

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/YL-SK/256

- Applicant** : Mr. CHEUNG Kin-kwok
- Site** : Lots 1353 S.A, 1354 (Part) and 1355 S.A in D.D. 114, Shek Kong, Yuen Long
- Site Area** : About 1,369 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
- Zoning** : “Conservation Area” (“CA”)
- Application** : Renewal of Planning Approval for Temporary Dog Kennels for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to use the application site (the Site) for temporary dog kennels for a period of 3 years. The Site is currently used for the applied use with valid planning permission until 2.8.2019.
- 1.2 The Site is the subject of 5 previous applications (No. A/YL-SK/131, 150, 173, 190 and 217) for the same applied use submitted by the same applicant, which were all approved with conditions by the Rural and New Town Planning Committee (the Committee) for a period of 3 years from 2006 to 2016. The last application No. A/YL-SK/217 was approved with conditions by the Committee for a period of 3 years on 15.7.2016. All approval conditions of it have been complied with. The validity of the planning permission is until 2.8.2019.
- 1.3 According to the information provided by the applicant, the current application is the same as the last application No. A/YL-SK/217 in terms of applied use, site area, layout and development parameters. The development involves 10 existing one to two-storey structures with a building height of 2.7m to 4.28m and a total non-domestic floor area of about 430.2m² are erected within the Site for dog

kennel, dog whelping room, mating room, store room and staff accommodation uses, etc. The Site is accessible via a local track/path leading from Kam Sheung Road to its north. Plans showing the locations, site layout, fire services installations (FSIs), drainage and landscape proposals submitted by the applicant are at **Drawings A-1 to A-5**.

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with plans received on 16.5.2019 **(Appendix I)**
 - (b) Supplementary Information received on 17.5.2019 **(Appendix Ia)**
 - (c) Further Information (FI) received on 20.6.2019 in response to departmental comments **(Appendix Ib)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form in **Appendix I**, which are briefly summarized as follows:

- (a) Enforcement action was taken against the applicant by the Agriculture, Fisheries and Conservation Department (AFCD) in October 2005. The applicant was required to apply for licence for selling dogs and to obtain planning approval from the Town Planning Board (the Board).
- (b) Because of the applicant's old age, he cannot find a job and can only sell dogs to make a living. All the structures have been on the Site for about 30 years for rearing of animals. Licence for sewage disposal has been obtained from the Environmental Protection Department (EPD) since 1993.
- (c) There is no change to the existing Fire Services Installations (FSIs) facilities approved under the previous approved application No. A/YL-SK/217.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is one of the two "current land owners". In respect of the other "current land owner", the applicant 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.31A) by having obtained consent from the other land owner. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34B) are relevant to this application. The relevant assessment criteria are attached at **Appendix II**.

5. Background

The Site is not the subject of any active enforcement case.

6. Previous Applications

- 6.1 The Site is involved in 5 previous applications (No. A/YL-SK/131, 150, 173, 190 and 217) for the same use at the Site submitted by the same applicant, which were all approved by the Committee for a period of 3 years. Details of the applications are summarized in **Appendix III** while their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-SK/131 on largely the same site was approved with conditions by the Committee on 3.3.2006 for a period of 3 years mainly on the consideration that the site was located in a remote location surrounded by dense woodland and was well screened by trees at the entrance; it was previously used as a chicken farm and structures had already been in existence at that time; the temporary use would unlikely have adverse environmental impact on the surrounding areas; the Director of Agriculture, Fisheries and Conservation (DAFC) had no adverse comment on the application from the ecological point of view as the site had been substantially paved and developed and only some fruit trees or common species were found on the site; sympathetic consideration could be given as it would be difficult for the applicant to find other suitable place for relocation of the dog kennels; and the temporary dog kennels which had to obtain discharge licence and animal trader licence would be subject to control and monitoring by the relevant authorities.
- 6.3 Application No. A/YL-SK/150 for renewal of planning approval of the same temporary dog kennels use under Application No. A/YL-SK/131 was approved with conditions by the Committee on 9.1.2009 for a period of 3 years mainly on the consideration that the site was located at the fringe of the “CA” zone and its use was not incompatible with the other rural residential and agricultural land uses to its north; the temporary dog kennels had obtained valid sewage disposal and animal trading licences; temporary use would unlikely have significant adverse environmental impact on the surrounding areas; there was no environmental complaint concerning the subject dog kennels at the site in the past 3 years, no material change in planning circumstances since the granting of the previous temporary approval under Application No. A/YL-SK/131 and no adverse comments from relevant departments on the application. The application lapsed on 10.1.2012.

- 6.4 Application No. A/YL-SK/173 was approved with conditions by the Committee on 7.9.2012 for a period of 3 years on similar consideration as set out in paragraph 6.3. However, the planning approval was revoked on 7.3.2013 due to non-compliance with approval conditions in relation to the submission of record of existing drainage facilities, tree preservation proposal, and FSIs proposal.
- 6.5 Applications (No. A/YL-SK/190 and 217) were approved with conditions by the Committee on 2.8.2013 and 15.7.2016 for a period of 3 years on similar consideration as set out in paragraph 6.3. The planning permission under the last application No. A/YL-SK/217 is still valid until 2.8.2019. All the approval conditions have been complied with.
- 6.6 Compared with the last application (No. A/YL-SK/217), the current application is for the same applied use on the same site with the same layout and development parameters.

7. Similar Application

There is no similar application within the same “CA” zone on the OZP.

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

8.1 The Site is:

- (a) paved and fenced off;
- (b) located at the fringe of the “CA” zone and adjoining an area zoned “Agriculture” (“AGR”) to its immediate north;
- (c) connected to Kam Sheung Road (about 250m to its north) via a local track/path, which is partly accessible by vehicles; and
- (d) currently occupied by some structures related to the applied use with valid planning permission granted under application No. A/YL-SK/217 (validity up to 2.8.2019).

8.2 The surrounding areas are predominantly rural in character surrounded by active/fallow agricultural land, scattered residential dwellings/structures, and vacant/unused land:

- (a) to its north within the “AGR” zone are mainly active/fallow agricultural land, scattered residential dwellings/structures and vacant/unused land;
- (b) to its immediate east are residential dwellings/structures;
- (c) to its south, west and further east within the “CA” zone are densely vegetated slopes; and

- (d) to its further south up the vegetated slopes is Tai Lam Country Park (**Plan A-1**).

9. Planning Intention

The planning intention of the “CA” zone is to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse effects of development. There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or the development is an essential project with overriding public interest may be permitted. The slopes at the southern part of the Planning Scheme Area of the OZP are zoned “CA” (covering the subject “CA” zone) for the purpose of giving added protection to the adjoining Tai Lam Country Park and Tai Mo Shan Country Park.

10. Comments from Relevant Government Departments

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

Land Administration

- 10.1.1 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) Lots No. 1353 S.A and 1355 S.A in D.D. 114 are covered by Short Term Waiver (STW) No. 4049 and Lot No. 1354 in D.D. 114 is covered by STW No. 4050 respectively to permit structures erected thereon for the purpose of “Temporary Dog Kennels”.
- (c) The Site is accessible from Kam Sheung 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.
- (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 the SKAHRA.
- (e) Should planning approval be given to the planning application, the STW holder(s) will need to apply to his office for

modification of the STW conditions where appropriate. 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(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

10.1.2 Comments of the Commissioner for Transport (C for T):

Considering that there is neither parking provision nor vehicular access to the lot and the induced traffic impact is minimal, he has no comment on the application.

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

- (a) It is noted that no vehicular access is proposed or to be granted under the application. He has no comment from highways maintenance point of view.
- (b) His department shall not be responsible for the maintenance of any access connecting the Site.

Nature Conservation

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

- (a) The Site has been paved, and the application seeks to continue the existing use at the Site. As such, he has no adverse comment on the application from nature conservation perspective.
- (b) The applicant holds a valid Animal Trader licence issued by his department. The licence is valid until 30.10.2019. As such, he has no objection to the application from licensing point of view.
- (c) Nevertheless, there is a stream abutting the Site. Should the application be approved, the applicant is advised to adopt necessary measures to avoid disturbance and pollution to the stream during operation as far as practicable.

Environment

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

- (a) There is no substantiated environmental complaint received by DEP in the past three years.
- (b) The application is essentially the same as the last application No. A/YL-SK/217 and the application will not involve any new access road, sewers, sewage treatment facilities, earthworks and building works.
- (c) It is noted that the applicant has obtained discharge licence under the Water Pollution Control Ordinance (WPCO) which is valid up to 31.10.2022. It is the obligation of the applicant to comply with its terms and conditions.
- (d) The applicant is also reminded to minimize noise caused by the use so that it would not cause environmental nuisance to nearby sensitive receivers.

Landscape

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

- (a) He has no objection to the application from the landscape planning point of view.
- (b) Referring to the aerial photo dated 13.3.2018, the Site is situated in an area of rural landscape character comprising natural woodland and temporary structures. The proposed use is not incompatible to the surrounding environment.
- (c) With reference to his site visit dated 3.6.2019, the Site is in operation as temporary dog kennels. Existing trees are in acceptable condition within the Site. There is no significant change to the surrounding landscape setting since the application was last approved in 2016. Further adverse landscape impact due to the applied use is not anticipated.
- (d) Should the application be approved, an approval condition for maintenance of existing trees within the Site satisfactorily at all times during the approval period is recommended.

Fire Safety

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

- (a) He has no objection in principle to the application subject to the existing fire service installations (FSIs) implemented on the site being maintained in efficient working order at all times.
- (b) Should the application be approved, the condition "the existing FSIs implemented on the site should be maintained in efficient working order at all times" should be included in the planning approval.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Drainage

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

- (a) He has no objection in-principle to the proposed development from the public drainage point of view.
- (b) Should the application be approved, the conditions requiring the applicant to maintain the existing drainage facilities and submit records of the existing drainage facilities on Site to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.

Building Matters

10.1.9 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 and his Department is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person should be appointed as the co-ordinator for the proposed

building works in accordance with the Buildings Ordinance (BO).

- (c) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of BD, they are UBW under the BO and should not be designated for any proposed use under the application.
- (d) For UBW erected on leased land, enforcement action may be taken by 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.
- (e) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (f) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Environmental Hygiene

10.1.10 Comments of the Director of Food and Environmental Hygiene (DEFH):

- (a) If any Food and Environmental Hygiene Department (FEHD)'s facility is affected by the development, FEHD's prior consent must be obtained. Re-provisioning of the affected facilities by the project proponent up to the satisfaction of FEHD may be required. Besides, the project proponent should provide sufficient amount of additional recurrent cost for management and maintenance of the re-provisioned facilities to FEHD.
- (b) Proper licence / permit issued by this Department is required if there is any food business / catering service / activities regulated by the Director of Food and Environmental Hygiene (DFEH) under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public and the operation of any business should not cause any obstruction.

- (c) If the proposal involves any commercial/trading activities, its state should not as to be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial/ trading activities, the applicant should handle on their own/at their expenses.
- (d) Any animal carcass/ parts shall be properly wrapped or bagged before disposal.

District Officer's Comments

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

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

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

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

11. Public Comments Received During the Statutory Publication Period

On 24.5.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 14.6.2019, no public comment was received.

12. Planning Considerations and Assessments

12.1 The application is for renewal of the planning permission for temporary dog kennel for a period of 3 years in the "CA" zone. The planning intention of the "CA" zone is intended to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse effects of development. There is a general presumption against development in "CA" zone. The Site was the subject of 5 previous approved planning applications for the same applied use since 2006. Moreover, DAFC has no adverse comment on the current application from the nature conservation perspective. It is considered that continuation of the temporary dog kennels at the Site will not frustrate the long-term planning intention of the "CA" zone.

- 12.2 The Site is located at the fringe of the “CA” zone and the development is considered not incompatible with the other rural residential and agricultural land uses in the vicinity. As advised by CTP/UD&L of PlanD, the existing trees on the Site are in acceptable condition and significant adverse landscape impact arising from continuing the existing use is not anticipated.
- 12.3 The application is in line with the TPB PG-No. 34B in that previous approvals for the same applied use were granted since 2006 and all approval conditions of the last approved application (No. A/YL-SK/217) have been complied with. There is no adverse comment from the relevant departments. Compared with the last approved application, the current application submitted by the same applicant is the same in terms of site area, layout and development parameters. As there is no major change in planning circumstances since the last approval, sympathetic consideration could be given to the current application.
- 12.4 The applicant has been operating the subject dog kennels with valid licences issued by the relevant authorities. DAFC has issued an Animal Trading Licence to the applicant to operate as an animal breeder on the Site and has no objection from licensing perspective. There was no substantiate environmental complaint concerning the Site received by DEP in the past three years. DEP has no adverse comment on the application and advised that the applicant has obtained the discharge licence under the WPCO for the subject operation with validity up to 31.10.2022. As such, the applied use at the Site is subject to control and monitoring by relevant authorities and would unlikely have significant adverse environmental impact on the surrounding areas.
- 12.5 Other relevant Government departments consulted including C for T, CE/MN of DSD, D of FS and CTP/UD&L of PlanD have no objection to or no adverse comment on the application. The technical requirements of CTP/UD&L of PlanD, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 13.2 (a) to (d) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority.
- 12.6 The Site is involved in five previous applications (No. A/YL-SK/131, 150, 173, 190 and 217) for the same use at the Site submitted by the same applicant, which were all approved by the Committee for a period of 3 years since 2006 and mainly for the reasons as mentioned in paragraph 6 above. Approval of the current application is in line with the Committee’s previous decisions.
- 12.7 There is no public comment received during the public inspection period.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 above, the Planning Department considers that the temporary dog kennels could be tolerated for a period of 3 years.

- 13.2 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, and be renewed from 3.8.2019 until 2.8.2022. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the existing trees on the site shall be maintained at all times during the planning approval period;
- (b) the existing drainage facilities on the site shall be maintained at all times during the planning approval period;
- (c) the submission of a record of the existing drainage facilities on the Site within **3** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 3.11.2019;
- (d) the existing fire service installations implemented on the site shall be maintained in efficient working order at all times during the planning approval period;
- (e) if any of the above planning conditions (a), (b) 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;
- (f) if the above planning condition (c) 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
- (g) 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.

[The above planning conditions are basically the same as those under the planning permission of the previous application No. A/YL-SK/217, except the previous condition on the implementation of the accepted FSIs proposal has been replaced by condition (d) above based on D of FS's comment.]

Advisory clauses

The recommended advisory clauses are attached at **Appendix IV**.

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

the development is not in line with the planning intention of the "CA" zone, which is to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse

effects of development. There is a general presumption against development in this zone. No strong justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant renewal of the planning 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 16.5.2019
Appendix Ia	Supplementary Information received on 17.5.2019
Appendix Ib	FI received on 20.6.2019 in response to departmental comments
Appendix II	Relevant Extracts of Town Planning Board Guidelines for Renewal of Planning Approval and Extension of Time for Compliance with Planning Condition for Temporary Use or Development (TPB PG-No. 34B)
Appendix III	Previous applications covering the Site
Appendix IV	Advisory clauses
Drawing A-1	Plan showing the locations of the on-site structures
Drawing A-2	Site Layout Plan
Drawing A-3	FSIs Proposal
Drawing A-4	Drainage Proposal
Drawing A-5	Landscape Proposal
Plan A-1	Location Plan with Previous Application
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
JULY 2019**