the locations of these applications are shown on **Plan A-1**.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4b)

7.1 The Site is:

- (a) currently used for the applied use without valid planning permission; and
- (b) accessible via a footpath leading from Kam Sheung Road.

7.2 The surrounding areas are predominantly rural in character mixed with cultivated and fallow agricultural land, plant nurseries, residential structures/dwellings, open storage yard and unused land;

- (a) to its east, south and west are agricultural land and residential structures/dwellings (the nearest about 5m away). An animal boarding establishment without planning permission is located to the further south; and
- (b) to its immediate north are residential structures/dwellings. To its further north are plant nurseries, residential structures/dwellings and open storage yard.

8. Planning Intention

The planning intention of the “AGR” zone is to primarily retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) 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.
- (b) The Site is accessible from Kam Sheung Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structures shall not exceed the relevant airfield height limit within SKAHRA.
- (d) Should planning approval be given to the planning application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Excepted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD.

Traffic

9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) Considering that there is neither parking provision nor vehicular access to the lot and the induced traffic impact is minimal, he has no comment on the application.
- (b) The local access between Kam Sheung Road and the Site entrance is not managed by his department.

9.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) His department does not and will not maintain any access connecting the Site and Kam Sheung Road, Kam Shui South Road or Kam Shui Road. The applicant should be responsible for his own access arrangement.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

9.1.4 Comments of the Director of Environmental Protection (DEP) :

- (a) There was no environmental complaint concerning the Site received in the past 3 years.
- (b) According to the information provided by the applicant, all animals will be kept inside the enclosed structures at all times. The structures will be enclosed by sound-insulating materials and double-glazing windows with provision of mechanical ventilation and air-conditioning (MVAC) system. Public announcement system and whistle blowing will not be allowed at the Site. It is also noted that the Site is subject to previous application for the same use.
- (c) Based on the above, should the application be approved, the applicant is advised to properly design and maintain the facilities and follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any potential environmental nuisance. Suitable mitigation measures should also be implemented to minimize potential odour impact.

- (d) Moreover, effluent discharges from the applied use are subject to control under the Water Pollution Control Ordinance (WPCO). A discharge licence under the WPCO shall be obtained before a new discharge is commenced. The design and construction of the septic tank and soak away system should follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department".

Landscape

9.1.5 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) He has no objection to the application from landscape planning point of view.
- (b) The Site is the subject of 3 previous applications. He had no objection from the landscape planning point of view to the last Application No. A/YL-KTS/633 for the same use.
- (c) Compared the aerial photo of 2014 to the latest aerial photo of 2018, there is no significant change in the rural landscape characters where the Site is located. The surrounding area of the Site comprises of temporary structures, car parks and scattered tree groups. The applied use is considered not incompatible with the landscape setting in proximity.
- (d) According to the site visit conducted on 16.11.2018, there was no significant change on the existing landscape character since the planning permission granted in 2014, and the Site was hard paved and fenced off. Existing trees were found in good condition, except a tree (*Litchi chinensis*) at northeastern centre of the Site has sparse foliage density. Further adverse landscape impact arising from the same use is not anticipated.
- (e) Should the application be approved, the approval condition requiring the maintenance of the existing trees within the Site in healthy condition at all times during the approval period should be included.
- (f) His detailed comments are at **Appendix IV**.

Agriculture

9.1.6 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) Upon his site visit, active agricultural activities could be found in the vicinity. Agricultural infrastructures such as footpath and water source are available. As the Site processes a potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
- (b) The subject address is associated with a Dog Breeder License (Category B) which will expire on 15.3.2019. Depending on the nature(s) of the business to be carried out on the Site, the applicant may also be required to apply for a Boarding Establishment License from his department. Should the application be approved, the applicant should be advised to apply for relevant license(s) from his department.

Drainage

9.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) He has no objection in-principle to the development.
- (b) Based on the applicant's submission, the applicant would maintain the same drainage facilities as those implemented under the previous Application No. A/YL-KTS/633.
- (c) Should the application be approved, approval conditions requiring the maintenance of the drainage facilities implemented under Application No. A/YL-KTS/633 and the submission of records of the existing drainage facilities on the Site should be included in the planning permission.

Fire Safety

9.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in-principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, 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 of where the proposed FSI to be installed should be clearly marked on the layout plans.

- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

9.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) There is no record of approval by the Building Authority for the existing structures at the Site. He is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's 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.
- (d) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained. Otherwise, they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) 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.
- (f) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined

under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

Electricity

9.1.10 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) In the public interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. The applicant should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the "Code of Practice on Working near Electricity Supply Lines" established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

Environmental Hygiene

9.1.11 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected and such activity and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) The applicant should arrange disposal properly at her own expenses for any waste generated from such activity/operation.
- (c) Proper licence / permit issued FEHD is required if there is any catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.

District Officer's Comments

9.1.12 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has not received any comments from locals upon close of consultation and he has no particular comment on the application.

9.2 The following Government department has no objection/no comment on the application:

- (a) Commissioner of Police (C of P);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 9.11.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 30.11.2018, four public comments were received from individuals (**Appendices V-1 to V-4**). The commenters object to the application mainly on the grounds that the animal boarding establishment causes adverse environmental hygiene and sewage impact, noise, odour and water pollution on the surrounding area; the Site is too close to residential dwellings and is being used for animal breeding; and the Site is not suitable for the applied use.

11. Planning Considerations and Assessments

11.1 The application is for temporary animal boarding establishment for a period of 3 years at a Site zoned "AGR". The planning intention of the "AGR" zone is 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. The applied use is not entirely in line with the planning intention of the "AGR" zone and DAFC does not support the application from the agriculture point of view. Nevertheless, it is considered that approval of the application on temporary basis for a period of 3 years would not jeopardize the long-term planning intention of the "AGR" zone.

11.2 The development comprising four single-storey structures with a building height of about 3.1m and a total floor area of 431.8m² is considered not incompatible with the surrounding land uses which are rural in character predominated by cultivated and fallow agricultural land, residential structures/dwellings and unused land. Although there are residential structures/dwellings in the immediate vicinity of the Site (with the nearest one being about 5m away) (**Plan A-2**), the

applicant advised that all animals are kept inside the enclosed structures at all times, and the structures are constructed with sound-insulating materials, double-glazing windows and mechanical ventilation and air-conditioning. No public announcement system or whistle blowing will be used at the Site. Also, there was no environmental complaint concerning the Site received in the past 3 years. DEP has no adverse comment on the application.

- 11.3 Relevant departments consulted, except DAFC, have no adverse comment on the application. To minimise any possible environmental nuisance, approval conditions restricting the operation hours, maintaining the sound-insulating materials and double-glazing windows and prohibiting outdoor animal activities, public announcement system and whistle blowing are recommended in paragraph 12.2 (a) to (d) below. Any non-compliance with the approval condition will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. The applicant will also be advised to adopt the latest 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites'. The technical requirements of CTP/UD&L of PlanD, CE/MN of DSD and D of FS could be addressed by approval conditions (e) to (i) in paragraph 12.2 below.
- 11.4 The Site is subject to 3 previous applications for same use submitted by the same applicant of the current application which were approved with conditions by the Committee between 2009 and 2014. All approval conditions of the last approved application (No. A/YL-KTS/633) have been complied with and the planning permission lapsed on 15.4.2017. There are also 2 similar applications for the same use located within the same "AGR" zone (**Plan A-1**) approved by the Committee in 2018 as mentioned in paragraph 6 above. Approval of the current application is in line with the Committee's previous decisions.
- 11.5 Four public comments objecting to the application were received during the statutory publication period mainly on the ground of adverse environmental and hygiene impact on the surrounding area as set out in paragraph 10 above. In this regard, relevant departments including DEP and DEFH have no objection to/adverse comments on the application. The planning considerations and assessments above are also relevant.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments in paragraph 10 above, the Planning Department has no objection to the temporary animal boarding establishment for a period of 3 years.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years, until 22.3.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00p.m. and 9:00a.m. (except for overnight animal boarding), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all animals shall be kept inside the enclosed structures, as proposed by the applicant, at all times during the planning approval period;
- (c) no public announcement system, portable loud speaker, or any form of audio amplification system or whistle blowing is allowed to be used on the Site at any time during the planning approval period;
- (d) the sound-insulating materials and double-glazing windows at the animal boarding rooms shall be maintained at all times during the planning approval period;
- (e) the existing trees on the Site shall be maintained at all times during the planning approval period;
- (f) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of the records of the existing drainage facilities on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 22.6.2019;
- (h) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 22.9.2019;
- (i) in relation to (h) above, the implementation of fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 22.12.2019;
- (j) if any of the above planning conditions (a), (b), (c), (d), (e) or (f) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (k) if any of the above planning conditions (g), (h) or (i) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and

- (l) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VI**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection are suggested for Members' reference:

the development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

- Appendix I** Application Form with plans received on 31.10.2018
- Appendix Ia** FI received on 22.11.2018 providing response to departmental comments
- Appendix Ib** FI received on 27.11.2018 providing information on the operation arrangement
- Appendix Ic** FI received on 4.12.2018 providing response to departmental comments

Appendix Id	FI received on 7.12.2018 providing response to departmental comments
Appendix Ie	FI received on 14.2.2019 providing response to departmental comments
Appendix II	Previous Applications covering the Site
Appendix III	Similar Applications in the same “AGR” zone on the OZP
Appendix IV	Detailed departmental comment from CTP/UD&L, PlanD
Appendices V-1 to V-4	Public comments received during the statutory publication period
Appendix VI	Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Site Layout Plan
Plan A-1	Location Plan with Previous and Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2019**