

TOWN PLANNING BOARD

TPB Paper No. 10431

For Consideration by
the Town Planning Board on 8.6.2018

REVIEW OF APPLICATION NO. A/YL-TYST/874
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed Animal Boarding Establishment
in "Green Belt" zone,
Lot 943 RP in D.D. 119, Kung Um Road, Yuen Long, New Territories

REVIEW OF APPLICATION NO. A/YL-TYST/874
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Animal Boarding Establishment
in “Green Belt” zone,
Lot 943 RP in D.D. 119, Kung Um Road, Yuen Long, New Territories**

1. Background

- 1.1 On 19.12.2017, the applicant, 洪家棣, sought planning permission for proposed animal boarding establishment under s.16 of the Town Planning Ordinance (the Ordinance). The application site (“the Site”) falls within an area zoned “Green Belt” (“GB”) on the draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/11 (**Plan R-1**).
- 1.2 On 9.2.2018, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the development is not in line with the planning intention of “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the Town Planning Board Guidelines No. 10 (TPB-PG No. 10) in that the proposed development would affect the existing natural landscape;
 - (c) the applicant has failed to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas; and
 - (d) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the landscape quality of the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-TYST/874 **(Annex A)**
 - (b) Extract of minutes of the RNTPC Meeting held on 9.2.2018 **(Annex B)**
 - (c) Secretary of the Board’s letter dated 2.3.2018 **(Annex C)**
 - (d) Letter of 21.3.2018 from the applicant applying for review with justifications **(Annex D)**

1.4 The Site was not involved in any previous application.

2. **Application for Review**

On 21.3.2018, the applicant, under section 17(1) of the Ordinance, applied for a review of the RNTPC's decision to reject the application. The justifications for the review was submitted alongside the application (**Annex D**).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the further information at **Annex D**. They can be summarized as follows:

- (a) The application whereby an animal protection organisation proposes a change in land use within the "GB" zone is the first of its kind. Having an environmentally friendly concept, the change in land use would not affect the integrity of the "GB" zone and would encourage revitalisation. Land in the vicinity of the Site has been used for unauthorized warehouses and vehicle repair workshops, which is unrecoverable.
- (b) The Site was an unused land prior to the current application and there had been no intention to rehabilitate the Site for agricultural use. The current application proposes half of the site area for farming while the remaining half would be occupied by an animal shelter. Solar panels are proposed to be installed on the roof of the structure, which is in line with the intention of environmental friendliness.
- (c) A fence of 6 metre is proposed to block noise emitted from the proposed development. Same as human, animals do emit odours. However, by regularly cleaning the Site and to maintain good ventilation, the odours would be minimised. Moreover, there are only scattered households in the vicinity with the nearest located as far as 70m to its southeast.
- (d) "Animals Home Limited" is a non-profit charity for which all the expenses are paid by the applicant. No fees are charged for the boarding of animals.
- (e) Currently, almost all animal protection organisations are operated by private individuals, where each of the premises houses tens to hundreds of animals. These individuals are passionate about these animals as the Agriculture, Fisheries and Conservation Department and the Society for the Prevention of Cruelty to Animals humanly euthanise thousands of animals every year.
- (f) Registered Structural Engineer would be invited to monitor the structural and fire safety aspects of the proposed development. A technically competent person (TCP-T1) would be on-site during the construction period.

4. **The Section 16 Application**

The Site and Its Surrounding Areas

- 4.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by RNTPC were described in paragraphs 8.1 and 8.2 of **Annex A**. Except for a piece of previously vacant land to the north of the Site which is currently being used for open storage of bamboo (**Plan R-2**), there has been no major change of the situation since then.
- 4.2 The Site is:
- (a) accessible from from Kung Um Road to its east via a local track (**Plans R-2 and R-3**); and
 - (b) formed and currently covered by vegetation (**Plans R-2, R-4a to R-4c**).
- 4.3 The surrounding areas have the following characteristics: (**Plan R-2**)
- (a) mixed with fallow agricultural land, vacant land, warehouses/storage, open storage yards, car repair workshops and unused land;
 - (b) scattered residential structures are found in the vicinity of the Site with the nearest one located about 70m to the southeast of the Site ;
 - (c) to its north is a piece of vacant land; and
 - (d) to its east and further north, warehouses are found. Also, to its further east is an area zoned “Undermined” where warehouses/storage, open storage yards, car repair workshops are found. They are mostly suspected unauthorized developments subject to enforcement action taken by the Planning Authority.

Planning Intention

- 4.4 There has been no change of planning intention of the concerned “GB” zone as mentioned in paragraph 9 of **Annex A** which is recapitulated below.
- 4.5 The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

Previous Application

- 4.6 The Site is not the subject of any previous application.

Similar Applications

- 4.7 There is no similar application within the “GB” zone on the OZP.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant government departments are stated in paragraphs 10.1 and 10.2 of **Annex A**.
- 5.2 The following government department has been further consulted and the comments are summarised as follows:

Environment

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

- (a) Having reviewed the applicant's justification for the review (**Annex D**), as the applicant has not provided additional information regarding the detailed design of the facilities, he considers his previous concerns on potential noise nuisance and odour have not been fully addressed. His previous view of not supporting the application is still valid and is recapitulated below:
 - (b) The applicant indicated that there are scattered households in the vicinity with the nearest one located at 70m to the southwest of the Site. Potential noise nuisance from dog barking and odour could be a concern if the facilities are not properly designed and maintained. As the applicant did not provide information such as design and operation details of the facilities to ascertain the environmental acceptability, he cannot lend his support to the application at this stage.
 - (c) Should the Board consider approving the application, the applicant should be reminded of his obligation to meet all statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures.
- 5.3 The following government departments have no further views/comments on the review application and maintain their previous adverse views on the s.16 application as below:

Nature Conservation and Animal Management

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

- (a) The Site falls in "Green Belt" zone. Based on past aerial photos, it is noted that the site was paved in March 2014. According to his recent site visit, the Site is currently vacant covered by common species of grass and shrubs, surrounded by secondary woodland of native species. The applicant has indicated in the application form that the proposed development would not involve any filling/excavation of land, site formation, diversion of stream or felling of trees. As such, he has no strong view on the application from nature conservation point of view, based on its existing site condition. Nonetheless, the history of the Site

and the planning intention of the “GB” zone among others is advised to be considered. Should the application be approved, the applicant is advised to adopt necessary measures to avoid affecting the trees and woodland surrounding the Site during construction (including formation of access, if any) and operation.

- (b) It is noted that the Site possesses a high potential of agricultural rehabilitation. It would be more desirable to solely use the Site for farming. As such, he does not support the application from agricultural point of view.
- (c) The subject address does not associate with any licence granted by his department, nor have his department received any application regarding the address. Under the current legislation, any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from his department.
- (d) Regarding the public comments enquiring the actual demand for animal boarding facilities, his department does not have the statistics or data related to the demand of animal boarding facilities in Hong Kong.

Landscape

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

- (a) She objects to the application from the landscape planning perspective.
- (b) With reference to the aerial photo taken in 2014, the Site is located in the middle part of an undisturbed wooded slope with dense vegetation of mature trees. Nevertheless, according to aerial photo taken in 2015 and her site visit observations on 17.1.2018, the Site has already been formed and some hoarding implemented. An informal vehicular access (track), within “GB” zone but outside the application boundary, has also been formed with vegetation clearance. Significant adverse impact on existing landscape resources, such as resulting from blanket removal of fauna and flora (mature vegetation cover with naturally grown trees) had already been taken place. In addition, other landscape/natural features such as the natural topography, landform and topsoil had also been irreversibly changed and adversely impacted. Apart from the heavy disturbance on the environment (within the application site and possible encroachment connecting to public road within “GB” zone) caused by the completed site formation, any potential or further effect on the surrounding natural habitat is unknown and should be assessed. In this regard, there is no information provided in the application.

- (c) In the application, there is no information (such as the extent, ground treatment, planting density, species of plants, maintenance and management approach) on the so-called “環保種植區” except an annotation of such on the proposed layout plan (Drawing A-2 of **Annex A**). The landscape compatibility and overall effectiveness of the proposed planting in the proposed “環保種植區” could not be ascertained. On the other hand, the practicality of spatial arrangement of the proposed “環保種植區” as in the middle core of the Site is in doubt. Any edge treatment to the Site, which is likely to be enclosed off from the surrounding “GB” area, is not mentioned in the application.
- (d) From landscape planning perspective, the proposal is not in line with the planning intention of this “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features. The existing site situation for the proposed use is not compatible with the surrounding from a landscape point of view. There is a general presumption against development within this zone. Approval of the application may set an undesirable precedent, likely encouraging other similar unauthorized development, in this area with high landscape sensitivity, without exploration of design option(s) and seeking prior planning approval.
- (e) With regards to the further information dated 28.1.2018 (Appendix Ic of **Annex A**), as a landscape proposal is not provided, her concerns on the landscape compatibility and overall effectiveness of the proposed planting are not adequately addressed. Moreover, the proposed fruit trees are not likely able to compensate for the loss of the landscape resources (such as mature trees).
- (f) As all existing vegetation within the Site has been removed, tree preservation proposal is no longer applicable. Nevertheless, should the application be approved, approval conditions requiring submission and implementation of a landscape proposal (including vegetation reinstatement to all disturbed ground) to the satisfaction of the Director of Planning or of the Board are recommended.

5.4 The following government departments have no further view/comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 10.1 of **Annex A**.

- (a) District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD);
- (b) Commissioner for Transport (C for T);
- (c) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (d) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);

- (e) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (f) Director of Fire Services (D of FS); and
- (g) Chief Engineer/Cross-boundary Infrastructure and Development, Planning Department (CE/CID, PlanD).

5.5 The following government departments have no further comment on the review application and maintain their previous views of having no comment on the s.16 application as stated in paragraph 10.2 of **Annex A**.

- (a) Chief Engineer/Construction, Water Supplied Department (CE/C, WSD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W)), CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Commissioner of Police (C of P); and
- (e) District Officer (Yuen Long) (DO(YL)).

6. **Public Comments on the Review Application Received During Statutory Publication Period**

On 6.4.2018, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 27.4.2018, 2 public comments were received (**Annexes E-1 and E-2**) from an individual and Kadoorie Farm and Botanic Garden raising objection to the review application mainly on the grounds of setting an undesirable precedent and failure to demonstrate no environmental impact.

7. **Planning Considerations and Assessments**

7.1 The application is for a review of RNTPC's decision on 9.2.2018 to reject the subject application for proposed animal boarding establishment at the Site zoned "GB" on the OZP (**Plan R-1**). The application was rejected for the reasons of not in line with the planning intention of "GB" zone; not complying with TPB-PG No. 10; failure to demonstrate no adverse environmental impact; and approval of the application would set an undesirable precedent for similar applications within the "GB" zone.

7.2 To support the s.17 review, the applicant submitted written justifications (**Annex D**) and claimed that the proposed development would not affect the integrity of the "GB" zone and would encourage revitalisation. On this aspect, it should be noted that the planning intention of the "GB" zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. The proposed development involving site formation and a 2-storey structure (Drawing A-3 of **Annex A**) is not in line with the planning intention of the "GB" zone and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention.

7.3 In the further submission (**Annex D**), the applicant argues that land in the vicinity of the Site has been used for unauthorized warehouses and vehicle repair workshops, which is unrecoverable. It should be noted that the Site is mainly surrounded by fallow agricultural land and vacant land, and forms part of a larger "GB" zone in the

area (**Plans R-2 and R-3**). The proposed development involving site formation and a 2-storey structure is considered not compatible with the surrounding areas which are of rural landscape character. While there are warehouses, open storage yards and car repair workshop to its further north and further east, they mainly falls within the “U” zone and are suspected unauthorised developments subject to enforcement action being taken by the Planning Authority.

- 7.4 The applicant also argues that the Site was an unused land prior to the subject application and there had been no intention to rehabilitate the Site for agricultural use, and the subject application proposes half of the site area for farming while the remaining half would be occupied by an animal shelter. In this regard, DAFC maintains his view of not supporting the application from agricultural point of view and considers that the Site possesses a high potential of agricultural rehabilitation. It would be more desirable to solely use the Site for farming. CTP/UD&L, PlanD maintains her view of objecting to the application from the landscape planning perspective. Significant adverse impact on existing landscape resources, such as extensive removal of vegetation had already been taken place, and the natural landform had also been changed and adversely impacted. No landscape proposal is provided in the s.16 or the s.17 stages to demonstrate that the proposed development would not cause adverse impact on the existing natural landscape. CTP/UD&L, PlanD maintains her concerns that approval of the application may set an undesirable precedent and likely encouraging other similar unauthorised development in this area.
- 7.5 According to the relevant Town Planning Board Guidelines (TPB PG-No.10), there is a general presumption against development within this zone and an application for new development within “GB” zone will only be considered in exceptional circumstances. It must be justified with very strong planning grounds. The development should not affect the existing natural landscape and cause any adverse landscape impact on the surrounding areas. Taking into account paragraphs 7.3 and 7.4 above, the proposed development does not comply with TPB-PG No. 10 in that the development is not compatible with the surrounding areas and the development would affect the existing natural landscape and the integrity of the “GB” zone.
- 7.6 In the further submission (**Annex D**), the applicant proposes a fence of 6 metre to block noise emitted from the proposed development, and to minimise odours by regularly cleaning the Site and maintaining good ventilation, and there are only scattered households in the vicinity with the nearest located as far as 70m to its southeast. DEP considers the submission is insufficient to address his concerns and maintains his view of not supporting the application as the applicant has not provided additional information regarding the detailed design of the facilities. Potential noise nuisance from dog barking as well as odour and sewage generated from the proposed use could be a concern if the facilities are not properly designed and maintained. Thus, the applicant also fails to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas.
- 7.7 There is no similar application within the “GB” zone on the OZP. Approval of the application would set an undesirable precedent for other similar uses to proliferate into the “GB” zone. The cumulative effect of approving such applications would result in a general degradation of the landscape quality of the green belt and undermine the intactness of the “GB” zone.

- 7.8 There are 2 public comments (**Annexes E-1 and E-2**) received during the statutory publication period raising objection to the review application on the grounds as summarised in paragraph 6 above and 3 public comments objecting to the application as stated in paragraph 11 of **Annex A**. The planning considerations and assessments in paragraphs 7.1 to 7.7 above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments as mentioned in paragraph 6, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 9.2.2018, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the development is not in line with the planning intention of “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the TPB Guidelines PG-No. 10 in that the proposed development would affect the existing natural landscape;
 - (c) the applicant has failed to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas; and
 - (d) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the landscape quality of the green belt.
- 8.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 8.6.2022, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) the submission and implementation of fire service installations proposal to

the satisfaction of the Director of Fire Services or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are attached at **Annex F**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.
- 9.3 Alternatively, should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

10. Attachments

Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a to R-4c	Site Photos
Annex A	RNTPC Paper No. A/YL-TYST/874
Annex B	Extract of minutes of the RNTPC Meeting held on 9.2.2018
Annex C	Secretary of the Board's letter dated 2.3.2018
Annex D	Letter of 21.3.2018 from the applicant applying for review with justifications
Annexes E-1 and E-2	Public comments received during statutory publication period of the review application
Annex F	Recommended Advisory Clauses

**PLANNING DEPARTMENT
JUNE 2018**