

RNTPC Paper No. A/YL-PH/837A
For Consideration by
the Rural and New Town
Planning Committee
on 4.9.2020

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/837

- Applicant** : Smartek Engineering Investment Limited represented by Sun Cheong Management Consultant Limited
- Site** : Lots 745 S.B. ss.1, 745 S.B. ss.2 (Part) and 745 S.B RP (Part) in D.D. 111, Fan Kam Road, Pat Heung, Yuen Long
- Site Area** : About 368m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
- Zoning** : “Village Type Development” (“V”)
[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 proposed temporary shop and services (ironware and hardware store without cement, sand, chemical product and dangerous goods) with ancillary office for a period of 3 years. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant (**Plans A-2 to A-4**).
- 1.2 The Site was the subject of four previous planning applications for temporary open storage, vehicle park and sales of second hand car uses. The last application No. A/YL-PH/747 for temporary public vehicle park for private car for a period of 3 years was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 28.7.2017. However, the planning permission was revoked on 28.1.2019 due to non-compliance with approval conditions.
- 1.3 According to the applicant, the proposed development involves 2 single-storey structures with a total floor area of about 72m² and building height not exceeding

5m for retail shop and an ancillary office. One private car parking space and one loading / unloading space for light goods vehicle will be provided within the Site. The Site is accessible from Fan Kam Road to the east. The operation hours are between 8:00 a.m. and 10:00 p.m. from Mondays to Saturdays. There is no operation on Sundays and public holidays. The site layout plan, landscape, drainage and fire service installation plans submitted by the applicant are at **Drawings A-1 to A-4**.

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with planning statement and plans (**Appendix I**) received on 23.3.2020
 - (b) Further Information (FI) received on 14.7.2020 in (**Appendix Ia**) response to departmental comments
[exempted from publication requirement]
 - (c) FI received on 26.8.2020 in response to departmental (**Appendix Ib**) comments
[exempted from publication requirement]
- 1.5 On 15.5.2020, the Committee agreed to defer a decision on the application to allow time for the applicant to prepare FI to address departmental comments. After the deferral request, the applicant submitted FIs in response to departmental comments. The application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the planning statement in **Appendix I**. They can be summarized as follows:

- (a) There are no similar shops in Pat Heung. The proposed development would be of convenience and could serve the nearby villagers.
- (b) The proposed development is a temporary use and would not jeopardize the long-term planning intention of the “V” zone.
- (c) The nature and layout of the proposed development are compatible with the surrounding environment. The Site’s area is small, and no adverse drainage, traffic, environmental and visual impacts will be generated.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not subject to planning enforcement action.

5. Previous Applications

- 5.1 The Site was the subject of four previous planning applications submitted by different applicants as the current application for temporary open storage, vehicle park and sales of second hand car uses. Details of the applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.

Two approved cases

- 5.2 Applications No. A/YL-PH/473 and 747 for temporary car park (private car) were approved with conditions by the Committee in 2004 and 2017 respectively, mainly on the considerations that temporary approval would not jeopardize the long-term planning intention; the development was not incompatible with the surrounding land uses; could meet some of the local parking needs; relevant departments had no adverse comment; and technical concerns could be addressed by appropriate approval conditions. However, the planning permission for both applications were revoked in 2004 and 2019 respectively due to non-compliance with approval conditions.

Two rejected cases

- 5.3 Applications No. A/YL-PH/486 and 493 for temporary open storage of vehicles and sale of second-hand cars were rejected by the Committee in 2005 for reasons that the proposed development was not in line with the planning intention of the “V” zone; the proposed development did not comply with the Town Planning Board Guidelines for “Application for Open Storage and Port Back-up uses” and there was insufficient information to demonstrate that an acceptable vehicular access would be provided (A/YL-PH/486 only); the proposed development was not compatible with the surroundings; and there was insufficient information to demonstrate that the development would not have adverse drainage / environmental impacts on the surrounding areas.

6. Similar Applications

- 6.1 There are two similar applications for temporary shop and services use within the same “V” zone. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Applications No. A/YL-PH/761 and 818 for proposed temporary shop and services (pet clinic) and proposed temporary shop and services with ancillary staff canteen were approved with conditions by the Committee in 2017 and 2020 respectively mainly on considerations that temporary approval would not jeopardize the planning intention of the “V” zone; the proposed development was not incompatible with the surrounding land uses; and there was no adverse comment from concerned departments. However, the planning permission of application No. A/YL-PH/761 was revoked on 8.5.2020 due to non-compliance with approval conditions.

7. The Site and Its Surrounding Areas (Plans A-2 to A-4)

- 7.1 The Site is:
 - (a) vacant and paved; and
 - (b) accessible from Fan Kam Road via a local track.
- 7.2 The surrounding areas are rural in character intermixed with residential dwellings / structures, open storage yards, parking of vehicles, clubhouse and vacant / unused land. Some of the open storage yards and parking of vehicles are suspected unauthorized development subject to planning enforcement action by the Planning Authority (**Plan A-2**):
 - (a) on the north, west and south are residential dwellings / structures, parking of vehicles (including two with planning permission under applications No. A/YL-PH/769 and 820), clubhouse (with planning permission under application No. A/YL-PH/767) and vacant / unused land; and
 - (b) on the east across Fan Kam Road are residential dwellings / structures, open storage yards, parking of vehicles and vacant / unused land.

8. Planning Intention

The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. 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 New Territories Exempted House (NTEH). Other commercial, community and recreational uses may be permitted on application to the Board.

9. Comments from Relevant Government Departments

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

Land Administration

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

- (a) The Site comprises 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) If the planning application is approved, the lot owner(s) will need to apply to his office to permit the structure(s) to be erected or regularize any irregularities on Site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above 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 rent or fee, as may be imposed by the LandsD.
- (c) There is no Small House application approved or under processing at the Site.

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, approval condition on no vehicle is allowed to queue back to or reverse onto / from public

road at any time during the planning approval period should be included.

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

- (a) HyD is not/shall not be responsible for the maintenance of any access connecting the Site and Fan Kam Road.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads or exclusive road drains.

Environment

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

- (a) There was no environmental complaint received for the Site in the past three years.
- (b) The applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary uses and Open Storage Sites” issued by DEP.

Drainage

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

- (a) He has no in-principle objection to the proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions on the submission of a revised drainage proposal, and implementation and maintenance of the drainage proposal for the development should be included.
- (c) His detailed comments on the submitted drainage proposal are at **Appendix IV**.

Fire Safety

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

- (a) He has no in-principle objection to the application 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 plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI 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

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

- (a) As there is no record of approval by the Building Authority (BA) 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 BA, they are unauthorised building works (UBW) under the 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 the prevailing 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, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they 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) The Site does not abut on a specified street of not less than 4.5m wide and 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

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

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

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

- (a) Director of Electrical and Mechanical Services;
- (b) Project Manager/ West, Civil Engineering and Development Department;
- (c) Chief Engineer/Construction, Water Supplies Department; and
- (d) Commissioner of Police.

10. Public Comments Received During Statutory Publication Period

On 31.3.2020, the application was published for public inspection. During the three-week statutory publication period, two public comments were received from village representative and indigenous inhabitant representative of Sheung Che Village (**Appendices V-1 and V-2**). The public comments object to the application mainly on the grounds that the application did not specify what type of shop and services is involved; the Site is zoned "V" and should be only used for residential development; there had been a UD case nearby in the same "V" zone; the area is prone to flooding; the proposed development is in close proximity to nearby residences; would result in adverse traffic

and environmental impacts and affect the health and safety of the villagers; and the proposed development would adversely affect the fungshui of the village.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary shop and services (ironware and hardware store) with ancillary office for a period of 3 years at the “V” zone. The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. The proposed use is not entirely in line with the planning intention of the “V” zone. Nevertheless, DLO/YL, LandsD advised that there is currently no Small House application approved or under processing at the Site. Besides, according to the applicant, the proposed development is intended to serve the nearby villagers. It is considered that temporary approval of the application would not frustrate the long-term planning intention of the “V” zone.
- 11.2 The proposed development is not considered incompatible with the surrounding land uses which is rural in character intermixed with residential dwellings / structure and vacant / unused land.
- 11.3 In view of the nature and scale of the proposed development and its location abutting Fan Kam Road, it is unlikely that the proposed temporary shop and services use would generate significant adverse traffic and drainage impacts and environmental nuisance to the surrounding area. Relevant departments consulted including C for T, DEP, CE/MN of DSD and D of FS have no adverse comment on the application. The applicant will be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any possible environmental nuisance. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (a) to (f) below.
- 11.4 The Site is subject to four previous applications for temporary carpark / open storage of vehicles and sale of second-hand cars, with two rejected and two approved as detailed in paragraph 5 above. The last previous application No. A/YL-PH/747 for proposed temporary public vehicle park submitted by a different applicant was approved in 2017 but was revoked in 2019 due to non-compliance of approval conditions. The current application is for a different use and submitted by a different applicant. There are two similar applications for temporary shop and services uses within the same “V” zone, which were approved with conditions by the Committee in 2017 and 2020 respectively as detailed in paragraph 6.2 above. Approval of the current application is in line with the Committee’s previous decisions on the similar applications.
- 11.5 Two public comments objecting to the application were received during the statutory publication period as mentioned in paragraph 10 above. In this regard,

the departmental comments as well as planning considerations and assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taking into account the public comments as mentioned in paragraph 10, the Planning Department has no objection to the proposed temporary shop and services 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 4.9.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (b) the submission of a revised drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 4.3.2021;
- (c) in relation to (b) above, the implementation of the revised drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 4.6.2021;
- (d) in relation to (c) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) the submission of 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 4.3.2021;
- (f) in relation to (e) above, the implementation of 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 4.6.2021;
- (g) if any of the above planning condition (a) or (d) 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

- (h) if any of the above planning condition (b), (c), (e) or (f) 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 attached at **Appendix VI**.

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

the proposed development is not in line with the planning intention of the "V" zone which is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form with planning statement and plans received on 23.3.2020
Appendix Ia	FI received on 14.7.2020
Appendix Ib	FI received on 26.8.2020
Appendix II	Previous applications covering the Site
Appendix III	Similar applications within the same "V" zone on the Pat Heung OZP

Appendix IV	Detailed comments of CE/MN of DSD
Appendices V-1 and V-2	Public comments received during the statutory publication period
Appendix VI	Advisory clauses
Drawing A-1	Layout Plan
Drawing A-2	Landscape Plan
Drawing A-3	Drainage Plan
Drawing A-4	FSI Proposal
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Application Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2020**