

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

APPLICATION NO. A/HSK/193

- Applicant** : Ka Fook Consultant Limited
- Site** : Lots 108 S.A (Part), 108 S.B ss.1 (Part), 108 S.B ss.2, 108 S.B ss.3 (Part), 110 (Part) and 112 (Part) in D.D.128, Ha Tsuen, Yuen Long
- Site Area** : 1,888 m² (about)
- 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** : “Government, Institution or Community” (“G/IC”)
[*Restricted to maximum building height of 3 storeys*]
- Application** : Proposed Shop and Services (Showroom) with Ancillary Office (Display of Solar Panels and Ancillary Facilities) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed shop and services (showroom) with ancillary office (display of solar panels and ancillary facilities) for a period of 3 years (**Plan A-1**). The Site falls within the “G/IC” zone on the approved HSK and HT OZP No. S/HSK/2. According to the covering Notes of the OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary planning permission for 3 years. The Site is currently used for open storage of construction materials, containers and machinery with ancillary office without a valid planning permission.
- 1.2 The Site is the subject of a previous application No. A/HSK/133 for proposed temporary open storage of recyclable materials for a period of 3 years which was rejected by the Rural and New Town Planning Committee (the Committee) of the Board on 12.4.2019 (**Plan A-1**).
- 1.3 The Site is accessible to Kai Pak Ling Road via a local track with ingress/egress at the north-western corner of the Site (**Plans A-2 and A-3 and Drawing A-1**). As shown on the proposed layout plan (**Drawing A-1**), three temporary structures with

a total floor area of 505m² (including a 2-storey (4.8m high) structure for ancillary office (floor area of 190m²), a single-storey (5m high) rain shelter (300m²) and a single-storey (2.4m high) structure for toilet use (15m²)) are proposed. 3 parking spaces for private cars (5m x 2.5m) and one loading/unloading bay (7m x 3.5m) for light goods vehicles are also proposed. The remaining area of the Site is for display of solar panels and manoeuvring space. According to the applicant, only light goods vehicles not exceeding 5.5 tonnes will be used for the delivery of goods. The goods on the Site are not for sale and only for display purpose. The operation hours are from 8a.m. to 6p.m. and there will be no operation on Sundays and public holidays. The proposed landscape plan and drainage plan submitted by the applicant are at **Drawings A-2 and A-3**.

1.4 A comparison of the applied use and major development parameters of the last rejected application and the current application is given in the following table:

	Previously Rejected Application (A/HSK/133) (a)	Current Application (A/HSK/193) (b)	Difference (b) – (a)
Site Area	1,888m ²	1,888m ²	Same
Applied Use	Proposed temporary open storage of construction machinery (3 Years)	Proposed shop and services (showroom) with ancillary office (display of solar panels and ancillary facilities) (3 Years)	Change in land use
Total Floor Area	454m ²	505m ²	+51m ² (+11.23%)
No. and Height of Structures	4 (2 warehouses, 1 site office & 1 toilet)	3 (1 site office, 1 rain shelter & 1 toilet)	-1
No. of Parking Space	-	3 for private car	+3
No. of Loading/ Unloading Space	1 for light goods vehicle (7m x 3.5m)	1 for light goods vehicle (7m x 3.5m)	Same
Operation Hours	9 a.m. to 7 p.m. Mondays to Saturdays excluding Sundays and public holidays	8 a.m. to 6 p.m. Mondays to Saturdays excluding Sundays and public holidays	-

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

- (a) Application Form with proposed layout plan, landscape plan and drainage plan received on 8.10.2019 **(Appendix I)**
- (b) Further Information (FI) from the applicant dated 11.11.2019 clarifying the floor area of a proposed structure **(Appendix Ia)**
[Accepted and exempted from publication and recounting requirements]

- (c) FI from the applicant dated 12.11.2019 clarifying the proposed use of the uncovered area **(Appendix Ib)**
[Accepted and exempted from publication and recounting requirements]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form at **Appendix I**. They can be summarized as follows:

- (a) The Site is zoned “G/IC” on the OZP where shops and services (showroom) is a Column 2 use within such zone.
- (b) Since the applicant is the sole agent of a China company for selling solar panels and ancillary facilities in Hong Kong and in view of the Government’s support of solar panel installations in New Territories Exempted House, he would like to rent the Site as showroom for display of the facilities. The Site is for signing contract and the display items would not be for retail sale.

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. 31) by publishing in newspapers and sending notice to the Ha Tsuen Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The storage use (including deposit of containers), workshop use and office use on the Site would be subject to planning enforcement action.

5. Previous Application

The Site is the subject of a previous application No. A/HSK/133 for proposed temporary open storage of recyclable materials for a period of 3 years which was rejected by the Committee of the Board on 12.4.2019. The reasons for rejection of the application are not in line with the planning intention of the “G/IC” zone, not compatible with the surrounding land uses which are predominantly residential in nature and setting of an undesirable precedent for similar applications. Details of this application are summarized at **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Application

There is no similar application within the subject “G/IC” zone on the OZP.

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

7.1 The Site is:

- (a) fenced, hard-paved and currently used for open storage of construction materials, containers and machinery with ancillary office without a valid planning permission; and
- (b) accessible from Kai Pak Ling Road via a local track (**Plan A-3**).

7.2 The surrounding areas have the following characteristics:

- (a) to its north are a piece of vacant land, a woodland and a number of residential dwellings including village houses and Mountain Royal (a residential estate) within the “Village Type Development” (“V”) zone of Fung Kong Tsuen (**Plans A-2 and A-3**);
- (b) to its immediate east is a woodland. A cluster of village houses under construction within the “V” zone of Fung Kong Tsuen are at its further east;
- (c) to its south are mainly hard-paved areas and a structure under construction, while to its further south is an open storage yard of recycling materials; and
- (d) to its west are some open storage yards of containers or vehicles and vehicle repair workshops.

8. Planning Intention

The planning intention of the “G/IC” zone is primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government organizations providing social services to meet community needs, and other institutional establishments.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

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

- (a) The Site comprises 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) The Site is accessible from Kai Pak Ling Road through Government land (GL) and private lot(s). His office does not guarantee any right-of-way to the Site.

- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should the application be approved, the lot owner(s) of the lot(s) without Short Term Waiver (STW) will need to apply to his office for permitting the structures to be erected or to regularize any irregularities on the Site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. 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 premium or fee, as may be imposed by LandsD.

Traffic

- 9.1.2 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT): (*Comments awaiting*)
 - (a) He has no adverse comment on the application from traffic engineering point of view.
 - (b) Sufficient manoeuvring space shall be provided within the Site. No vehicles are allowed to queue back to public roads or reverse onto/from the public roads.
 - (c) The local track leading to the Site is not under his purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.
- 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 to prevent surface water flowing from the Site to the nearby public road and drains.
 - (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Fung Kong Tsuen Road.

Environment

- 9.1.4 Comment of the Director of Environmental Protection (DEP):
 - (a) No environmental complaint pertaining to the Site has been received in the past three years.
 - (b) Should the planning application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage' ('COP').

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 proposed development from a drainage point of view. His detailed comments on the submitted drainage proposal are at **Appendix IV**.
- (b) Should the application be approved, he would suggest that a condition should be stipulated requiring the applicant to submit a revised drainage proposal, to implement and maintain the proposed drainage facilities.

Landscaping

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

- (a) With reference to the recent site photos, it is observed that the Site is occupied by open storage of construction materials, containers and machinery. The Site is situated in a village landscape character disturbed by open storage yards. Significant change to the landscape character arising from the application is not envisaged.
- (b) In consideration that the Site is in close proximity to existing village houses, adequate landscape screen planting in particularly along the eastern and northern boundaries should be provided. Should the application be approved by the Committee, it is suggested that a condition should be stipulated requiring the applicant to submit and implement a revised landscape proposal.

Fire Safety

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

- (a) He has no objection 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.
- (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 plans.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matter

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

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and landfilling) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) 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 Site under the BO.
- (c) 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.
- (d) 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.

Nature Conservation

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

The Site falls within the "G/IC" zone and its surrounding areas are partly disturbed. As the applicant indicated that the proposed development would not involve land filling, site formation and tree felling, he has no adverse comment on the application from nature conservation point of view.

Long Term Development

9.1.10 Comments of the Project Manager (New Territories West), Civil Engineering and Development Department (PM/NTW, CEDD):

- (a) He has no objection to the temporary use for 3 years, which should be considered in accordance with the provisions of the existing OZP and infrastructure capacities.
- (b) The Site falls within the boundary of Hung Shui Kiu/Ha Tsuen New Development Area (HSK/HT NDA, formerly known as HSK NDA). According to the Planning and Engineering Study (P&E Study) for the HSK/HT NDA and the latest plan, to ensure timely and orderly implementation, the development of HSK/HT NDA and relevant site formation and infrastructure works would be implemented in five

stages, viz. Advance Works and Stage 1 to Stage 4. The lot(s) concerned falls within a site under Stage 4 Works in the latest programme of the HSK/HT NDA. While the detailed implementation programme for the project is still being formulated, it is envisaged that clearance of the Site in question will not be arranged before the first population intake of the HSK/HT NDA expected in 2024.

District Officer's Comments

9.1.11 Comments of the 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) Commissioner of Police (C of P); and
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 15.10.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 5.11.2019, one public comment from an individual was received (**Appendix IV**), raising concern that the decision on the present application should be the same as the previous application No. A/HSK/133 since storage of solar panels has no difference with construction materials.

11. Planning Considerations and Assessments

11.1 The application is for temporary shop and services (showroom) with ancillary office (display of solar panels and ancillary facilities) for a period of 3 years at a site zoned "G/IC" (**Plan A-1**). The planning intention of the "G/IC" zone is primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government organizations providing social services to meet community needs, and other institutional establishments. The proposed shop and services (showroom) use is not in line with the planning intention of the "G/IC" zone. There is no strong planning justification given in the submission for a departure from the planning intention of the "G/IC" zone, even on a temporary basis.

11.2 The Site is situated in an area predominated by woodland and a cluster of village houses and residential dwellings (the nearest domestic use is located about 8m to the northeast of the Site) (**Plan A-2**) within the adjoining "V" zone of Fung Kong Tsuen to its immediate north and east. Although there are open storage yards and workshops in the vicinity of the Site, they are either suspected unauthorised

developments subject to enforcement actions by the Planning Authority or within the “Other Specified Uses” annotated ‘Port Back-Up, Storage and Workshop Uses’ zone, where such uses are always permitted. The applied use, which involves storage and display of items, is not compatible with the surrounding environment, in particular the village cluster of Fong Kong Tsuen, including Mountain Royal and woodland to the immediate north and east of the Site (**Plans A-2 and A-3**).

- 11.3 The proposed development is related to a previously rejected application No. A/HSK/133 for proposed temporary open storage of construction machinery (including electric generators and miniature excavators) mainly on the grounds of not compatible with the surrounding land uses which are predominantly residential in nature and setting of an undesirable precedent for similar applications. Rejecting the current application is in line with the Committee’s previous decision. Besides, there has been no other case either involving storage or shop and services use within the subject “G/IC” zone has been approved by the Committee.
- 11.4 There is one public comment received with concern stated in paragraph 10 above. The planning considerations and assessments in the above paragraphs are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10 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 “G/IC” zone which is intended primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. No strong planning justification has been given in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the proposed development is not compatible with the surrounding land uses which are predominantly residential in nature; and
 - (c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the same “G/IC” zone. The cumulative effect of approving such applications would result in a general degradation of the 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 **29.11.2022**. 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 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) no operation on Sundays or public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no goods vehicles exceeding 5.5 tonnes, including container tractor/trailers as defined in the Road Traffic Ordinance, as proposed by the applicant, is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) the submission of a revised drainage proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **29.5.2020**;
- (e) in relation to (d) above, the implementation of the drainage proposal within **9** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **29.8.2020**;
- (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 a revised landscape proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **29.5.2020**;
- (h) in relation to (g) above, the implementation of the landscape proposal within **9** months from the date of the planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **29.8.2020**;
- (i) 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 **29.5.2020**;
- (j) in relation to (i) 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 **29.8.2020**;
- (k) 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; and
- (l) if any of the above planning conditions (d), (e), (g), (h), (i) or (j) 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 at **Appendix IV**.

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 proposed layout plan, landscape plan and drainage plan received on 8.10.2019
Appendix Ia	FI from the applicant dated 11.11.2019 clarifying the floor area of a proposed structure
Appendix Ib	FI from the applicant dated 12.11.2019 clarifying the proposed use of the uncovered area
Appendix II	Previous Application
Appendix III	Public comment
Appendix IV	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Proposed Landscape Plan
Drawing A-3	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a & 4b	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2019**