

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

**APPLICATION NO. A/NE-SSH/131**

- Applicant** : Chung Hing Engineering (HK) Limited represented by Grandmax Surveyors Limited
- Site** : Lots 1034 S.A (Part), 1035 S.A (Part), 1036 S.A, 1037 S.A (Part), 1038, 1039 (Part), 1040 (Part), 1041 (Part), 1042 (Part), 1043 S.A (Part), 1043 S.A ss.1 (Part), 1043 S.B ss.1(Part), 1043 S.C and 1044 S.A (Part) in D.D. 218, Shap Sz Heung, Tai Po, New Territories
- Site Area** : About 2,249m<sup>2</sup>
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Shap Sz Heung Outline Zoning Plan (OZP) No. S/NE-SSH/11
- Zoning** : “Village Type Development” (“V”)
- Application** : Temporary Open Storage of Construction Materials, Tools and Parts with Ancillary Site Office and Staff Car Park 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 open storage of construction materials (including soil/sand), tools and parts with ancillary site office and staff car park for a period of three years. The Site falls within an area zoned “V” on the approved Shap Sz Heung OZP No. S/NE-SSH/11 (**Plan A-1**). According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within “V” zone requires permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently used for the applied use without planning permission and is the subject of an active enforcement case against unauthorized use for parking of vehicles and storage use.

- 1.2 The applicant claims itself as the sub-contractor of China Light and Power Limited (CLP) responsible for underground electricity cable works in relation to the Sai Sha Road widening project and Hiram's Highway Improvement Project. The applied use comprises eleven containers for office, storage and indoor sitting area uses with a total floor area of 139.5m<sup>2</sup>. The remaining area will be used for open storage of construction materials, staff parking areas for six private cars and a parking and loading/unloading area for two light goods vehicles and one medium goods vehicle. The Site is served by a local access road from Sai Sha Road, with the ingress/egress at the northwest of the Site (**Drawings A-1 to A-3**). The applied use will be operated from 9:00 a.m. to 6:00 p.m. from Mondays to Saturdays only.
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) application form with attachments received on 27.5.2019 (**Appendix I**)
  - (b) supplementary information received on 29.5.2019 providing clarification on the lot number within the Site (**Appendix Ia**)
  - (c) further information received on 10.7.2019 clarifying the projects relating to the applied use and types of construction materials to be stored, and a revised site plan (**Appendix Ib**)

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the attachments (**Appendices I, Ia and Ib**) listed above. They can be summarized as follows:

- (a) the applicant is a sub-contractor of CLP responsible for upgrading underground electricity cable lines relating to the Sai Sha Road widening project and Hiram's Highway Improvement Project. The applied site office and open storage is only temporary in nature to serve the works need in the nearby area;
- (b) the Site is currently fenced off and the temporary structures are in small scale;
- (c) to avoid noise impact, no workshop activities such as cutting, melting and dismantling will be included and no night-time operation is allowed;
- (d) no adverse visual impact is anticipated since there are mature trees acting as visual barriers between the Site and adjoining village houses;
- (e) the applicant will provide appropriate drainage facilities to mitigate any drainage impacts should the application be approved;
- (f) the approval of the application on a temporary basis will not frustrate the planning intention of "V" zone; and

- (g) there are sites of similar temporary uses for Sai Sha Road widening project scattering around Che Ha village and nearby villages. There are also similar applications with planning approval found in different areas in New Territories such as Tong Yan San Tsuen, Pat Heung and Kwu Tung.

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

The applicant is not a “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 current land owners and Sai Kung North Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

**4. Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is the subject of an active enforcement case (**Plan A-2**) for unauthorized development (UD) involving parking of vehicles and storage use. Enforcement Notice was issued on 21.2.2019 requiring the concerned owners to discontinue the UD. According to her site inspection on 22.5.2019, the UD still continued at the Site upon the expiry of the notice. Prosecution action is being considered by the Planning Authority.

**5. Town Planning Board Guidelines**

The Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 13E) is relevant to this application. The Site falls within Category 4 areas under the TPB PG-No. 13E promulgated on 17.10.2008. Relevant extract of the Guidelines is at **Appendix II**.

**6. Previous Application**

There is no previous application covering the Site.

**7. Similar Application**

There is no similar application for temporary open storage with ancillary site office and staff car park use within the same “V” zone.

**8. 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 and A-4b)**

8.1 The Site is:

- (a) flat, fenced and partly paved;
- (b) currently used for storage of construction materials with ancillary site office and parking of vehicles without planning permission; and
- (c) accessible via a local access road to Sai Sha Road.

8.2 The surrounding areas have the following characteristics:

- (a) an area to the immediate west of the Site is occupied by workshop, parking and storage uses, which are unauthorized developments under active enforcement actions;
- (b) the areas to the further west and to the north are largely vacant with scattered tree groups; and
- (c) the village cluster of Che Ha is located to the south and east of the Site, separated by tree groups.

**9. Planning Intention**

The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

**10. Comments from Relevant Government Departments**

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

**Land Administration**

10.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, Lands D):

- (a) he has no objection to the application;
- (b) the Site consists of 14 private lots in D.D. 218, Shap Sz Heung, Tai Po which are held under the Block Government Lease demised for agricultural purpose. No structure shall be erected on the lots without the prior approval from LandsD;

- (c) his site inspection revealed that nine containers and three temporary structures were found on the Site without the prior approval from LandsD;
- (d) the applicant is required to clear any existing structures on the Site immediately unless they are covered by valid approval. Otherwise, appropriate lease enforcement action will be taken in due course;
- (e) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access (EVA) thereto;
- (f) no Small House application has been received in respect of the Site; and
- (g) should the application be approved by the Board, the lots owners are required to submit application for Short Term Waiver (STW) to LandsD if they wish to erect any structure on the Site. However there is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver fee and administrative fees as considered appropriate.

### **Traffic**

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

- (a) she does not support the application;
- (b) the applicant should assess the impact of the additional traffic loading arising from the applied use on Sai Sha Road during the AM and PM peak period to demonstrate that it would not cause any adverse traffic impact;
- (c) the applicant is required to justify the need to provide car parking in the application site;
- (d) the applicant is required to demonstrate that sufficient space within the application site could be provided for manoeuvring of vehicles. In addition, no vehicle queuing and no reverse movement of vehicles on public road is allowed; and
- (e) the existing village access on and near the application site is not under Transport Department's management. It is suggested that the land status, management and maintenance responsibilities of the village access should be clarified with the relevant lands and maintenance authorities accordingly in order to avoid potential land disputes.

## **Environment**

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

- (a) he does not support the application as there are domestic structures in the vicinity of the Site, the closest ones are located to the south of the Site at a distance of less than 30m (**Plan A-2**);
- (b) according to his record, there is no environmental complaint related to the Site in the past three years; and
- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measure and requirement in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by Environmental Protection Department.

## **Drainage**

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

- (a) he has no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, a condition should be included to request the applicant to submit and implement the drainage proposal for the Site to the satisfaction of Director of Drainage Services to ensure that it will not cause adverse drainage impact to the surrounding area; and
- (c) there is no existing public sewerage in the vicinity of the Site.

10.1.5 The Chief Engineer/Consultant Management, Drainage Services Department (CE/CM, DSD) advises that the application has no conflict with DSD’s proposed sewerage works under Public Works Project Item No. 4125DS – Tolo Harbour Sewerage of Unsewered Areas Stage 2. Therefore, she has no comment on the application from the project interfacing point of view.

## **Building Matters**

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

- (a) there is no record of submission of the proposed temporary buildings or structures to the Building Authority (BA) for approval. The proposed temporary structures are subject to the control of Part VII of the Building (Planning) Regulations and

require prior approval and consent under the Buildings Ordinance (BO);

- (b) before any new building works (including containers/open sheds/shelters as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BA should be obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (c) for UBW erected on leased land, enforcement action may be taken by the 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 building works or UBW on the Site under the BO;
- (d) the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation 5 and EVA shall be provided under Building (Planning) Regulation 41D;
- (e) if the Site is not abutting on a specified street having a width not less than 4.5m, the development intensity shall be determined by the BA under Building (Planning) Regulation 19(3) at building plan submission stage; and
- (f) detailed consideration will be made at building plan submission stage.

### **Fire Safety**

#### 10.1.7 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to the satisfaction of Fire Services Department. The applicant is advised to submit layout plans with proposed fire services installations and water supplies for firefighting to his Department for approval;
- (b) having considered the nature of the open storage, an additional approval condition should be included requiring the provision of fire extinguishers within 6 weeks from the date of planning approval to the satisfaction of D of FS. In this regard, the applicant is advised to submit a valid fire certificate (FS 251) to his Department for approval; and

- (c) 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.

### **Landscape**

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

- (a) the application does not involve any landscape issue and there is no significant landscape resources within the Site. No significant landscape impact is envisaged; and
- (b) since the Site does not fall in any landscape sensitive zones and areas and the proposed development is unlikely to create adverse visual and landscape impact, it is considered not necessary to impose any landscape-related condition should the application be approved by the Board.

### **Nature Conservation**

10.1.9 Comment of the Director of Agriculture, Fisheries and Conservation (DAFC):

the Site is located entirely within the “V” zone and is currently vacant and paved. Therefore, he has no comment on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (c) Project Manager/North, Civil Engineering and Development Department (PM(N), CEDD);
- (d) Chief Highway Engineer/New Territories East, Highways Department(CHE/NTE, HyD);
- (e) Director of Electrical and Mechanical Services (DEMS); and
- (f) District Officer/Tai Po, Home Affairs Department (DO(TP), HAD).

## **11. Public Comment Received During Statutory Publication Period**

On 4.6.2019, the application was published for public inspection. During the statutory public inspection period, one public comment was received (**Appendix III**). The commenter objects to the application mainly on the grounds that the development is incompatible with the planning intention of “V” zone and would further degrade the ecology and natural environment of the rural area.



## 12. Planning Considerations and Assessments

- 12.1 The Site falls within Category 4 area under the TPB PG-No. 13E promulgated by the Board on 17.10.2008 (**Appendix II**). The following considerations in the Guidelines are relevant:
- 12.1.1 Category 4 areas: applications for open storage and port back-up uses would normally be rejected except under exceptional circumstances. For applications on sites with previous planning approvals, and subject to no adverse departmental comments and local objections, sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the applications relevant technical assessments/proposals, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. The intention is however to encourage the phasing out of such non-conforming uses as early as possible. A maximum period of 2 years may be allowed upon renewal of planning permission for an applicant to identify suitable sites for relocation. No further renewal of approval will be given unless under very exceptional circumstances and each application for renewal of approval will be assessed on its individual merit.
- 12.2 The application is for temporary open storage, site office and staff car park use on a Site zoned “V” on OZP. The development is not in line with the planning intention of the “V” zone which is to designate both recognized villages and areas of land considered suitable for village expansion, and land within this zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.
- 12.3 The Site is flat, fenced, partly paved and used as open storage with vehicle parking and site office without planning permission. Comparing the aerial photos taken in 2017 and 2018 (**Plan A-3**), the Site was previously covered by vegetation, which has been cleared since 2017 prior to submission of this application. According to the CTP/CEP, PlanD, it is the subject of an active enforcement case for UD involving parking of vehicles and open storage use. As the unauthorized development has not been discontinued after the expiry date of the Enforcement Notice, prosecution action is being considered by the Planning Authority. DLO/TP, LandsD also advised that the containers and temporary structures currently on the Site are erected without the prior approval from his office. Appropriate lease enforcement action will be taken in due course.
- 12.4 The applied temporary use is considered incompatible with the surrounding area which comprises mainly village houses and vacant land. CTP/UD&L of PlanD has no comment on the application because the Site does not fall in any landscape sensitive zones and areas and the application does not involve any landscape issue or significant landscape resources. Nevertheless, DEP does not support the application as there are sensitive receivers, i.e. domestic structure,

in the vicinity of the Site with the closest one located to the south of the Site at a distance of less than 30m (**Plan A-2**). C for T also does not support the application and advises that the applicant should assess the impact of the additional traffic loading arising from the applied use on Sai Sha Road to demonstrate that no adverse traffic impact would be caused, and should also justify the need to provide car parking and demonstrate that sufficient space within the Site could be provided for manoeuvring of vehicles. Other Government departments consulted, including CE/MN of DSD, CBS/NTW of BD and D of FS, have no comment on or no objection to the application.

- 12.5 The application does not comply with the TPB PG-No. 13E in that the Site falls within Category 4 areas (**Appendix II**) where applications would normally be rejected except under exceptional circumstances. The Site is not the subject of any previous planning approval for similar uses. There is no special circumstance in the application that justifies sympathetic consideration. Also, there are no similar applications within the same “V” zone. The examples of planning approval for temporary uses quoted by the applicant in his submission were mainly located in areas not falling within “V” zone on the OZPs. Approval of the application would set an undesirable precedent for similar applications in the “V” zone.
- 12.6 Regarding the adverse public comment as detailed in paragraph 11 above, the Government department’s comments and the planning assessments above are relevant.

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

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the development is not in line with the planning intention of the “V” zone which is to designate both recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
  - (b) the development does not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No.13E) in that no previous planning approval for open storage use has been granted at the Site and there are adverse departmental comments on the application;
  - (c) the applicant fails to demonstrate that the development would not generate adverse traffic and environmental impacts on the surrounding areas; and

- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for other similar applications within the “V” zone. The cumulative effect of approving such applications would result in a general degradation of the environment in 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 19.7.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no vehicles other than private cars, light and medium goods vehicles, as proposed by the applicant, are allowed to be parked/stored on the Site at any time during the planning approval period;
- (d) no vehicle dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site at any time during the planning approval period;
- (e) 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 19.1.2020;
- (f) in relation to (e) above, the implementation of drainage facilities 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 19.4.2020;
- (g) the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by 30.8.2019;
- (h) the submission of proposals for fire service installations and water supplies for firefighting 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 19.1.2020;
- (i) in relation to (h) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 19.4.2020;

- (j) the submission of a traffic proposal to demonstrate that no adverse traffic impact will be caused and sufficient space will be provided within the Site for manoeuvring of vehicles within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the TPB by 19.1.2020;
- (k) in relation to (j) above, the implementation of the traffic proposal within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the TPB by 19.4.2020;
- (l) if any of the above planning conditions (a), (b), (c) 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; and
- (m) if any of the above planning conditions (e), (f), (g), (h), (i), (j) or (k) 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 IV**.

#### **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 to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

#### **Attachments**

<b>Appendix I</b>	Application form and attachments received on 27.5.2019
<b>Appendix Ia</b>	Supplementary information dated 29.5.2019
<b>Appendix Ib</b>	Further information dated 10.7.2019
<b>Appendix II</b>	Extract of Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E)
<b>Appendix III</b>	Public comment
<b>Appendix IV</b>	Recommended advisory clauses
<b>Drawing A-1</b>	Location plan submitted by the applicant
<b>Drawing A-2</b>	Lot index plan submitted by the applicant
<b>Drawing A-3</b>	Site Plan submitted by the applicant
<b>Plan A-1</b>	Location plan
<b>Plan A-2</b>	Site plan

**Plan A-3**                    Aerial photo  
**Plans A-4a & 4b**        Site photos

**PLANNING DEPARTMENT**  
**JULY 2019**