

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/248

- Applicant** : Smart Happiness Limited represented by Ever United Planning and Development Limited
- Site** : Lot 1149 (Part) in D.D. 125, Tseung Kong Wai, Ha Tsuen, Yuen Long
- Site Area** : About 460m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Hung Shui Kiu and Ha Tsuen (HSK and HT) Outline Zoning Plan (OZP) No. S/HSK/2
- Zoning** : “Village Type Development” (“V”)
[Restricted to maximum building height of 3 storeys (8.23m)]
- Application** : Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning approval to use the application site (the Site) for temporary shop and services (real estate agency) for a period of 3 years (**Plan A-1a**). According to the Notes of the OZP for “V” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant (**Plan A-4**).
- 1.2 Part of the Site is subject to two previous applications for the same applied use (**Plan A-1b**). The last application No. A/HSK/111 was approved by the Rural and New Town Planning Committee (the Committee) of the Board with conditions on 7.12.2018 for a period of 3 years with validity up to 7.12.2021. The current application is submitted by the same applicant at a larger site with an increase in the number of structures and total floor area.
- 1.3 The Site is accessible from San Sik Road via a local track with the entrance located at the eastern side of the Site (**Drawing A-1, Plans A-2 and A-3**). As shown on the layout plan at **Drawing A-2**, there will be three single-storey temporary structures with a total floor area of about 206m², including a 3.8m high structure for real estate agency and conference room (with a floor area of not exceeding 202m²) and two 2.5m high structures for F.S. pump room and F.S. water tank (each with a floor area of not exceeding 2m²). No parking spaces will be provided. The

proposed landscape and tree preservation plan, drainage plan and discharge path to public drain plan are at **Drawings A-3 to A-5** respectively. The proposed operation hours will be from 9:00 a.m. to 8:00 p.m. daily including Sundays and public holidays.

- 1.4 A comparison of the major development parameters of the current application and the last approved application is given in the following table:

Major Development Parameters	Last Approved Application (A/HSK/111) (a)	Current Application (A/HSK/248) (b)	Difference (b) - (a)
Applied Use	Temporary shop and services (real estate agency)(3 years)		Same
Site Area	135m ²	460m ²	+325m ² (+241%)
No. of Structures	2	3	+1 (+50%)
Total Floor Area	80m ²	206m ²	+126m ² (+158%)
No. of Parking Spaces	Nil		Same
Operation Hours	9:00 a.m. to 8:00 p.m. daily (including Sundays and public holidays)		Same

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

- (a) Application Form received on 18.8.2020 **(Appendix I)**
(b) Supplementary Planning Statement with plans **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are provided in the Supplementary Planning Statement at **Appendix Ia**. They can be summarized as follows:

- (a) The Site is subject to two previous planning permissions (No. A/YL-HT/973 and A/HSK/111) for the same use. With an increase in the number of staffs and poor conditions of real estate office, the applicant would like to redevelop and expand the agency office.
- (b) All approval conditions for two previous planning applications have been complied with¹.
- (c) The proposed development meets the planning intention of the “V” zone which aims to serve the daily needs of residents. Shop and services is a Column 2 Use in “V” zone and always permitted at the Ground floor of a New Territories Exempted House (NTEH).
- (d) The proposed development is temporary in nature and would not jeopardize the building of NTEH in the long run.
- (e) The proposed development is compatible with the surrounding environment and would not affect the character of the indigenous village.

¹ For application No. A/HSK111, one remaining time-limited approval condition on the implementation of fire service installations (FSIs) proposal has yet to be complied with.

- (f) The applicant has provided some mitigation measures to further minimize any potential impact to the nearby residents. In view that the proposed development is compatible with the surrounding environment and no significant impacts will be generated, preferential treatment should be given.
- (g) The Board has approved a number of similar real estate agencies at “V” zone in Hung Shui Kiu and Ha Tsuen areas. Similar preferential treatment should be granted to the current application.
- (h) Neither parking space nor vehicular ingress/egress are proposed for the proposed development and insignificant traffic impact would be generated. Drainage facilities will be provided and surface channel will be cleaned at regular interval.

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 publishing notices in local newspapers. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to planning enforcement action.

5. Previous Applications

- 5.1 The Site is the subject of two previous applications (No. A/YL-HT/973 and A/HSK/111) for the same applied use. Details of these applications are summarized at **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 The two applications were approved by the Committee in 2015 and 2018 on similar considerations that the applied uses were not incompatible with the surrounding areas, would cater for some needs of the nearby villagers and no major adverse comments from concerned Government departments.
- 5.3 Compared with the last application, the current application is submitted by the same applicant for the same use on a larger site with an increase in number of structures and total floor area.

6. Similar Applications

There are nine similar applications (No. A/HSK/13, 58, 62, 97, 120, 130, 143, 212 and 244) for temporary shop and services (real estate agency) with/without convenient store and showroom within the same “V” zone between 2017 and 2020. All of these applications were approved by the Committee on similar considerations as mentioned in para. 5.2 above. Particulars of these applications and the decisions of the Committee are summarized at **Appendix III** and their locations are shown on **Plan A-1a**.

7. The Site and Its Surrounding Areas (Plan A-1a to Plan A-4)

7.1 The Site is:

- (a) currently vacant; and
- (b) accessible from San Sik Road via a local track.

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate north is a piece of vacant land while to its further north and northeast are residential dwellings and village settlement of Tseung Kong Wai;
- (b) to its immediate east are shrubland and a vacant temporary structure, while to its further east are some residential dwellings (closest being about 16m away);
- (c) to its immediate south is a vacant temporary structure, while to its further south and southeast are an open storage yard of containers and construction materials with one under valid planning permission, vacant land, shrubland and some parking of vehicles; and
- (d) to its immediate west is a piece of land with construction works in progress, while to its further west are some temporary structures for residential use and an open storage yard of construction materials under valid planning permission.

8. Planning Intention

The planning intention of the “V” zone is to designate both existing 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. 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. 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, 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 prior approval of the Government.

- (b) Lot No. 1149 in D.D. 125 is covered by Short Term Waiver No. 4569 (STW4569) for the purposes of Temporary Shop and Services (Real Estate Agency).
- (c) According to his record, there are no Small House (SH) applications approved/under processing within the Site. There are 13 SH applications approved and 3 SH applications under processing in the vicinity.
- (d) Should the application be approved, the STW holder will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Application(s) for any of the above will be considered by LandsD acting in the capacity of 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 rent or fee, as may be imposed by LandsD.

Traffic

9.1.2 Comment of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):

He has no adverse comment on the application from traffic engineering viewpoint.

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

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and San Sik Road.

Environment

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

Should the application be approved, the applicant is reminded to follow the relevant mitigation measures and requirements in the latest "Code of Practice (COP) on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" to minimize any potential environmental nuisance.

Drainage

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

- (a) He has no objection in principle to the application from a drainage point of view.
- (b) Should the application be approved, he would suggest imposing a planning condition requiring the applicant to submit a drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of his Division.
- (c) The applicant is reminded that the development should neither obstruct overland flow nor adversely affect existing stream course, natural streams, village drains, ditches and the adjacent areas.
- (d) The applicant should consult DLO/YL and seek consent from the relevant owners for any works to be carried out outside the Site before commencement of the drainage works.

Landscape

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

The applicant is advised that approval of the application by the Board does not imply approval of the tree works such as pruning, transplanting and/or felling under lease. The applicant is reminded to approach relevant authority/government department(s) direct to obtain the necessary approval on tree works.

Building Matters

9.1.7 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 existing structures at the Site.
- (b) If the existing structures (not being a NTEH) are erected on leased land without the approval of BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any approved 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 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 application 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 the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the coordinator 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) 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 the B(P)R 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 services installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the structures, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs are to be installed should be clearly marked on the layout plan.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the BO, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comment

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

- (a) He has no comment on the application from departmental point of view.
- (b) His office has not received any comment from the locals on the application.

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM/W, CEDD);
- (b) Director of Agriculture, Fisheries and Conservation (DAFC); and
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 25.8.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (real estate agency) at a site zoned “V” on the OZP. The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. 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. Although the temporary shop and services (real estate agency) use is not entirely in line with the planning intention of the “V” zone, it could provide real estate agency service to meet any such demand in the area. DLO/YL of LandsD advises that no Small House application within the Site has been received. Approval of the application on a temporary basis of 3 years would not jeopardise the long-term development of the area.
- 11.2 The proposed temporary is not incompatible with the existing land use for the area, which is predominately occupied by village houses.
- 11.3 There is no adverse comment from the concerned Government departments, including DEP, AC for T/NT of TD and CE/MN of DSD. Significant environmental, traffic and drainage impact on the surrounding area is not expected. Besides, relevant approval conditions have been recommended in paragraph 12.2 to minimize any possible nuisances or to address the technical requirements of the concerned Government departments. Any non-compliance with these approval conditions would result in revocation of the planning permission and any unauthorised development on the Site would be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will be advised to follow the ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites’ in order to minimize the possible environmental impacts on the nearby sensitive receivers.
- 11.4 The Committee has approved two previous applications for the same applied use on the Site since 2015 and nine similar applications within the subject “V” zone between 2017 and 2020. Approval of the subject application is in line with the Committee’s previous decisions.
- 11.5 There is no public comment received on the application during statutory publication period.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above, the Planning Department has no objection to the temporary shop and services (real estate agency) 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 **9.10.2023**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the site during the planning approval period;

- (b) the submission of a drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **9.4.2021**;
- (c) in relation to (b) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **9.7.2021**;
- (d) in relation to (c) above, the implemented drainage facilities within the Site shall be maintained at all times during the planning approval period;
- (e) the submission of a fire service installations proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **9.4.2021**;
- (f) in relation to (e) above, the implementation of the fire service installations proposal within **9** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **9.7.2021**;
- (g) if any of the above planning conditions (a) or (d) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (h) if any of the above planning conditions (b), (c), (e) or (f) is not complied with by the above 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**.

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

the development is not in line with the planning intention of the "Village Type Development" zone which is primarily to designate both existing recognized villages and areas of land considered suitable for village expansion. There is no strong 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

Appendix I	Application Form received on 18.8.2020
Appendix Ia	Supplementary Planning Statement with plans
Appendix II	Previous Applications covering the Application Site
Appendix III	Similar Applications within the subject “V” Zone on the approved Hung Shui Kiu and Ha Tsuen Outline Zoning Plan
Appendix IV	Advisory Clauses
Drawing A-1	Proposed Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape and Tree Preservation Plan
Drawing A-4	Proposed Drainage Plan
Drawing A-5	Discharge Path to Public Drain Plan
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Applications Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2020**