

RNTPC Paper No. A/YL-SK/273
For Consideration by
the Rural and New Town
Planning Committee
on 17.1.2020

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

APPLICATION NO. A/YL-SK/273

- Applicant** : Miao Miao Doggie Home Co. Limited
- Site** : G/F, Lots 1216 RP (Part), 1217 S.A (Part) and 1217 S.B (Part) in D.D. 114, Sheung Tsuen, Kam Sheung Road, Yuen Long
- Site Area** : About 340 m²
- Ground floor of an New Territories Exempted House (NTEH) (Small House): about 65 m² (19%)
- Outdoor area adjoining the NTEH: about 275 m² (81%)
- Lease** : NTEH portion:
- Building Licence No. 1604 to permit erection of a 3-storey building with a built-over area of 65.04 m² and a height of 7.62m for non-industrial purposes

Outdoor portion of the Site:
- Block Government Lease (demised for agricultural use)
- Plan** : Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
- Zoning** : “Village Type Development” (“V”)
[Maximum building height of 3 storeys (8.23m)]
- Application** : Temporary Animal Boarding Establishment and Dog Training Facility 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 and dog training facility for a period of 3 years. The Site falls within an area zoned “V” on the approved Shek Kong OZP No. S/YL-SK/9 (**Plan A-1**). According to the Notes of the OZP, ‘animal boarding establishment’ and ‘dog training facility’ are neither Column 1 nor Column 2 uses within the “V” zone. Notwithstanding this, temporary use or development of any land or building not exceeding a period of 3 years may be

allowed with permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission.

- 1.2 According to the applicant, the Site covers the ground floor of an existing NTEH (Small House) (with a floor area of about 65m²) and its adjoining outdoor area (with an area of 275m²) (**Drawing A-1**). The ground floor of the NTEH will be used as rooms for boarding dogs, whereas the outdoor area adjoining the NTEH will include a prefabricated room (of about 35 m²) for dog training, and a rain/sun shelter (of about 62 m²) erected near the front gate and the remaining area (of about 178 m²) as lawn/passageway areas for dog activity and passage/circulation purposes. The operation hours are between 9:00 a.m. and 7:00 p.m. daily (including Sundays and public holidays) with 24-hour animal boarding services. The Site is accessible via a local track leading to Nam Hing West Road, and no parking or loading/unloading space will be provided at the Site. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 25.11.2019 (**Appendix I**)
 - (b) Supplementary Information (SI) received on 28.11.2019 (**Appendix Ia**)
 - (c) Further information (FI) received on 9.1.2020 (**Appendix Ib**)
(*exempted from publication*)
 - (d) FI received on 10.1.2020 (**Appendix Ic**)
(*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, Ib** and **Ic**, and are briefly summarized as follows:

- (a) There is a huge demand for dog boarding facilities in Kam Tin area. The dog boarding and training services provided by the applicant at the Site are intended to meet the need of many residents in Wing Hing Wai and along Kam Sheung Road who are dog owners.
- (b) Dogs will be kept inside the enclosed kennel outside operation hours (i.e. between 7:00 p.m. and 9:00 a.m.). Each dogs will be kept in its own separate room. No public announcement system and portable loudspeaker will be used on site. Besides, the premises at the Site will be provided with air conditioning/mechanical ventilation.
- (c) Staff and visitors usually take public transport to the Site via the local access from Nam Hing West Road (**Plan A-2**). Besides, vehicles would only temporarily park at the local access between Nam Hing West Road and the Site for loading/unloading occasionally (once every 1-2 weeks), which would lead to minimal traffic.

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 (TPB) 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 at the Site and sending notice to Pat Heung Rural Committee by local registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to planning enforcement action against unauthorized development (UD) (No. E/YL-SK/220) involving use for animal boarding establishment (**Plan A-2**). An Enforcement Notice (EN) was issued on 21.6.2019 requiring discontinuation of UD by 21.9.2019. Recent site inspection revealed that the UD still continued upon expiry of the EN, and prosecution action may be followed.

5. Previous Application

There is no previous application in respect of the Site.

6. Similar Application

6.1 There is no similar application for temporary ‘animal boarding establishment’ or ‘dog training facility’ use within the same “V” zone on the OZP.

6.2 Application No. A/YL-SK/263 for temporary animal boarding establishment with hospice services for a period of 3 years within the adjacent “Agriculture” (“AGR”) zone on the Shek Kong OZP will be also considered at this meeting.

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

7.1 The Site is:

- (a) hard-paved, fenced and partly occupied by an NTEH (Small House);
- (b) currently used for the applied use without valid planning permission, while the second and third floors of the NTEH are for residential use; and
- (c) accessible via a local track leading to Nam Hing West Road.

- 7.2 The surrounding areas of the Site are predominantly rural in character with clusters of domestic dwellings/structures in village setting.
- (a) to its immediate north is a nullah, and to its further north across the nullah are mainly some domestic dwellings/structures intermixed with a sitting-out area, parking of vehicles, open storage yards, active/fallow agricultural land and vacant land; and
 - (b) to its immediate east, south and west are mainly clusters of domestic dwellings/structures (with the nearest distance of about 5m) with parking of vehicles.

8. Planning Intention

The planning intention of “V” zone is primarily to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the “V” zone for a more orderly development pattern, and efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

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 of LandsD):
- (a) the Site comprises an Old Schedule Agricultural Lots 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) within the Site, Building Licence No. 1604 was issued to Lot 1217 S.A in D.D. 114 to permit erection of a 3-storey building with a built-over area of 65.04 m² and a height of 7.62m for non-industrial purposes;
 - (c) the Site is accessible from Nam Hing West Road via

Government Land (GL) and private land. His office provides no maintenance work for GL involved and does not guarantee any right-of-way over GL to the Site.

- (d) 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; and
- (e) should planning approval be given to the planning application, 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. 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 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) he has no comment on the application from traffic engineering perspective, having regard to the applicant's FI (**Appendices Ib and Ic**) that there is neither parking provision nor vehicular access to the Site and the induced traffic impact is minimal; and
- (b) the applicant should note that the local access between Nam Hing West Road and the Site 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.

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

- (a) HyD is not/shall not be responsible for the maintenance of any access connecting the Site and Nam Hing West Road; and
- (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):

- (a) the application is not supported from environmental planning perspective, noting from the site plan (**Plan A-2**) that some domestic dwellings are located within 5-30m from the Site. It is very likely that noise will be generated from dogs barking and people shouting at night and during the operation hours, causing noise nuisance and impact to the nearby residents; and
- (b) there was no substantiated environmental complaint on the Site received by DEP in the past three years.

Nature Conservation

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

- (a) he has no strong view on the application from nature conservation perspective, having regard to the applicant's FI (**Appendix Ic**) that the access route will not encroach upon the planting site (established as ecological mitigation measures for the Main Drainage Channels for Yuen Long and Kam Tin) to the immediate north of the Site managed by his department (**Plan A-2**); and
- (b) the Site is associated with a valid boarding licence granted by his department.

Drainage

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

- (a) he has no objection in-principle to the applied development from the public drainage point of view; and
- (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 in the planning approval.

Building Matters

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

- (a) if the existing structures (not being a NTEH) are erected on leased land without approval of the Building Authority (BA), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;
- (b) for unauthorized building works (UBW) erected on leased land, enforcement action may be taken by 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 BO;
- (c) before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW under BO. An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with BO;
- (d) 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; and
- (e) 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 Building (Planning) Regulations at the building plan submission stage.

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 where the proposed FSI to be installed should be clearly marked on the layout plans; and

- (c) 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.

Environmental Hygiene

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

- (a) if the proposal involves any commercial/trading activities, 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
- (b) any animal carcass/parts shall be properly wrapped or bagged before disposal.

District Officer's Comments

9.1.10 Comments of the District Officer/Yuen Long, Home Affairs Department (DO/YL of 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) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L of PlanD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C of WSD);
- (c) Project Manager/West, Civil Engineering and Development Department (PM/W of CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 3.12.2019, the application was published for public inspection. During the three-week statutory public inspection period, a total of 24 public comments from the two indigenous inhabitant representatives, one resident representative, one village committee

chairperson and 15 local residents of Sheung Tsuen (of which, 17 are in standard format) as well as five members of public (of which, four in standard format) (**Appendix III**) were received. All raised objections to the application mainly on the following grounds:

- (a) the Site is located amidst clusters of village dwellings. The premises on the Site is not equipped with soundproofing materials. Noise generated from dogs barking will create nuisance to the nearby residents;
- (b) the Site is located close to a nullah (**Plan A-2**) which is not equipped with animal waste/hair/chemicals treatment facilities (e.g. large septic tank) and hence the use would bring adverse impacts to the neighbouring environment and ecosystem;
- (c) the Site is accessible via a local track leading to Nam Hing West Road (**Plan A-2**), which is the major vehicular access of Sheung Tsuen and is narrow for one-lane-two-way traffic. The vehicles of the applicant and visitors occupied the local track (on the GL portion) right next to the Site and sometimes even obstructed the major vehicular access, especially during weekends. In addition, there are no transport-associated facilities nor large car parking area near the Site, creating inconvenience and safety issues to road users and residents nearby;
- (d) the applicant widened the local track right to the Site by tearing down the *feng shui woods* without permission for his private use;
- (e) the dogs on Site not having adequate training may attack people, creating threats to the elderly and children. Besides, the applicant may not possess professional qualification for large dog training; and
- (f) the applied development has been in operation prior to obtaining the relevant Licences.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary animal boarding establishment and dog training facility for a period of 3 years at the Site zoned “V” on the approved Shek Kong OZP (**Plan A-1**). “V” zone is primarily intended to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. The applied use is not in line with the planning intention of the “V” zone. The applicant has not provided strong planning justifications in the submission to merit a departure from the planning intention of “V” zone, even on a temporary basis.
- 11.2 The applied development is considered incompatible with the surrounding areas which are rural in character with clusters of domestic dwellings/structures in village setting (**Plan A-2**). The second and third floors of the existing NTEH (Small House) on the Site are used for domestic purpose, and more residential

dwelling are found in its immediate vicinity (within 5-30m from the Site). In view of the above, DEP does not support the application from environmental planning perspective since it is very likely that noise generated from dogs barking and people shouting at night and during the operation hours would cause noise nuisance and impact to the nearby residents. Other relevant departments including C for T, DAFC, CE/MN of DSD, CE/C of WSD and DFEH have no objection to/adverse comment on the application.

- 11.3 The Site is not subject to any previous application nor any similar application within the same “V” zone on the OZP. The applied development, if approved, would set an undesirable precedent for similar applications within the “V” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.
- 11.4 Regarding the public objections received during the statutory publication period as stated in paragraph 10, relevant Government departments’ comments and planning considerations and assessments set out in paragraphs 11.1 to 11.3 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 as stated in paragraph 10, the Planning Department does not support the application for the following reasons:
- (a) the applied development is not in line with the planning intention of the “V” zone which is primarily to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. There are no strong planning justifications in the submission to merit a departure from the planning intention of “V” zone, even on a temporary basis;
 - (b) the applied development is incompatible with the surrounding areas which are rural in character with clusters of domestic dwellings/structures in village setting, and the applicant fails to demonstrate that the applied development would not cause adverse environmental impacts to the surrounding area; and
 - (c) approval of the application would set an undesirable precedent for similar applications in the “V” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.
- 12.2 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 17.1.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 9:00 a.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 kennel on the Site between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, during the planning approval period;
- (c) no public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used, as proposed by the applicant, on the Site at any time during the planning approval period;
- (d) 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 17.7.2020;
- (e) in relation to (d) 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 17.10.2020;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of proposal for fire service installations and water supplies for fire-fighting 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 17.7.2020;
- (h) in relation to (g) above, the implementation of proposal for fire service installations and water supplies for fire-fighting 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 17.10.2020;
- (i) if any of the above planning conditions (a), (b), (c) 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;
- (j) if any of the above planning conditions (d), (e), (g) or (h) 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.

Advisory Clauses

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

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 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.

14. Attachments

Appendix I	Application Form with attachments received on 25.11.2019
Appendix Ia	Supplementary Information (SI) received on 28.11.2019
Appendix Ib	Further information (FI) received on 9.1.2020
Appendix Ic	FI received on 10.1.2020
Appendix II	Public Comments
Appendix III	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos