

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-NTM/403

- Applicant** : Cheng Ka Shing represented by Lanbase Surveyors Limited
- Site** : Lot 864 (Part) in D.D. 105, Ngau Tam Mei, Yuen Long
- Site Area** : About 893 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ngau Tam Mei Outline Zoning Plan (OZP) No. S/YL-NTM/12
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed House

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed house at the application site (the Site). According to the Notes of the OZP for the “GB” zone, ‘House (other than rebuilding of New Territories Exempted House (NTEH) or replacement of existing domestic building by NTEH permitted under the covering Notes’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site is paved and currently occupied by two concrete structures for domestic use. The applicant proposes to redevelop the existing domestic structures into a single-storey detached house to support the applicant’s agricultural use in the surroundings. Details of the proposed house are as follows:

Site Area	about 893 m ²
Gross Floor Area (GFA)	about 215.7 m ²
Plot Ratio (PR)	about 0.24
Building Height (BH)	not exceeding 4.5m
No. of Storeys	1
Site Coverage (SC)	about 24.15%
Private Car Parking Space	2 (2.5m x 5m)

- 1.3 The Site is accessible to Shek Wu Wai Road via local tracks (**Plans A-1 to A-2**). According to the applicant, entrance to the Site is proposed at the northeastern site boundary with vehicular ingress/egress through the adjoining Lot 863 (which is also owned by the applicant), and an underground septic tank is proposed within the Site. The layout, floor and section plans are at **Drawings A-1 to A-3**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 21.5.2020 **(Appendix I)**
 - (b) Supporting Planning Statement **(Appendix Ia)**
 - (c) Further information (FI) received on 14.8.2020 **(Appendix Ib)** providing information of the Site and responses to departmental comments*
 - (d) FI received on 26.8.2020 providing information of **(Appendix Ic)** the Site*
 - (e) FI received on 18.11.2020 providing an updated **(Appendix Id)** layout plan*
 - (f) FI received on 5.1.2021 providing site photos and **(Appendix Ie)** responses to departmental comments*

**exempted from publication requirement*

- 1.5 On 10.7.2020 and 18.9.2020, the Rural and New Town Planning Committee (the Committee) decided to defer a decision on the application each for two months as requested by the applicant to allow time for the applicant to prepare FI to address departmental comments. On 14.8.2020, 26.8.2020, 18.11.2020 and 5.1.2021, the applicant submitted FI, and 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 planning statement attached to the application form and FI at **Appendices Ia to Ie**. They can be summarized as follows:

- (a) The applicant and his family have been engaging in livestock farming at the Site and the adjoining Lots 863, 864 and 865 since late 1970s. A number of squatter units for chicken sheds and domestic use had been in existence before the Ngau Tam Mei Interim Development Permission Area (NTM IDPA) Plan was gazetted in 1990. The applicant and his family are living at the Site for supporting the agricultural activities including goat keeping, pond fish and vegetable farming. The applicant plans to reorganize the agricultural activities

from Lots 863, 864 and 865 to Lots 863 and 864 for a comprehensive re-activation of agricultural activities. Redevelopment of the Site into a regularized detached residential house for an on-farm domestic purpose to support the agricultural use is required.

- (b) Residential use is not a prohibited use in the “GB” zone as on-farm domestic structure is an always permitted use and ‘House’ is allowed by planning application at the “GB” zone. The redevelopment is mainly to accommodate the applicant and his farming family in support of the agricultural use.
- (c) The proposed development is in line with the Town Planning Board Guidelines No. 10 (TPB PG-No. 10) in that the proposed PR of 0.24 does not exceed the development restrictions of PR of 0.4 and the GFA of the proposed house (i.e. 215.7 m²) is identical to that of the structures existed before the gazetting of the NTM IDPA Plan. The squatter structures that existed before 1990 were replaced by 2 concrete structures (with an area of 529 m²) in 1994-1995 as accommodation for foreign and local workers and the applicant’s farming family. The proposed GFA is 314m² less than that of the 2 concrete structures which are still kept for domestic use at the Site.
- (d) The proposed development is compatible with the surrounding environment with a mix of agricultural use, vegetated land and low-density residential development mostly of 2 to 3 storeys.
- (e) The proposed house (**Drawing A-1**) will not be in conflict with the existing trees. No adverse traffic, drainage and sewerage impact is anticipated. Only 2 car parking spaces will be provided at the proposed development. On-site septic tank and soak away pits would be provided to ensure that there would not be odour and effluent nuisance to the neighbourhood. Storm water would be collected by the peripheral channels and properly discharged to the nearby stream course. No land excavation work will be involved.

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. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant assessment criteria are summarized as below:

- (a) There is a general presumption against development (other than redevelopment) in “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 PR, SC and BH should be compatible with the character of surrounding areas. With the exception of NTEHs, a PR up to 0.4 for residential development may be permitted.
- (c) Redevelopment of existing residential development will generally be permitted up to the intensity of the existing development.
- (d) The design and layout of any proposed development should be compatible with the surrounding area. 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.
- (e) The vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features. Tree preservation and landscaping proposals should be provided.
- (f) The proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area.
- (g) 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.

5. Background

The Site is not subject to planning enforcement action. Should a material change of use be identified on the Site, which constitutes an unauthorized development (UD) under the Town Planning Ordinance, enforcement action would be instigated subject to sufficient evidence collected.

6. Previous Application

The Site is not the subject of any previous application.

7. Similar Application

There is no similar application within the same “GB” zone.

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

8.1 The Site is:

- (a) paved and occupied by 2 concrete structures (one single-storey and another two-storey, with a total GFA of about 529m²) for domestic uses; and
- (b) accessible via local track leading to Shek Wu Wai Road (**Plan A-1**);

8.2 The surrounding areas are rural in character with a mixture of warehouses, storage/open storage yards and vacant/unused land:

- (a) to its immediate southeast is a warehouse within the same Lot 864, with agricultural use at the eastern portion of Lot 865. Further southeast are unused land, storage and open storage yards;
- (b) to its immediate southwest within Lot 865 is a warehouse. Further southwest are vacant land and storage use;
- (c) to its west across the local access road are unused land with dense vegetation;
- (d) to its immediate northeast within Lot 863 are residential dwelling and warehouse. Further north are vacant/unused land, residential dwelling, plant nursery, open storage yards and warehouse.

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 summarized as follows:

Land Administration

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

- (a) The Site is located within Lot 864, while the proposed vehicular access point of the Site is abutting the adjoining lot i.e. Lot 863. Both Lot 864 and Lot 863 are old schedule agricultural lots held under Block Government Lease and no structures are allowed to be erected without the prior approval of the Government.

- (b) The ownership particulars of the lot forming the Site have to be examined in details at the land exchange application stage, if applied.
- (c) The Site has an area of about 893m², of which site area, site boundaries, lease details, etc. are subject to verification upon receipt of land exchange application (if any).
- (d) In the event that planning permission is given by the Board for the proposal, the applicant should be reminded that land exchange would be required to implement the proposal. Upon receipt of the land exchange application, LandsD will consider the application in its private capacity as landlord and there is no guarantee that the land exchange, including but not limited to the grant of any right of way (if any), for the proposed development will be approved. The land exchange, if approved, will be subject to such terms and conditions, including, among other things, payment of premium, administrative fee and other applicable fees, to be imposed by LandsD as at sole discretion.

10.1.2 Comments of the Squatter Control Unit, LandsD:

- (e) According to the 1982 Squatter Control (SC) Survey Record, there were 8 SC survey numbers, with 2 SC survey numbers registered for domestic use (381 ft²), 3 for shelters (339 ft²), 1 for agricultural storage (247 ft²), 1 for a chicken shed (374 ft²) and 1 for a kitchen (117 ft²) within the Site.
- (f) However, the current structures at the Site were found not tallied with the then Surveyed Squatter Structures at the Site under the survey records that change of dimensions, use and building materials were involved. Hence, squatter control enforcement action has been taken to delete the 8 SC survey numbers. Two Deletion Letters of deleting the 8 SC survey numbers were issued to the lot owner on 31.8.2020.
- (g) The squatters within the Site recorded were unauthorized structures but were only tolerated by the Government to remain on a temporary basis until such times as they were cleared for development, environmental clearance or for safety reasons, provided the location, dimensions, building materials and use are the same as the record in the 1982 SC Survey. It is not a kind of building entitlement.

Traffic

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

- (a) The Site is connected to Shek Wu Wai Road via a section of local access which is not managed by the Transport Department (TD). The land status of the local access road should be clarified with the LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- (b) As there is no information about the vehicular access at the private lot(s) to the Site, the applicant should arrange by themselves if necessary, and should seek the relevant land owner(s)' agreement on the right of using the vehicular access.
- (c) Should the application be approved, the following condition should be incorporated:

the design and provision of vehicular access and parking spaces for the proposed development to the satisfaction of the Commissioner for Transport or of the Town Planning Board.
- (d) The applicant should also be advised that no vehicle is allowed to queue back to or reverse onto/from the Site.

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

- (a) Shek Wu Wai Road is maintained by HyD.
- (b) HyD is not/shall not be responsible for the maintenance of any access connecting the Site to Shek Wu Wai Road.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

10.1.5 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

The Site falls within the area of influence (AOI) of the proposed Northern Link (NOL), which is a recommended railway scheme under the Railway Development Strategy 2014. Although the programme and the alignment of the proposed NOL are still under review, those areas within the AOI may be required to be vacated at the time for the construction of the NOL and would be subject to nuisance, such as noise and vibration of the proposed NOL. He has no objection in principle to the application from development point of view of the NOL, provided that the applicant is satisfied with the surrounding condition of nuisance taking into about the future construction, operation and maintenance of NOL.

Environment

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

In view of the small population and nature of the proposed development, provision of septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the Environmental Protection Department (EPD)'s Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by EPD" and are duly certified by an Authorized Person (AP).

Nature Conservation

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

He has no adverse comment on the application from nature conservation point of view. Based on the aerial photo, the Site is paved with some temporary structures.

Landscaping

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

- (a) He has reservation on the application from the landscape planning perspective.
- (b) Referring to the aerial photo in 2018, the Site is situated in an area of disturbed rural landscape character comprising scattered tree groups, temporary structures, open storage yards and vacant land. The Site is currently paved and occupied with two structures, and few numbers of existing trees are found at the northern and southern edge within the Site.
- (c) Having reviewed the submitted FI, it is noted that the applicant proposed to adjust the location of the proposed house from the existing trees at the southern boundary. Significant adverse impact to the landscape resource within and near the Site is not anticipated. However, there is concern that approval of the application would encourage other similar use, the cumulative impact of such approval would further alter and degrade the landscape character of the undisturbed area of "GB" zone.

Drainage

10.1.9 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 drainage operation and maintenance point of view.
- (b) The applicant shall make a drainage submission to demonstrate how he will collect, convey and discharge rain water falling onto or flowing to the Site. The drainage submission should include a drainage plan showing the details of the existing drains and the proposed drains together with adequate supporting design calculations and charts should be included. Approval of the drainage proposal must be sought prior to the implementation of drainage works on site.
- (c) After completion of the drainage works, the applicant shall provide DSD for reference a set of record photographs showing the completed drainage works with corresponding photograph locations marked clearly on the approved drainage plan. DSD will inspect the completed drainage works jointly with the applicant with reference to the set of photographs.
- (d) The applicant shall ascertain that all existing flow paths would be properly intercepted and maintained without increasing the flooding risk of the adjacent areas.
- (e) No public sewerage maintained by his office is currently available for connection. For sewage disposal and treatment, agreement from DEP shall be obtained.
- (f) The applicant is reminded that the drainage works as well as the site boundary should not cause encroachment upon areas outside his jurisdiction.
- (g) All the proposed drainage facilities should be constructed and maintained by the applicant at his own cost. The applicant should ensure and keep all drainage facilities on the Site under proper maintenance during occupancy of the Site.
- (h) The applicant should consult DLO/YL regarding all the drainage works outside the site boundary in order to ensure unobstructed discharge from the Site.

Building Matters

10.1.10 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 (BA) for the structures existing at the Site and BD is not in a position to offer comments on their suitability for the use proposed in the application.

- (b) The following issues should be observed by the applicant:
- (i) if the existing structures (not being NTEH) are erected on leased land without approval of BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;
 - (ii) for UBW erected on leased land, enforcement action may be taken by BA 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 works or UBW on the Site under BO;
 - (iii) before any new building works (including containers and open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, the prior approval and consent of BA should be obtained, otherwise they are UBW. An AP should be appointed as the co-ordinator for the proposed building works in accordance with BO;
 - (iv) the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulation (B(P)R) respectively;
 - (v) 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 B(P)R at the building plan submission stage;
 - (vi) for features applied to be excluded from the calculation of the total GFA, it shall be subject to compliance with the requirements laid down in the relevant Joint Practice Notes and Practice Notes for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers (PNAP). For example, the requirements of building set back, separation and site coverage of greenery as stipulated in PNAP APP-152; and
 - (vii) detailed checking will be carried out during building plan submission stage.

Fire Safety

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

- (a) He has no objection in principle to the application 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. The applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to D of FS for approval. The applicant should also be advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSIs 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 BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

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

He has no comment on the application and the local comments should be submitted to the Board directly, if any.

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

- (a) Commissioner of Police;
- (b) Chief Engineer/Construction, Water Supplies Department;
- (c) Director of Leisure and Cultural Services;
- (d) Director of Electrical and Mechanical Services;
- (e) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (f) Project Manager (West), Civil Engineering and Development Department.

11. Public Comments Received During Statutory Publication Period

The application was published for public inspection on 29.5.2020. During the first 3 weeks of the statutory publication period which ended on 19.6.2020, 5 public comments were received with 2 comments supporting and 3 objecting to the application. The supporting comments were submitted by the San Tin Rural Committee and a Yuen Long District Council member, stating that the applicant and his family have been living at the Site for years supporting livestock farming; there will be no adverse environmental, visual, traffic, drainage and sewerage impacts and no land excavation will be involved; and sympathetic consideration should be given to

allow the applicant and his family to continue using the Site for domestic use to support his agricultural practices. The opposing comments were submitted by the Hong Kong Bird Watching Society, Kadoorie Farm & Botanic Garden Corporation and an individual, mainly raising concerns that the proposed development is not in line with the planning intention of the “GB” zone; approval will set an undesirable precedent; and the “GB” zone should be protected for the benefit of the community at large (**Appendix II**).

12. Planning Considerations and Assessments

- 12.1 The applicant proposed to redevelop the structures on the Site into a single house with a GFA of about 215.7m² and 1 storey (4.5m). The Site falls within an area zoned “GB” which is intended 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. The proposed development is not in line with the planning intention of the “GB” zone and the applicant has not provided strong justification to warrant a departure from the planning intention.
- 12.2 According to TPB PG-No. 10, development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The applicant claims that a number of structures had been existed and used for chicken sheds and domestic purpose at the Site before the gazetting of the NTM IDPA Plan in 1990, and the GFA of the proposed house (215.7m²) is same as that of the structures existed before 1990. According to LandsD, the structures claimed by the applicant at the Site were Surveyed Squatter Structures (bearing 8 SC survey numbers) covered in the 1982 SC Survey, but only 2 of them (with a GFA of about 35.4m²) were registered for domestic use and 1 was registered for kitchen use (with a GFA of about 10.9m²). The proposed domestic GFA of 215.7m² is much greater than that of the surveyed domestic squatters. Moreover, the two concrete structures currently at the Site do not conform to the Survey Record and LandsD has already taken squatter control enforcement action that the 8 SC survey numbers at the Site have been deleted. LandsD also points out that the squatters were unauthorized structures but were only tolerated to remain on a temporary basis, provided the location, dimensions, building materials and use are the same as the record in the 1982 SC Survey, and they are not a kind building entitlement. Since there was a material change of use and the applicant has no building entitlement at the Site, there are no exceptional circumstances to justify the proposed development to accord with TPB PG-No.10 and the application does not warrant sympathetic consideration.
- 12.3 The Site is amid a large “GB” zone where dense vegetation is located to the west of the Site, with some agricultural use, storage/open storage yards, vacant and unused land in the surrounding areas. The storage/open storage yards are suspected UDs subject to enforcement action by the Planning Authority. There is no previous planning approval for house development within the concerned “GB” zone. CTP/UD&L, PlanD is of the view that although significant adverse impact to the landscape resource within and near the Site is not

anticipated, approval of the application would encourage similar use, and the cumulative impact of such approval would further alter and degrade the landscape character of the undisturbed area of the “GB” zone.

- 12.4 Other concerned departments including C for T, DEP, CE/MN, DSD, D of FS and CE/C, WSD have no objection to or no comment on the proposed house development from traffic, environmental, sewage, drainage, fire safety and water supply perspectives.
- 12.5 Five public comments with supporting and objecting views were received during the statutory public inspection period as detailed in paragraph 11. The planning assessment above is relevant.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11 above, 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 intended 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. No strong planning justification has been provided in the submission to justify a departure from the planning intention; and
 - (b) the approval of the application will 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 environment of the area.
- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 8.1.2025, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) the design and provision of vehicular access and parking spaces to the satisfaction of the Commissioner for Transport or of the Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Board; and

- (c) the submission and implementation of fire service installations proposal to the satisfaction of the Director of Fire Services or of the Board.

Advisory Clauses

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

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 conditions and advisory clauses, if any, to be attached to the permission, and the date when the validity of the permission should expire.

15. Attachments

Appendix I	Application Form received on 21.5.2020
Appendix Ia	Supporting Planning Statement
Appendix Ib	FI received on 14.8.2020
Appendix Ic	FI received on 26.8.2020
Appendix Id	FI received on 18.11.2020
Appendix Ie	FI received on 5.1.2021
Appendix II	Public Comments
Appendix III	Recommended Advisory Clauses
Drawing A-1	Master Layout Plan
Drawing A-2	Ground Floor Plan
Drawing A-3	Section Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos