

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-KTS/833**

- Applicant** : Longwick Landscape Greening Company Limited represented by R-riches Property Consultants Limited
- Site** : Lot 1892 RP in D.D. 106, Pat Heung, Yuen Long, New Territories
- Site Area** : 1,757m<sup>2</sup>
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Shop and Services (Landscaping and Gardening Showroom) for a Period of 3 Years and Land Filling

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application Site (the Site) for proposed temporary shop and services (landscaping and gardening showroom) for a period of three years and land filling. According to the Notes of the OZP, temporary use or development of any land not exceeding a period of three years and filling of land in the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is not subject to any previous application and is vacant (**Plan A-2**).
- 1.2 According to the applicant, the proposed development involves an open area for displaying gardening and landscaping products (including stone arrangements, flower pots and seeds), an artificial pond for displaying landscape products with water features, and four one to two storey structures (3.5m and 7m in height) with a total floor area of about 469.2m<sup>2</sup> for ancillary office, shops and services and toilet, caretaker office, and storage uses. 3 private car parking spaces and 1 light goods vehicle loading / unloading space will also be provided. About 785m<sup>2</sup> (45%) of the Site will be soil ground, about 75m<sup>2</sup> (4%) will be occupied by an artificial pond, about 159m<sup>2</sup> (9%) will be landscaping area, and the

remaining area (about 738m<sup>2</sup> / 42%) (including 68m<sup>2</sup> of existing paved area) will be filled to a height of not more than 0.2m to become a hard-paved area for site formation of structures, footpath, and manoeuvring space for vehicles. The operation hours are from 10:00 a.m. to 6:00 p.m. daily including public holidays. No vehicle exceeding 5.5 tonnes will be allowed to enter / exit the Site. The Site is accessible via a short local access branching off from Pat Heung Road. The layout plan, section plan and paved ratio plan submitted by the applicant are at **Drawings A-1 to A-3**.

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

- (a) Application form with plans received on 14.10.2019 (Appendix I)
- (b) Further Information (FI) received on 4.12.2019 and 9.12.2019 in response to departmental comments (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 the planning statement and FI in **Appendices I and Ia**. They can be summarized as follows:

- (a) The proposed development is to support local farmers as well as to promote sustainable local farming in the Kam Tin and Pat Heung area.
- (b) The proposed development is temporary in nature and would not jeopardize the long-term planning intention of the “AGR” zone. Upon expiry of the planning approval, the Site will be reinstated to an amenity area with the hard-paving removed and reinstated for agricultural purpose.
- (c) The applicant will follow the ‘Code of Practice on Handling the Environment Aspects of Temporary Uses and Open Storage Sites’ to minimize adverse environmental impacts on the surrounding area. The relevant Professional Persons Environmental Consultative Committee Practice Notes (ProPECC PNs) would be followed to treat all discharge, and a license will be applied under the Water Pollution Control Ordinance.
- (d) There will be sufficient room for vehicles to manoeuvre within the Site, thus minimizing traffic impacts on the surrounding area. If needed, the applicant will submit and implement drainage, fire services and landscape proposals after gaining planning permission for the proposed development.

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

The applicant is not the “current land owners” 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 notifying Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

### **4. Background**

The Site is not subject to any active enforcement case.

### **5. Previous Application**

The Site is not involved in any previous application.

### **6. Similar Applications**

6.1 There are 6 similar applications in two locations for temporary shop and services (real estate agency) within the same “AGR” zone on the OZP. Details of the applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.

6.2 All the applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2011 and 2018, mainly for reasons that approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone notwithstanding the Director of Agriculture Fisheries and Conservation (DAFC) did not support the applications (for application No. A/YL-KTS/534, 621, 714 and 788 only); the development could serve some of the needs of the neighbouring residential developments; the development was not incompatible with the surrounding land uses; in view of the small scale of the development, environmental nuisance generated would unlikely be significant; and the concerns of the relevant departments could be addressed by imposing appropriate approval conditions. However, 4 applications were revoked due to non-compliance with the approval conditions.

6.3 There is no application for filling of land within the same “AGR” zone.

6.4 Application No. A/YL-KTS/834 for renewal of planning approval for temporary shop and services (real estate agency) within the same “AGR” zone will be considered at the same meeting.

**7. The Site and Its Surrounding Areas (Plans A-2 to A-4b)**

7.1 The Site is:

- (a) vacant and mostly hard paved; and
- (b) accessible via a local track leading from Pat Heung Road (about 10m) across a nullah to its northwest.

7.2 The surrounding areas are rural in character intermixed with residential structures / dwellings, vacant / unused land, cultivated agricultural land and a pond (**Plan A-2**):

- (a) to its south and east are mainly residential dwellings / structures, cultivated agricultural land and vacant / unused land;
- (b) to its southwest are parking of vehicles, a pond and residential dwellings / structures; and
- (c) to its immediate north is a nullah, and further north across Pat Heung Road is land zoned “Village Type Development” with residential dwellings / structures, vacant / unused land and Small Houses under construction.

**8. Planning Intention**

The planning intention of the “AGR” zone is primarily 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.

**9. Comments from Relevant Government Departments**

9.1 The following Government departments have been consulted and their views 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 Pat Heung 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 structure shall not exceed the relevant airfield height limit within SKAHRA.
- (d) Should the application be approved, 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. 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 Exempted Building(s) will be considered or allowed. 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 premium or fee, as may be imposed by the LandsD.

### **Traffic**

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto / from public road at any time during the planning approval period should be included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) His department is not / shall not be responsible for the maintenance of any access connecting the Site and Pat Heung Road.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads or exclusive road drains.

**Environment**

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

The applicant should be advised to adopt the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites” issued by the DEP to minimise any potential impact.

**Agriculture**

9.1.5 Comments of the DAFC:

The Site is currently a mostly paved and abandoned land. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as greenhouses and plant nurseries etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

**Landscape**

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

- (a) She has no objection to the application.
- (b) With reference to the aerial photo taken in 2018, the Site is

situated in an area of rural landscape character. The Site's surrounding area comprises vacant lands, farmlands, Small Houses and scattered tree groups. Considering that the adjacent site for temporary use (application No. A/YL-KTS/788) within the same "AGR" zone has been approved, the proposed development is considered not incompatible with existing landscape setting in the proximity.

- (c) According to a site visit conducted on 31.10.2019, the Site was mostly hard paved. An existing tree of common species was found at the south-western boundary of the Site. Further significant adverse landscape impact arising from the development is not anticipated.
- (d) In view that there are existing trees located along northwest boundary outside the Site, which act as landscape buffer to the adjacent road, landscape condition is not recommended should the application be approved.

### **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 proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal and the implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.

### **Building Matters**

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

- (a) As there is no record of approval granted by the Building Authority (BA) 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 the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (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 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.
- (d) Before any new building works (including containers / open sheds as temporary buildings, demolition and land filling) are to be carried out on Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person 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 (B(P)R) respectively.
- (f) The Site does not abut on a specified street of not less than 4.5m wide and its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

### **Fire Safety**

#### 9.1.9 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.

### **Water Supply**

#### 9.1.10 Comments of the Chief Engineer/ Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) Existing water mains will be affected (**Plan A-2**). A waterworks reserve within 1.5m from the centre line of the water main shall be provided to the WSD. No structure shall be built or materials stored within this waterworks reserve. Free access shall be made available at all times for staff of the Director of Water Supplies or their contractor to carry out construction, inspection, operation, maintenance and repair works.
- (c) No trees or shrubs with penetrating roots may be planted within the Waterworks Reserve or in the vicinity of the water main.
- (d) The Government shall not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.

### **District Officer's Comments**

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

He has no particular comment on the application. He has received comments from the Village Representatives of Yuen Kong Tsuen and Yuen Kong San Tsuen. They object to the application mainly on adverse fengshui, traffic and drainage impacts on the area. The same comment is also received during the statutory planning publication period.

- 9.2 The following Government departments have no objection to/ no comment on the application:

- (a) Director of Electrical and Mechanical Services;
- (b) Project Manager (West), Civil Engineering and Development Department; and
- (c) Commissioner of Police.

## 10. **Public Comments Received During Statutory Publication Period**

On 25.10.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, a total of 6 public comments (**Appendices III-1 to III-6**) were received from Village Representative of Yuen Kong Tsuen and Yuen Kong San Tsuen, Hong Kong Bird Watching Society, Kadoorie Farm and Botanic Garden Corporation, World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited and an individual. All of them object to the application on the following grounds:

- (a) The proposed development is not in line with the planning intention of the “AGR” zone. Land zoned “AGR” in Kam Tin is still highly arable and should be retained for cultivation purposes. Approval of the application will set an undesirable precedent to similar applications within the “AGR” zone.
- (b) The proposed development will bring about adverse fungshui, traffic and drainage impacts to the area.
- (c) Vegetation clearance and land filling has been observed at the Site between 2017 and 2018. This is a suspected “destroy first, build later” case, which should not be encouraged.

## 11. **Planning Considerations and Assessments**

11.1 The application is for proposed temporary shop and services (landscaping and gardening showroom) for a period of three years in the “AGR” zone, with filling of land at part of the Site (738m<sup>2</sup> / 42%). The planning intention of the “AGR” zone is primarily 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. Although the application is not in line with the planning intention of the “AGR” zone and DAFC does not support the application as the Site possesses potential for agricultural rehabilitation, it is considered that approval of the application on a temporary basis of 3 years would not jeopardize the long-term planning intention of the “AGR” zone.

11.2 According to the applicant, the proposed landscaping and gardening showroom will be for displaying gardening and landscaping products (including stone arrangements, flower pots and seeds). The proposed use is considered not

incompatible with the surrounding land uses which is rural in character and intermixed with residential structures / dwellings, vacant / unused land, cultivated agricultural land and a pond.

- 11.3 The Site is just about 10m away from Pat Heung Road. Besides, given the nature of the landscaping and gardening showroom, it is unlikely that the proposed development would generate significant environmental nuisance to the surrounding area. Relevant departments consulted, including C for T, DEP, CE/MN of DSD and D of FS have no adverse comment on the application. The applicant will be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Open Storage and Other Temporary Uses” in order to alleviate any potential environmental impact. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (h) below.
- 11.4 There are 6 similar applications for temporary shop and services (real estate agency) in the same “AGR” zone, including one to the immediate southwest of the Site, approved by the Committee between 2011 and 2018 as detailed in paragraphs 6.1 and 6.2 above. Approval of the current application is in line with the Committee’s previous decisions.
- 11.5 6 public comments were received during the statutory public inspection period, all of them object to the application as stated in paragraph 10 above. In this regard, relevant Government departments’ comments as well as planning assessments and considerations as stated above are relevant.

## **12. Planning Department’s Views**

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraphs 9.1.11 and 10, the Planning Department considers that the proposed temporary shop and services (landscaping and gardening showroom) could be tolerated 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 13.12.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval Conditions

- (a) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;

- (b) the submission of 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 13.6.2020;
- (c) in relation to (b) above, the implementation of 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 13.9.2020;
- (d) in relation to (c) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) 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 13.6.2020;
- (f) in relation to (e) 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 13.9.2020;
- (g) if any of the above planning condition (a) or (d) 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;
- (h) if any of the above planning condition (b), (c), (e) or (f) 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
- (i) upon 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 at **Appendix IV**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Member's reference:

the proposed development is not in line with the planning intention of the "AGR" zone which is primarily 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 is no strong planning justification 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**

<b>Appendix I</b>	Application Form with Plans received on 14.10.2019
<b>Appendix Ia</b>	FI received on 4.12.2019 and 9.12.2019
<b>Appendix II</b>	Similar Applications
<b>Appendices III-1 to III-6</b>	Public Comments
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Drawing A-2</b>	Section Plan
<b>Drawing A-3</b>	Paved Ratio Plan
<b>Plan A-1</b>	Location Plan with Similar Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a and A-4b</b>	Site Photos