

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/487

- Applicant** : Ying Shing (Hopewell) Engineering Company Limited
- Site** : Lots 1196, 1197 and 1198 in D.D. 92, Kwu Tung South, Sheung Shui, New Territories
- Site Area** : 6,160.1m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kwu Tung South Outline Zoning Plan No. S/NE-KTS/16
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed Temporary Open Storage of Construction Materials and Machinery with Ancillary Offices for a Period of 3 Years and Filling of Ponds

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary open storage of construction materials (timber and bamboo) and machinery with ancillary offices for a period of 3 years and filling of ponds. The Site falls within an area zoned “GB” on the approved Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/16. The proposed open storage use is neither a Column 1 nor Column 2 use within the “GB” zone. According to the Notes of the OZP, the proposed temporary use not exceeding a period of three years and filling of pond within the “GB” zone require permission from the Town Planning Board (the Board). The 4 ponds in the Site had already been filled. The Site is partly occupied by scattered containers and construction materials, and partly vacant.
- 1.2 According to the applicant, the temporary development comprises 3 single-storey

structures (2m high) for office use and a rain shed (5m high) for storage of construction materials and machinery. Total covered floor area is 810m². The 4 ponds (948m² in area) in the Site had already been filled and hard paved. The layout plan is at **Drawing A-1**.

1.3 The Site is accessible from Kam Chui Road. The ingress/egress is proposed at the north-eastern tip of the Site. No parking space or loading/unloading bay is proposed within the Site. The daily vehicular (light goods vehicles) trip generation is estimated to be 90. The operation hours are from 8:00 a.m. to 5:00 p.m. from Mondays to Fridays. There will be no operation on Saturdays, Sundays and public holidays.

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application Form with attachment received on 8.5.2020 (Appendix I)
- (b) Further Information of 17.6.2020 (Appendix Ia)
(Exempted from publication)

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in **Appendices I and Ia** and are summarised as follows:

- (a) There were 4 ponds at the subject lots for fish farming. Due to uncertain prospect, the landowner filled the ponds 7 years ago and subsequently the Site was abandoned. In recent years, the landowner does not want to abandon the Site, the applicant therefore applies to the Board for temporary open storage of construction materials and machinery on the Site.
- (b) The proposed use would not cause any adverse environmental impact.
- (c) As the Site is large and there will be no more than 3 vehicles transporting construction materials each time, there will be no queuing of vehicles outside the Site. Signs will be provided near the ingress/egress of the Site and footpath to ensure pedestrian safety. Adverse traffic impact is not anticipated.
- (d) There is adequate drainage facility in the road nearby. Adverse drainage impact is not anticipated.

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

The applicant is not the “current land owner” but has complied with the requirements as set

out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notice to the Sheung Shui District Rural Committee (SSDRC) by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

4.1 The Site falls within the “GB” zone. The Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) are relevant to this application. The relevant assessment criteria are summarized as follows:

- (a) there is a general presumption against development (other than redevelopment) in a “GB” zone;
- (b) an application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas;
- (c) the design and layout of any proposed development should be compatible with the surrounding areas. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (d) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (e) the proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

4.2 The Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses’ (TPB PG-No. 13F) promulgated by the Board on 27.3.2020 are relevant to the application. The Site falls within the Category 4 areas under TPB PG-No. 13F. The relevant extract of the Guidelines is attached at **Appendix II**.

5. **Background**

The southern part of the Site is subject to planning enforcement action under the Town Planning Ordinance against unauthorised development (UD) involving storage use (including deposit of containers) (**Plan A-2**). On 9.10.2019, Enforcement Notice (EN) was issued to the concerned lot owner requiring discontinuation of the UD. According to the site inspection conducted on 4.3.2020, the UD still continued upon expiry of the notice. Prosecution action may be taken.

6. **Previous Application**

There is no previous application involving the Site.

7. **Similar Applications**

There is no similar application for temporary open storage use within the same “GB” zone in the northern part of the OZP. However, there are 7 similar applications for various temporary open storage uses within “GB” zone in the southern part of the OZP. All were rejected by the Committee or by the Board on review between 1997 and 2016. Details of the applications are summarised at **Appendix III** and their locations are shown on **Plan A-1b**.

8. **The Site and Its Surrounding Areas** (**Plans A-1a, A-2**, aerial photo on **Plan A-3** and site photos on **Plans A-4a to 4c**)

8.1 The Site is:

- (a) partly fenced and partly paved;
- (b) partly occupied by scattered containers and construction materials, and partly vacant; and
- (c) accessible via Kam Chui Road.

8.2 The surrounding area is predominantly rural in nature with mainly a country club, agricultural use, domestic structures, densely vegetated knolls and an open storage yard which is a suspected UD subject to planning enforcement action:

- (a) to the north are a farm and a koi farm;
- (b) to the east across Kam Chui Road are densely vegetated knolls, an open storage yard and a domestic structure; and

- (c) to the west are green house and active agricultural land, and to the south and further west are Beas River Country Club. Residential development is at further southeast.

9. Planning Intention

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views are summarised as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the subject lots are Old Schedule lots held under the Block Government lease (demised for agriculture use) without any guaranteed right of access. The applicant should make its own arrangement for acquiring access, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access of the proposed use;
- (b) some of the existing structures on the Site are covered by Modification of Tenancy (MOT). Nevertheless, the existing use and dimensions of the MOT structures concerned may not be acceptable under the MOT conditions;
- (c) apart from the MOT structures, the other existing structures on the Site were erected without approval from his office. The aforesaid structures are not acceptable under the Leases concerned. His office reserves the right to take enforcement actions against the aforesaid structures;
- (d) if the applicant wishes to demolish the MOT structures concerned to make way for the proposed development, applications for cancellation of the MOT would not be entertained unless it is raised by the MOT holder concerned;

- (e) if land/pond filling works would be performed on the Site, the applicant should take precautionary measures to restrict the scale of land/pond filling activity so as to ensure no private lot(s)/Government land adjacent to the Site would be disturbed. Besides, the applicant should also comply with all the land/pond filling requirements imposed by relevant Government departments(s), if any; and
- (f) if the application is approved, the owners of the lots concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fees as considered appropriate by his office.

Traffic

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

- (a) he does not support the application;
- (b) the information provided by the applicant is insufficient to address the traffic impact. The applicant should elaborate more with figures and diagrams on the provision of the traffic facilities. The applicant should demonstrate the satisfactory manoeuvring of vehicles entering to and exiting the Site, manoeuvring within the Site, preferably using the swept path analysis; and
- (c) the vehicular access between the Site and Kam Tsin Road or Hang Tau Road is not managed by his department. The applicant should seek comment from the responsible party.

Environment

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

- (a) the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" in order to minimise the potential environmental impacts on the adjacent area; and

- (b) there is no environmental complaint against the Site received by DEP in the past three years.

Landscape Aspect

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

- (a) he has some reservations on the application from landscape planning perspective;
- (b) the Site is located in an area of rural landscape character comprising of village house, temporary structures, country clubs and densely vegetated woodland. The proposed development is considered incompatible with the landscape setting in proximity. According to the record, there is no previous approved application for similar use within “GB” zone;
- (c) according to the site visit conducted on 27.5.2020, the Site was fenced off and in preparation for the proposed use. More than half of the Site was hard paved and the rest was covered by wild vegetation. 11 existing trees which are of common species are found in the north-eastern part of the Site and they would be retained according to the application form. Adverse impact on the existing landscape resource within the Site is not anticipated; and
- (d) however, compared the aerial photos of 2015 and 2017, all ponds within the Site were already filled and hard paved and some existing tree groups were also removed prior to planning approval. The landscape environment of the Site was gradually degraded by vegetation clearance and filling of ponds. There is concern that approval of the application would set an undesirable precedent for other similar site modification in the neighbourhood prior to planning permission. The cumulative impact of such approval would further degrade the landscape quality of the “GB” zone.

Drainage

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

- (a) he has reservation on the application from the public drainage viewpoint;

- (b) the applicant did not address the possible drainage impact which may have caused due to the pond filling. There are no technical details including hydraulic calculations to demonstrate that the existing drainage system has adequate capacity to receive the surface runoff of the Site with the proposed open storage use; and
- (c) should the application be approved, conditions should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that the proposed temporary use and filling of ponds will not cause adverse drainage impact to the adjacent area.

Building Matters

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

there is no record of submission of the proposed building/structure to the Building Authority for approval. His detailed advisory comments are at **Appendix V**.

Nature Conservation

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

- (a) his recent site inspection reveals that the Site was largely paved. Some containers and temporary structures are found within the Site. According to the aerial photos, the Site has been paved and remained for similar condition for some years. He has no adverse comment on the application from nature conservation point of view; and
- (b) the fish ponds existed in the Site before were already filled years ago before the application. Pond filling is not recommended from fish culture perspective.

Fire Safety

10.1.8 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 the satisfaction of Director of Fire Services;

- (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;
- (c) having considered the nature of the open storage use, approval condition requiring the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of D of FS is suggested. To address this additional approval condition, the applicant should submit a valid fire certificate (FS 251) to his department for approval; and
- (d) his detailed advisory comments are at **Appendix V**.

District Officer's Comments

10.1.9 Comments of the District Officer/North (DO/N), HAD:

he has consulted the locals from 1.6.2020 to 12.6.2020. The North District Council (NDC) member of the subject Constituency supports the proposal. The Chairman of SSDRC, the Indigenous Inhabitant Representative (IIR) and Resident Representative (RR) of Kam Tsin have no comment.

10.2 The following government departments have no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
- (c) Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD).

11. Public Comments Received During Statutory Publication Period

On 22.5.2020, the application was published for public inspection. During the three-week statutory publication period, 4 public comments (**Appendices IV-1 to IV-3**) from Kadoorie Farm and Botanic Garden Corporation, Hong Kong Bird Watching Society, Designing Hong Kong and an individual were received. All object to the application mainly on the grounds that the development is not in line with the planning intention of "GB" zone; and approval of the application will promote "destroy first, develop later" attitudes and set an undesirable precedent.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary open storage of construction materials (timber and bamboo) and machinery with ancillary offices for a period of 3 years and filling of ponds. The 4 ponds had already been filled. The Site falls within an area zoned “GB” on the approved Kwu Tung South OZP No. S/NE-KTS/16 (**Plan A-1**). The proposed use is not in line with the planning intention of “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. As stated in the TPB PG-No. 10, an application for new development within “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.
- 12.2 The proposed open storage, with covered floor area of 810m², comprises 3 one-storey structures for office use and a rain shed (5m high). The proposed development is considered not compatible with the surrounding rural character with a country club, a farm, koi farm, green house, farmland, domestic structures and densely vegetated knolls. As stated in the TPB PG-No. 10, proposed development in the “GB” zone should be compatible with the surrounding areas, should not affect the existing natural landscape, should not overstrain the capacity of existing and planned roads and should not adversely affect drainage or aggravate flooding in the area. In this connection, CTP/UD&L, PlanD has some reservations on the application as all ponds within the Site had already been filled and hard paved and some existing tree groups were also removed prior to planning approval, and the landscape environment of the Site was gradually degraded. Approval of the application would set an undesirable precedent and encourage other applications for similar developments in the area resulting in a general degradation of the environment and landscape quality of the area. According to the submission, the daily vehicular trip generation is 90. However, no parking or loading/unloading facility is proposed in the Site. C for T does not support the application as the information provided by the applicant is insufficient to address the traffic impact. CE/MN, DSD has reservation on the application as the applicant did not address the possible drainage impact which may have caused due to the pond filling, and there are no technical details to demonstrate that the existing drainage system has adequate capacity to receive the surface runoff of the Site with the proposed open storage use. In view of the above, the proposed development is not in line with the TPB PG-No. 10.
- 12.3 As mentioned in paragraph 4.2, the Site falls within Category 4 areas under the TPB PG-No. 13F. Applications for open storage use in Category 4 areas would normally be rejected except under exceptional circumstances. The application is not in line with the TPB PG-No. 13F in that no previous approval for open storage use has been granted for the Site and there are adverse departmental comments on landscape,

traffic and drainage aspects as mentioned above.

- 12.4 The Site does not involve any previous application. There are 7 similar applications for temporary open storage use within “GB” zone in the southern part of the OZP. All were rejected between 1997 and 2016 as detailed in paragraph 7.
- 12.5 Four public comments were received during the statutory publication period, objecting to the application as stated in paragraph 11 above. In this regard, the planning considerations and assessments as stated above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the local views and public comments mentioned in paragraphs 10.1.9 and 11, the Planning Department does not support the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “Green Belt” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
 - (b) the proposed development is not in line with the Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) in that the proposed development is not compatible with the surrounding areas and the applicant fails to demonstrate that there is no adverse landscape, traffic and drainage impacts on the surrounding areas;
 - (c) the proposed development is not in line with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13F) in that there is no previous planning approval for the open storage use and there are adverse departmental comments on the landscape, traffic and drainage aspects; and
 - (d) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in general degradation of the landscape quality of the area.

13.2 Alternatively, 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 26.6.2023. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 5:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays, Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the provision of fire extinguisher(s) and a valid fire certificate (FS 251) within 6 weeks from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 7.8.2020;
- (d) the submission of fire service installations proposals 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 26.12.2020;
- (e) in relation to (d) above, the provision of fire service installations 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 26.3.2021;
- (f) the submission of a drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 26.12.2020;
- (g) in relation to (f) above, the implementation of the drainage proposal within 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 26.3.2021;
- (h) if any of the above planning condition (a) or (b) 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;
- (i) if any of the above planning condition (c), (d), (e), (f) or (g) 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
- (j) upon expiry of the planning permission, the reinstatement of the application 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 V**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, 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.

15. Attachments

Appendix I	Application Form with attachment received on 8.5.2020
Appendix Ia	Further Information of 17.6.2020
Appendix II	Relevant extract of TPB PG- No. 13F
Appendix III	Similar Applications
Appendix IV-1 to IV-4	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1a and A-1b	Location Plans
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4c	Site Photos