

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

**APPLICATION NO. A/YL-PH/791**

- Applicant** : 鄧威良先生
- Site** : Lots 60 (Part), 61 (Part) and 62 (Part) in D.D. 114, Pat Heung, Yuen Long
- Site Area** : 3,000 m<sup>2</sup> (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 (Second-Hand Motor Vehicles Showroom) 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 (second-hand motor vehicles showroom) for a period of 3 Years. The Site is vacant and partly covered by grass (**Plans A-2 to A-4b**).
- 1.2 The Site was involved three previous applications (No. A/YL-PH/333, 401 and 758). The first two applications (No. A/YL-PH/333 and 401) covered part of the Site for temporary open storage were rejected by the Rural and New Town Planning Committee (the Committee) or by the Town Planning Board (the Board) in 2000 and 2002. Application No. A/YL-PH/758 covered almost the whole Site for proposed temporary public vehicle park (private cars, lorries and coaches) submitted by the same applicant of the current application was rejected by the Board on 9.3.2018.
- 1.3 According to the applicant, the proposed second-hand motor vehicles showroom comprises 20 spaces for private cars, 15 spaces for light goods vehicles and a two-storey container-converted structure with floor area of about 216m<sup>2</sup> with height of about 6m for office and staff resting lounge. Three parking spaces for visitors will be provided on-site. The operation hours are between 9:00 a.m. and 6:00 p.m. daily except Friday. No goods vehicle exceeding 5.5 tonnes will enter the Site. The Site is accessible from Kam Tin Road via a local track. The site

layout plan with landscape and fire services installations proposals and vehicular access plan as submitted by the applicant are at **Drawings A-1 and A-2**.

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

- (a) Application form with supplementary statement and **(Appendix I)** plans received on 7.8.2018
- (b) Supplementary information (SI) received on 8.8.2018 **(Appendix Ia)** clarifying the site area
- (c) SI received on 9.8.2018 clarifying the operation details **(Appendix Ib)** of the proposed use
- (d) Further information (FI) received on 20.9.2018 and 21.9.2018 clarifying the transport arrangement and trip generation to the Site  
*(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 supplementary statement, SI and FI in **Appendices I to Ic**. They can be summarized as follows:

- (a) The proposed use is mainly use for display of second hand vehicles. No flammable substances will be stored at the Site. No dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site.
- (b) Landscaping and fire service installations will be provided and maintained. It is expected that no traffic impact will be induced by the proposed development.

## **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**

- 4.1 Part of the Site was the subject of a planning enforcement case against an unauthorized development (UD) involving storage use. Enforcement Notice was issued to the responsible persons on 8.2.2017, and some of them were convicted by the court on 28.2.2018. Upon the discontinuation of the UD, Compliance Notice was issued on 10.5.2018.
- 4.2 The Site is still under monitoring by the Planning Authority. Should there be sufficient evidence to prove that the use on site is an UD under the Town Planning Ordinance, a new round of enforcement action will be instigated.

#### **5. Previous Applications**

- 5.1 A portion (about 30%) at the eastern part the Site was involved in 2 previous applications (No. A/YL-PH/333 and 401) for temporary open storage of vehicles and vehicle parts prior to sale/temporary open storage of new and old vehicles and vehicle parts and majority of the Site involved in a previous application (No. A/YL-PH/758) for proposed temporary public vehicle park (private cars, lorries and coaches). The last application was submitted by the same applicant of the current application. Details are summarized in **Appendix II** and the locations are shown on **Plan A-1**.
- 5.2 The three applications were rejected by the Committee or by the Board on review on 30.6.2000, 4.10.2002 and 9.3.2018 respectively. They were rejected mainly on the grounds that the developments were not in line with the planning intention of the “AGR” zone; insufficient information to demonstrate the development would not have adverse drainage/ environmental impact; and approval of the applications would set undesirable precedents for similar uses to proliferate into the “AGR” zone.

#### **6. Similar Application**

There is a similar application No. A/YL-PH/783 for temporary shop and services (car beauty) which was approved with conditions by the Committee on 15.6.2018 mainly for the reasons that the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone; the development is not incompatible with the surrounding area; the proposed use is not anticipated to generate significant adverse traffic, environmental and landscape impact; and no adverse comment from government departments and the public. Details are summarized in **Appendix III** and the location is shown on **Plan A-1**.

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

- 7.1 The Site:
- (a) is vacant and partly covered by grass; and
  - (b) accessible via a local track branching off Kam Tin Road.

7.2 The surrounding areas are intermixed with plant nurseries, cultivated agricultural land, a residential dwelling/structure, open storage yards, and vacant/unused land. Most of the open storage yards within the “AGR” zone are suspected unauthorised development subject to enforcement action by the Planning Authority:

- (a) to its immediate east is a local track and vacant land and further east are some open storage of vehicles within the “Open Storage” (“OS”) zone. A residential dwelling/structure is located at its northeast;
- (b) to its south is a plant nursery;
- (c) to its west are a plant nursery, open storage yards of vehicle and construction materials and vacant land; and
- (d) to its north are vacant/unused land and cultivated agricultural land and further north are open storage yards within the “OS” 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 Old Scheduled 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 Kam Tin Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structures shall not exceed the relevant airfield height limit within SKAHRA.

- (d) Should planning approval be given to the application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application 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, 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.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) HyD does not and will not maintain any access connecting the Site and Kam Tin Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and 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) Should the application be approved, 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.

### **Landscape**

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

- (a) She has some reservation to the application from the landscape planning perspective.
- (b) The Site is connected to Kam Tin Road via a paved driveway to the north. Small Houses are concentrated within “V” zone to the further north of the Site. The Site is subject to a previous rejected application for car park use (No. A/YL-PH/758) to which she has some reservation from the landscape planning perspective.
- (c) Referring to the aerial photos taken in March 2018, the Site is situated in an area of rural landscape character comprising scattered tree groups and open storages. Although the proposed use is not in line with the planning intention of “AGR” zone, it is not incompatible to the surrounding environment.
- (d) With reference to the site visit in August 2018, the Site is vacant and hard paved. No existing tree is recorded within the Site. Although adverse impact to landscape resources arising from the proposed use is not anticipated, approval of the application would set an undesirable precedent to encourage such unauthorized removal of vegetation. The cumulative effect would result in degradation of landscape character and cause adverse impact on landscape resources.
- (e) Should the Board approve the application, approval condition on submission and implementation of the landscape proposal should be included.
- (f) Detailed comments are at **Appendix IV**.

### **Agriculture**

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

As there are active agricultural activities in the vicinity of the Site and the Site possess potential for agricultural rehabilitation, he does not support the application from agricultural point of view.

### **Drainage**

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

- (a) He has no objection in-principle to the proposed development.
- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal for the development and implementation and maintenance of the drainage proposal 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) The fire service installations proposal submitted by the applicant is considered acceptable to his department. The applicant is advised that installation/ maintenance/ modification/ repair work of FSI shall be undertaken by an Registered Fire Service Installation Contractor (RFSIC). The RFSIC shall after completion of the installation/ maintenance/ modification/ repair work issue to the person on whose instruction the work was undertaken a certificate (FS 251) and forward a copy of the certificate to the D of FS.
- (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) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of his department, they are unauthorized under the 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) 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.
- (e) 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 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) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Project Manager(West), Civil Engineering and Development Department (PM(W), CEDD) ; and
- (d) Commissioner of Police (C of P).

## **10. Public Comments Received During the Statutory Publication Period**

- 10.1 On 14.8.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 4.9.2018, twenty comments from a Yuen Long District Council (YLDC) member, the Hong Kong Bird Watching Society, Designing Hong Kong, general public, the operator of the nearby plant nursery and local villagers (**Appendices V-1 to V-20**) were received.
- 10.2 The YLDC member objects to the application without providing grounds. Other commenters objects the application mainly on the grounds that the proposed use is not in line with the planning intention of the "AGR" zone; enforcement notices for unauthorized development were issued; involved "destroy first, build later" case; approval of the application would set an undesirable precedent to further similar applications; the Site is subject to previous rejected case of similar use and no merit for approval; and DAFC's objection should be considered.



## 11. **Planning Considerations and Assessments**

- 11.1 The application is for proposed temporary shop and services (second-hand motor vehicles showroom) for a period of three years within the “AGR” zone which is intended to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed development is not in line with the planning intention of the “AGR” zone. DAFC does not support the application as the Site has potential for agricultural rehabilitation. No strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.
- 11.2 The surrounding areas are intermixed with plant nurseries, cultivated agricultural land, a residential dwelling/structure, open storage/yards, and vacant/unused land. While there are some open storage yards within the “AGR” zone (**Plan A-2**), however, it is noted that most of them are suspected unauthorized developments subject to enforcement action by the Planning Authority. CTP/UD&L of PlanD has some reservation on the application as approval of the application would set an undesirable precedent to encourage unauthorized removal of vegetation, and cumulative effect would result in degradation of landscape character and cause adverse landscape impact on landscape resources.
- 11.3 Three previous applications for temporary open storage (No. A/YL-PH/330 and 401) (at the eastern part of the Site) and public vehicle park (No. A/YL-PH/758) uses were all rejected by the Committee or the Board in 2000, 2002 and 2018 with similar grounds stated in paragraph 5.2 above. While a similar application No. A/YL-PH/783 for proposed shop and services (car beauty) was approved with conditions by the Committee in 2018, it is subject to different circumstance than the current application as the application site is located to the further north of the “V” zone adjoining Kam Tin Road (**Plan A-1**) with a much smaller site area (i.e. 288m<sup>2</sup>), no active agricultural activities in the vicinity, no adverse comments from relevant departments including DAFC and CTP/UD&L of PlanD and no local objection to the application had been received.
- 11.4 Twenty public comments objecting the application were received as stated in paragraph 10 above. In this regard, the planning assessments and considerations above are relevant.

## 12. **Planning Department’s Views**

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments in paragraph 10, the Planning Department does not support the application for the following reason:

the proposed 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. This zone is also intended to retain fallow arable

land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 5.10.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Fridays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) 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;
- (d) no medium and heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the submission of landscape 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 5.4.2019;
- (g) in relation to (f) above, the implementation of landscape 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 5.7.2019;
- (h) the submission of 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 5.4.2019;
- (i) in relation to (h) above, the implementation of 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 5.7.2019;
- (j) in relation to (i) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;

- (k) the implementation of the accepted 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 5.4.2019;
- (l) if any of the above planning conditions (a), (b), (c), (d), (e) or (j) 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;
- (m) if any of the above planning conditions (f), (g), (h), (i) or (k) 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
- (n) 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 VI**.

**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 plans received on 7.8.2018
- Appendix Ia** SI received on 8.8.2018
- Appendix Ib** SI received on 9.8.2018
- Appendix Ic** FI received on 20.9.2018 and 21.9.2018
- Appendix II** Previous s.16 applications covering the application site
- Appendix III** Similar application within the same “AGR” zone

<b>Appendix IV</b>	Detailed comments from CTP/UD&L of PlanD
<b>Appendices V-1 to V-20</b>	Public comments received during the statutory publication period
<b>Appendix VI</b>	Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Drawing A-2</b>	Vehicular Access Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a and 4b</b>	Site Photos

**PLANNING DEPARTMENT  
OCTOBER 2018**