

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/205

- Applicant** : Mr. Lee Kwok Ming represented by Mr. Kwok Chi Man
- Site** : Lots 1792 RP (Part), 1794 S.B RP(Part) and 1798 RP (Part) in D.D. 125, Ha Tsuen, Yuen Long, New Territories
- Site Area** : 180m²
- 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** : Proposed Temporary Shop and Services 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 shop and services use for a period of 3 years (**Plan A-1**). The Site falls within the “V” zone on the approved HSK and HT OZP No. S/HSK/2. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use in the “V” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by a converted containers structure for storage use without a valid planning permission.
- 1.2 The Site is accessible from Ping Ha Road via a local track (**Plan A-2 and Drawing A-1**). As shown on the layout plan at **Drawing A-1**, the existing structure would be sub-divided into two temporary structures with a total floor area of 180m², including a 3m high single-storey structure (floor area of 85m²) for convenient store and a 3m high single-storey structure (floor area of 95m²) for sales of metal ware (including metal materials, renovation equipment and tools). About 1-2 workers from nearby residents will be employed for the convenient store. The customers are mainly of nearby villagers and will come to the store by walking/cycling while any parking needs by other customers can be fulfilled by the nearby car park near the Ha Tsuen Heung Rural Committee. The operation hours are from 9 a.m. to 7 p.m. Mondays to Saturdays. There will be no operations on Sundays and public holidays.

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

- (a) Application Form with supplementary Planning Statement, location plan and proposed layout plan received on 19.11.2019 **(Appendix I)**
- (b) Further Information received on 29.11.2019 providing trip generation rate of the proposed development and vehicular and pedestrian access arrangement **(Appendix Ia)**
[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 the Supplementary Planning Statement at **Appendix I**. They can be summarized as follows:

- (a) The proposed development is in line with the planning intention of “V” zone to serve the needs of the villagers. Since the proposed development is temporary in nature, it would not jeopardize the building of New Territories Exempted House (NTEH) in the village in the long run.
- (b) The form of the proposed development is compatible with the surrounding areas which are mostly occupied by NTEH.
- (c) The applied use is primarily to serve the villagers and the nature and size of the proposed development, which is a kind of shop and service use, would not affect the character of the village.
- (d) No neon lights will be installed for the store and there will also be no workshop activities. No toxic nor polluting materials will be stored at the proposed development. There will be no night time operation and the opening hours will be restricted from 9:00 a.m. to 7:00 p.m. daily and no noise nuisance will be generated to the nearby residents. Given the small size of the proposed development, it would have no adverse environmental and traffic impacts on the surrounding areas.

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 posting site notice and sending notice to the Ha Tsuen Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The storage use on the Site would be subject to planning enforcement action.

5. Previous Application

The Site is not the subject of any previous planning application.

6. Similar Applications

There are 10 similar applications (No. A/YL-HT/418, 560, 739, 882, 926, 977, 998, 1051 and A/HSK/58 and 129) involving 3 sites for temporary shop and services (convenient store) uses within the same “V” zone. All these applications were approved by the Committee since 2005 taking into consideration that the applied uses were not incompatible with the surrounding uses. However, three of these approved applications (No. A/YL-HT/882, 977 and 1051) were subsequently revoked due to non-compliance with approval conditions. Particular of these applications and the decisions of the Committee are summarized at **Appendix II** and their locations are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) currently occupied by a single-storey converted containers structure for storage use; and
- (b) accessible from Ping Ha Road via a local track.

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate north are some village houses while to its further north across a cycle track and nullah are the Ha Tsuen Heung Rural Committee and a carpark under a valid planning permission No. A/HSK/169;
- (b) to its further east across Ping Ha Road are a warehouse, an open storage of construction machinery, two vehicle/trailer repair workshops, an open storage of vehicles and a vehicle and container trailer park. To its further southeast are an open storage of vehicles and an open storage of construction material and machinery under valid planning permissions No. A/HSK/126 and 181 respectively; and
- (c) to its south and west are a number of residential buildings of Yan Wu Garden and Greenlake Garden.

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 Town Planning 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 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 Ping Ha Road through both Government Land (GL) and private lots. His office provides no maintenance works over the GL involved and does not guarantee any right-of-way to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) According to his record, there is no Small House application approved/under processing for the Site, and there are 10 small house applications approved and no small house applications under processing in the area within 30 metres from the Site.
- (e) Should the planning application be approved, the lot owner(s) of the lot(s) without STW will need to apply to his office for permitting the structures to be erected or to regularize any irregularities on Site, if any. No construction of New Territories Exempted Building(s) will be considered or allowed. Application(s) for any of the above will be considered by the 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 the 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 point of view.

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 Ping Ha Road.

Environment

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

Should the applicant be approved, the applicant is reminded to follow the latest 'Code of Practice on Handling 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 planning conditions requiring the applicant to submit a drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of his Division.

Building Matters

9.1.6 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 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

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

- (a) He has no objection in principle to the proposal subject to 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 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.

District Officer's Comments

9.1.8 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);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC); and
- (d) Chief Engineer/ Construction, Water supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 26.11.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 17.12.2019, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services use for a period of 3 years 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. Whilst the applied development is not in line with planning intention of the “V” zone, it could provide shop and services to meet any such demand in the area. DLO/YL advises that there is no Small House application approved/under processing for the Site. Approval of the application on a temporary basis of 3 years would not frustrate the long-term development of the area.
- 11.2 The Site is located at the fringe of the “V” zone and adjacent to the existing Ping Ha Road. The proposed temporary use is not incompatible with the surrounding land use, which is predominately occupied by residential houses, in particular clusters of village houses to its west.
- 11.3 There is no adverse comment from the concerned Government departments, including AC for T/NT, TD, EPD and CE/MN, DSD on the application. Given the small-scale of the proposed development, it is not expected to create any significant adverse environmental, visual, traffic or drainage impact on the surrounding areas. The technical concerns raised by relevant departments could also be addressed by approval conditions as recommended in paragraph 12.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and any unauthorised development on the Site will be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will also be advised to follow the latest ‘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 10 similar applications for temporary shop and services use (convenient store) within the same “V” zone on the OZP since 2005. In this regard, approval of the current application is in line with the Committee’s previous decisions.
- 11.5 No public comment on the application was received during the 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 application.

- 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 **17.1.2023**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 9:00 p.m. and 7:00 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) the submission of a 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 **17.7.2020**;
- (d) in relation to (c) 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 **17.10.2020**;
- (e) in relation to (d) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **17.7.2020**;
- (g) in relation to (f) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **17.10.2020**;
- (h) if any of the above planning conditions (a), (b) or (e) 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
- (i) if any of the above planning conditions (c), (d), (f) or (g) 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 III**.

- 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 given in the submission to deviate 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 with supplementary planning statement, location plan and proposed layout plan received on 19.11.2019
Appendix Ia	Further Information received on 29.11.2019 providing trip generation rate of the proposed development and vehicular and pedestrian access arrangement
Appendix II	Similar Applications within the subject "V" Zone on the Approved Hung Shui Kiu and Ha Tsuen Outline Zoning Plan
Appendix III	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2020**