

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/783

- Applicant** : Mr. KWAN Chi Wik Victor
- Site** : Lot 1479 S.B (Part) in D.D.111, Leung Uk Tsuen, Kam Tin Road, Pat Heung, Yuen Long
- Site Area** : 288m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Shop and Services (Car Beauty) 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 temporary shop and services (car beauty) for a period of three years. The Site is currently used for open storage of vehicles without valid planning permission (**Plans A-2 to A-4**).
- 1.2 The Site was involved in eight previous applications (No. A/YL-PH/345, 443, 535, 603, 658, 680, 724 and 770) all for temporary open storage of private cars and lorries. All the applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) except the last application No. A/YL-PH/770 (submitted by a different applicant of the current application) which was rejected by the Committee on 16.3.2018 .
- 1.3 According to the applicant, a single-storey container-converted structure with floor area of about 15m² with height of about 2.59m (moveable and about 3m above ground level) is for retail and storage provided at the Site. Five private cars to display the car beauty products, four parking spaces for private cars and vans and one loading/unloading space for light goods vehicles will be provided on-site. The operation hours are between 9:00 a.m. and 8:00 p.m. daily. No goods vehicle exceeding 5.5 tonnes will be entered the Site. The Site is abutting and accessible from Kam Tin Road. The site layout plans,

drainage proposal and landscape proposal as submitted by the applicant are at **Drawings A-1 to A-3**.

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

- (a) Application form with plans received on 24.4.2018 (**Appendix I**)
- (b) Further information (FI) received on 4.6.2018 in (**Appendix Ia**) responses to departmental comments
(accepted and exempted from publication and recounting requirements)
- (c) Further information (FI) received on 11.6.2018 in (**Appendix Ib**) responses to departmental comments
(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 and FI in **Appendices I to Ib**. They can be summarized as follows:

- (a) The application is on temporary basis which will not jeopardize other land use in future. Also, there are some similar operations in the surrounding areas, approval of the application would strengthen the coordination among different operators and provide impetus on the development of the industry.
- (b) The Site will be used for retail of car beauty products (such as cleanser, back mirror, car audio, security system). No dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site.
- (c) Only vehicles not exceeding 5.5 tonnes will be entered the Site, and no traffic congestion nor damage to the road surface would be created. Traffic measures such as no vehicle is allowed to make right turn in and out to the Site, signage and alarm will be provided at the Site. Also, sufficient maneuvering space is provided within the Site.

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 Pat Heung Rural Committee by mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is currently not a subject of any active enforcement case. Should there be sufficient evidence to prove that the use on site is an unauthorized development under the Ordinance, appropriate enforcement action will be taken.

5. **Previous Applications**

- 5.1 The Site is the subject of eight previous applications (No. A/YL-PH/345, 443, 535, 603, 658, 680, 724 and 770) for temporary open storage of private cars and lorries use submitted by different applicant as the current application approved with conditions by the Committee on 27.10.2000, 19.9.2003, 2.2.2007, 29.1.2010, 25.1.2013, 13.12.2013, 22.1.2016 and 16.3.2018 respectively. Details of the applications are summarized in **Appendix II** and the locations of the sites are shown on **Plan A-1b**.
- 5.2 Application No. A/YL-PH/345 was approved with conditions by the Committee on 27.10.2000 for 2 years mainly for the reasons that the use would unlikely induce significant traffic and environmental impacts on the surrounding areas. Relevant Government departments consulted had no adverse comments on the application and no local objection was received against the application. The site would be required for road works of 'Improvement to Kam Tin Road, Stage II' which was then scheduled to start construction in end-2002, therefore the permission was given on a temporary basis for 2 years up to 27.10.2002.
- 5.3 Applications No. A/YL-PH/443, 535, 603, 658, 680 and 724 were approved with conditions by the Committee on 19.9.2003, 2.2.2007, 29.1.2010, 25.1.2013, 13.12.2013 and 22.1.2016 respectively mainly for similar reasons that the development was generally in line with the Town Planning Board Guidelines on Application for Open Storage and Port Back-up Uses in that previous approval had been granted. Relevant Government departments consulted generally had no adverse comments on the application and no local objection to the application had been received. However, three applications (No. A/YL-PH/658, 680 and 724) submitted by the same applicant for the same use were revoked between 2013 and 2017. Application No. A/YL-PH/658 was revoked on 29.7.2013 due to non-compliance of approval conditions in relation to the submission of drainage, tree preservation and fire safety aspects. Application No. A/YL-PH/680 was revoked on 13.12.2015 due to non-compliance of approval conditions regarding the provision of run-in/out to/from Kam Tin Road. Application No. A/YL-PH/724 was revoked on 22.12.2017 due to non-compliance of provision of run-in/out to/from Kam Tin Road and the implementation of the tree preservation proposal.
- 5.4 The last planning application No. A/YL-PH/770 was rejected by the Committee on 16.3.2018 mainly on the grounds that previous planning permissions granted to the applicant under Applications No. A/YL-PH/658, 680 and 724 were revoked due to non-compliance with approval conditions.

Approval of the application with repeated non-compliances would set an undesirable precedent for other similar planning applications for temporary uses which are also subject to the requirement to comply with the approval conditions, thus nullifying statutory planning control.

5.5 As compared to the last approved application, the current application is submitted by a different applicant and for a different use.

6. Similar Application

There is no similar application within the same “AGR” zone.

7. The Site and Its Surrounding Areas (Plans A-1a to A-2 and Photos on Plan A-4)

7.1 The Site:

- (a) directly abuts Kam Tin Road;
- (b) is fenced off and paved; and
- (c) is currently used for open storage of vehicles without valid planning permission.

7.2 The surrounding areas are mixed with open storage/storage yards, workshops, graves, residential structures/dwellings and vacant/unused land. Some of the open storage/storageyard and workshop are suspected unauthorized development (UD) subject to enforcement action by the Planning Authority;

- (a) to its immediate east is an open storage of vehicles. Residential structures/dwellings and a temporary site office operated with planning permission under Application No. A/YL-PH/717 are located to its further southeast on land zoned “Village Type Development” (“V”) on the OZP (**Plan A-2**);
- (b) to its immediate south and west are residential structures/dwellings. Open storage yards, graves and vacant/unused land are located to the further southwest; and
- (c) across Kam Tin Road is an area zoned “Open Storage” on the OZP. Open storage yards and workshops are found within the zone.

8. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views 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 the prior approval of the Government.
- (b) Lot No. 1479 S.B in D.D. 111 is covered by a Short Term Waiver (STW) No. 4652 to permit structures erected thereon for the purpose of “temporary open storage (private car and lorries)”.
- (c) The Site is accessible to Kam Tin Road via Government Land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (d) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (e) Should the application be approved, the STW holder(s) will need to apply to his office for modification of the STW conditions if there is any irregularities on site. Such application(s) will be considered by LandsD acting in the capacity as 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 Comments of the Commissioner for Transport (C for T):

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, the following approval conditions should be included:

- (i) No vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.
- (ii) No vehicle is allowed to make right turn from public road to the Site or right turn from the Site to the public road at any time during the planning approval period.
- (iii) The submission of a run-in/out proposal to/from Kam Tin Road and its implementation to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board.

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

Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Agriculture

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

- (a) As the Site has been used as an open storage uses for a number of years in the past and its potential for agricultural rehabilitation is very low, he has no strong view against the application from agricultural point of view.
- (b) Should the application be approved, the applicant is advised to avoid damages to the mature roadside trees on the northern boundary of the Site along Kam Tin Road during operation.

Environment

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

- (a) Should the application be approved, the applicant is advised to follow the latest 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' issued by the EPD in order to minimize any possible environmental nuisances.
- (b) The applicant is also be reminded that effluent discharges from the proposed use are subject to control under the Water Pollution Ordinance (WPCO). A discharge licence under the WPCO should be obtained before a new discharge is commenced. It is the obligation of the applicant to meet all statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures.

Landscape

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

- (a) She has no objection to the application from the landscape planning point of view.
- (b) The Site is adjacent to Kam Tin Road to the north. The Site is the subject of eight previous applications and she had no objection to the last application for open storage of private cars and lorries (No. A/YL-PH/770) from the landscape planning perspective.
- (c) Based on the aerial photo taken in January 2018, the Site is situated in an area of rural landscape character comprising of scattered tree groups, open storages and small houses. Although the proposed use is not in line with the planning intention of “AGR” zone, it is not incompatible to the surrounding environment.
- (d) According to the site visit in May 2018, the Site is currently used for car parking and open storage. Existing trees within the Site are in fair to good condition. Adverse impact arising from the proposed development on landscape resources is not anticipated.
- (e) Should the application be approved, the conditions for submission and implementation of tree preservation proposal should be included in the planning permission.

Drainage

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

- (a) As the applicant would maintain the same drainage facilities as those implemented under previous application No. A/YL-PH/724, he has no in-principle objection to the proposed development.
- (b) Should the application be approved, conditions requiring the applicant to maintain the drainage facilities implemented under Application No. A/YL-PH/724 and to submit records of the existing drainage facilities on the Site should be included in the planning permission.

Fire Safety

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

- (a) He has no in-principle 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. The layout plan should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

9.1.9 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 for the existing structures at the Site, BD is not in a position to offer comments on their suitability for the proposed use.
- (b) The applicant's attention is drawn to the following points:
 - (i) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
 - (ii) 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.
 - (iii) Before any new building works (including containers / open sheds as temporary buildings and land filling) are to be carried out on Site, prior approval and

consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

- (iv) 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.
- (v) 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.

District Officer's Comments

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

He has not received any comment from the locals upon close of consultation and he has no particular comment on the application.

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

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

10. Public Comment Received During the Statutory Publication Period

On 4.5.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 25.5.2018, no comment was received.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services (car beauty) for a period of three years within the "AGR" zone. Although the development is not in line with the planning intention of the "AGR" zone which is intended to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes, DAFC has no strong view against the application from the agricultural point of view as the

potential for agricultural rehabilitation of the Site is very low. It is considered that approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone.

- 11.2 The development is considered not incompatible with the surrounding areas which are mixed with open storage/storage yards, workshops, graves, residential structures/dwellings and vacant/unused land. Also, the Site has direct access from Fan Kam Road without passing through residential dwellings/structures.
- 11.3 Given the nature and scale of the development, the proposed use is not anticipated to generate significant adverse traffic, environmental, visual and landscape impact. The relevant developments consulted including C for T, DEP, CE/MN of DSD, CTP/UD&L of PlanD and D of FS have no adverse comment on the application. To minimize any possible environmental nuisance generated by the proposed development, approval conditions restricting operation hours and types of vehicles used and prohibiting dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities are recommended in paragraphs 12.2 (a) and (c) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to alleviate any potential environmental impact. Moreover, the technical requirements of C for T, CE/MN of DSD, CTP/UD&L of PlanD and D of FS could be addressed by approval conditions in paragraph 12.2 (d) to (m) below.
- 11.4 The Site was subject to eight previous applications for temporary open storage uses. Seven of them were approved with conditions by the Committee between 2000 and 2016 and the last application (No. A/YL-PH/770) for temporary open storage of private cars and lorries for a period of 3 years was rejected by the Committee on 16.3.2018. The application was rejected mainly on the grounds that three previous permission granted for the open storage use at the Site were revoked due to non-compliances with approval conditions. Approval of the application with repeated non-compliances would set an undesirable precedent for other similar planning applications for temporary uses which are also subject to the requirement to comply with the approval conditions, thus nullifying statutory planning control. As compared with the last application, the current application is for a different use and submitted by a different applicant.
- 11.5 No public comment was received during the statutory publication period.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 12 above, the Planning Department considers that the proposed temporary shop and services (car beauty) could be tolerated 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 15.6.2021. 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) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site at any time during the planning approval period;
- (c) no vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance, as proposed by the applicant, are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) no vehicle is allowed to make right turn from public road to the Site or right turn from the Site to the public road at any time during the planning approval period;
- (f) the submission of a run-in/out proposal to/from Kam Tin Road within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport and Director of Highways or of the Town Planning Board by 15.12.2018;
- (g) in relation to (f) above, the implementation of the run-in/out proposal to/from Kam Tin Road within **9** months from the date of planning approval to the satisfaction of the Commissioner for Transport and Director of Highways or of the Town Planning Board by 15.3.2019;
- (h) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the submission of a record of the existing drainage facilities on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 15.9.2018;
- (j) the submission of tree preservation proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 15.12.2018;

- (k) in relation to (j) above, the implementation of tree preservation proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 15.3.2019;
- (l) the submission of fire services 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 15.12.2018;
- (m) in relation to (l) above, the implementation of fire services 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 15.3.2019;
- (n) if any of the above planning conditions (a), (b), (c), (d), (e) or (h) 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;
- (o) if any of the above planning conditions (f), (g), (i), (j), (k), (l) or (m) 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; and
- (p) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are at **Appendix III**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Member's reference:

the development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong justification has been given in the submission for a departure from the planning intention, even on temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to 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.

- 14.3 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.

15. Attachments

Appendix I	Application form with plans received on 24.4.2018
Appendix Ia	FI received on 4.6.2018
Appendix Ib	FI received on 11.6.2018
Appendix II	Previous s.16 applications covering the application site
Appendix III	Advisory Clauses
Drawings A-1a and A-1b	Site Layout Plans
Drawing A-2	Drainage Proposal Plan
Drawing A-3	Landscape Proposal Plan
Plan A-1a	Location Plan
Plan A-1b	Previous Applications Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JUNE 2018**