

RNTPC Paper No. A/YL-PH/780A
For Consideration by
the Rural and New Town
Planning Committee
on 20.7.2018

APPLICATION FOR PERMISISON
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/780

- Applicant** : Parkwell Properties Ltd.
- Site** : Lot 98 in D.D. 108, Pat Heung, Yuen Long
- Site Area** : 1,507m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
- Zoning** : “Residential (Group D)” (“R(D)”)
[maximum plot ratio of 0.2 and building height of 2 storeys (6m)]
- Application** : Proposed Temporary Place of Recreation, Sports or Culture (Hobby Farm) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary place of recreation, sports or culture (hobby farm) for a period of 3 years. According to the Notes of the OZP, ‘Place of Recreation, Sports or Culture’ use is a Column 2 use within the “R(D)” zone, which requires permission from the Town Planning Board (the Board). The Site was involved in three previous applications and the last application for temporary public car park for a period of 3 years was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 5.2.2016, but the application was revoked on 5.5.2016 due to non-compliance of approval conditions. The Site is currently fenced and vacant (**Plans A-2 to A-4b**).
- 1.2 According to the layout submitted by the applicant, the Site will be occupied by 30 one-storey planting shelves, 3 double-deck containers for resting room, storage room, plant nursery, flower exhibition room and reception uses with total floor area of about 450m². There is a moveable water tank to be provided for

watering and fish breeding. Six private car parking spaces, one parking space for light goods vehicles and one loading/unloading space will be provided at the Site. The operation hours will be from 10:00 a.m. to 10:00 p.m. daily (including public holiday). The maximum number of visitors per day on weekdays will be about 15 persons while there will be around 147 visitors on Saturday, Sunday and public holidays. The Site is accessible via a local track branching off Fan Kam Road. No audio system will be used at the Site. The layout plan and vehicular access plan submitted by the applicant are at **Drawings A-1 to A-2**.

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form with plans received on 3.4.2018 **(Appendix I)**
 - (b) Further information (FI) received on 14.5.2018 clarifying on operation details, sewage/waste treatment and traffic arrangement in response to departmental comments
(accepted and exempted from publication and recounting requirements) **(Appendix Ia)**
 - (c) FI received on 21.5.2018 clarifying on parking provision, landscaping area and traffic arrangement in response to departmental comments
(accepted and exempted from publication and recounting requirements) **(Appendix Ib)**
 - (d) FI received on 6.6.2018 clarifying the operation details and traffic arrangement in response to departmental comments
(accepted and exempted from publication and recounting requirements) **(Appendix Ic)**
 - (e) FI received on 8.6.2018 clarifying the access arrangement
(accepted and exempted from publication and recounting requirements) **(Appendix Id)**
 - (f) FI received on 9.7.2018 clarifying the operation hours, number of visitor and updating the layout plan
(accepted and exempted from publication and recounting requirements) **(Appendix Ie)**
- 1.4 As requested by the applicant, the Committee agreed to defer consideration of the application on 1.6.2018 to allow time for the applicants to address the departmental comments. After the respective deferral requests, the applicant submitted responses to departmental comments to support the application.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in section 9 in the application form and FI at **Appendices I to Ie**. They can be summarized as follows:

The proposed hobby farm is for planting of flowers, plants, vegetables and fruit trees. It is for private use only and will not open to the public. No adverse traffic impact on Fan Kam Road is anticipated. Consent of passing through the adjacent site for access has also been obtained.

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

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site was the subject of a planning enforcement action (No. E/YL-PH/721) alleging for storage use with Enforcement Notice (EN) issued to the responsible persons on 27.10.2015. The use of the Site for hobby farm use without a valid planning permission constitutes an unauthorized development under the Town Planning Ordinance (TPO). Should there be sufficient evidence to prove that the use on site is an unauthorized development under the TPO, appropriate enforcement action will be taken.

5. **Previous Applications**

- 5.1 The Site was involved in three previous applications (No. A/YL-PH/479, 537 and 725) for temporary open storage of vehicles/construction machinery and temporary public car park use respectively. Details of the applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 Applications No. A/YL-PH/479 and 537 submitted by different applicants for proposed temporary open storage of vehicles (Application No. A/YL-PH/479) and temporary open storage of construction machinery (Applications No. A/YL-PH/537) for a period of three years were rejected by the Board on review on 22.4.2005 and the Committee on 23.2.2007 respectively mainly on the grounds that the developments were not in line with the planning intention of “R(D)” zone and did not comply with the TPB Guidelines for Application for Open Storage and Port Back-up Uses in that no previous approval had been granted and not compatible with the nearby residential development and the “Conservation Area” (“CA”) zone. There was also insufficient information to demonstrate that the proposed development would not have adverse impacts on the surrounding areas.

- 5.3 Application No. A/YL-PH/725 submitted by a different applicant for temporary public car park for a period of three years was approved with conditions by the Committee on 5.2.2016 for the reasons that since there is no known permanent development program at the “R(D)” zone, approval of the application on a temporary basis would not frustrate the long-term planning intention; the temporary public car park is not incompatible with the surrounding land uses; and generally no major adverse comments from government departments. However, the application was revoked on 5.5.2016 due to non-compliance with conditions on provision of boundary fence.

6. Similar Application

There is no similar application for the proposed use within the subject “R(D)” zone.

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

7.1 The Site is:

- (a) currently fenced and vacant ; and
- (b) accessible via a local track leading from Fan Kam Road.

7.2 The surrounding areas are predominately rural in character mixed with residential dwellings/structures, open storage of vehicles, vehicle workshops and vacant/unused land. Most of the open storage yards and workshops are suspected unauthorized development subject to enforcement action by the Planning Authority (**Plan A-2**):

- (a) to its immediate north is a temporary public car park under planning permission (Application No. A/YL-PH/745). Further north are residential dwellings/structures, open storage/ storage yards and workshops;
- (b) to its east are open storage/storage yards and workshops.
- (c) to its further east and south across a natural stream is unused land zoned “Conservation Area” (“CA”); and
- (d) to the immediate west is vacant land. Further west are open storage/ storage yards, vehicle repair workshop and a residential dwelling.

8. **Planning Intention**

The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from 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 an Old Scheduled 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) The Site is accessible to Fan Kam Road via Government Land (GL) and private land. His office provides no maintenance works for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site does not falls within Shek Kong Airfield Height Restriction Area (SKAHRA).
- (d) Should the application be approved, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site. Such application(s) 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 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 point of view.

- (b) Should the application be approved, the 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 is recommended.
- (c) The Site is connected to the public road network via a section of local access road which is not managed by TD. 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 (CHE/NTW, HyD):

- (a) His department is not/ shall not be responsible for the maintenance of any existing vehicular access connecting the Site and Fan Kam Road. The applicant should be responsible for his own access arrangement.
- (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) Provided the applicant would minimise any noise from the proposed use such as prohibiting the use of public announcement system, portable loudspeakers or any form of audio amplification system so that it would not cause any environmental nuisance to nearby sensitive receivers, he has no objection to the application from environmental planning perspective.
- (b) The applicant is also advised to follow the relevant mitigation measures and requirements in the revised 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' to minimize any potential environmental nuisance.
- (c) It is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures to prevent polluting the watercourse adjacent to the Site. Adequate supporting

infrastructure / facilities should be provided for proper collection, treatment and disposal of waste / wastewater generated from the proposed use. If septic tank and soakaway system will be used, its design and construction shall follow the requirements of EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department".

- (d) There is no environmental complaint received in the past three years.

Landscape

9.1.5 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 surrounded by open storages and temporary structures within the "R(D)" zone and is connected to Fan Kam Road via driveway at the north. A "CA" zone is to the immediate south of the Site separated by a natural stream (**Plan A-2**).
- (c) Based on the aerial photo taken in January 2018, the Site is situated in an area of rural landscape character comprising of woodland, scattered tree groups and opens storages. Although the proposed use is not in line with the planning intention of "R(D)" zone, it is not incompatible to the surrounding environment. The Site is hard paved and vacant with no existing tree within the Site. Adverse impact on landscape resources and landscape character arising from the proposed development is not anticipated.
- (d) Should the application be approved, the condition on submission and implementation of landscape proposal is recommended to be included in the planning permission.
- (e) Her detailed comments are at **Appendix III**.

Drainage

9.1.6 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, approval conditions requiring the applicant to submit a drainage proposal and implement and maintain the drainage proposal for the development to the satisfaction to the Director of Drainage Services or of the Board should be included.

Fire Safety

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

- (a) He has no objection in-principle 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 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) 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

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

- (c) 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.
- (d) 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.

Nature Conservation

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

- (a) The Site is located in “R(D)” and is disturbed. As such, he has no objection to the application from nature conservation point of view.
- (b) There is a natural stream along the south-eastern boundary of the Site (**Plan A-2**). Should the application be approved, the applicant shall be advised to adopt precautionary measures to avoid disturbance and pollution to the natural stream.

Environmental Hygiene

9.1.10 Comments of the Director of Food and Environment Hygiene (DFEH):

- (a) If any Food and Environment Hygiene Department’s (FEHD) facility is affected by the development, FEHD's prior consent must be obtained. Reprovisioning 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 reprovisioned facilities to FEHD.
- (b) Proper licence / permit issued by FEHD is required if there is any food business / catering service / activities regulated by the 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, no environmental nuisance should be generated to the surroundings. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.

Electricity

9.1.11 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) In the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

District Officer’s Comments

9.1.12 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) Commissioner of Police (C of P);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Project Manager/NT North and West, Civil Engineering and Development Department (PM/NTN&W, CEDD); and
- (d) Director of Leisure and Cultural Services (DLCS).

10. Public Comments Received During the Statutory Publication Period

- 10.1 On 13.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 4.5.2018, two comments from general public (**Appendices IV-1 and IV-2**) were received.
- 10.2 One commenter supports the application mainly for the reasons that the proposed hobby farm could set a precedent to stop activities with adverse environmental impact and pollution in the area, so as to improve the environment and hygiene. Another commenter objects to the application mainly on the grounds that the proposed structures, parking, toilets, discharge of grey water would affect the quality of soil and its suitability for its intended purpose of residential use; the business has been in operation for some time without permission; and rejection of the application could encourage site owner to provide housing at the Site.

11. Planning Considerations and Assessments

- 11.1 The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board. Although the proposed use is not in line with the planning intention of the “R(D)”, there is no known proposal for permanent development at the Site. Approval of the application on a temporary basis for a period of 3 years would not jeopardize the long-term planning intention of the “R(D)” zone.
- 11.2 According to the applicant, the proposed hobby farm would be used for planting of flowers, plants, vegetables and fruit trees. In view of the nature of use, the proposed use is considered not incompatible with the surrounding areas which are predominately rural in character mixed with residential dwellings/ structures, open storage/ storage yards, vehicle workshops and vacant/unused land.
- 11.3 There is no adverse comment from relevant departments consulted including DEP, CTP/UD&L of PlanD, C for T, DAFC and FEHD on the current application. To minimize any potential environmental nuisance generated by the proposed development, approval conditions restricting the operation hours and use of public announcement system are recommended in paragraphs 12.2 (a) to (b) below. Any non-compliance with the approval condition will result in revocation of the planning permission and unauthorized development on site will be subject to enforcement action by the Planning Authority. The applicant will also be advised to adopt the environmental mitigation measures as set out

in the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to alleviate any potential impact. The technical requirements of C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS could be addressed by imposition of appropriate approval conditions in paragraph 12.2 (c) to (k) below.

- 11.4 The Site was subject to 3 previous applications for temporary open storage of vehicles/ construction machinery which were rejected by the Board on review or the Committee in 2005 and 2007 and temporary public car park approved with conditions by the Committee in 2016. As compared with these applications, the current application is for a different use and submitted by a different applicant.
- 11.5 Two public comments (one support and one object) were received during the statutory public publication period as set out in paragraph 10 above. In this regard, the planning assessments and considerations as stated 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 mentioned in paragraph 10 above, Planning Department considers that the temporary Place of Recreation, Sports or Culture (Hobby Farm) 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 20.7.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 10:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no public announcement system, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the existing boundary fence on the Site shall be maintained at all times during the planning approval period;

- (e) 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 20.1.2019;
- (f) in relation to (e) 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 20.4.2019;
- (g) 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 20.1.2019;
- (h) in relation to (g) above, the provision of drainage facilities 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 20.4.2019;
- (i) in relation to (h) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (j) 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 20.1.2019;
- (k) in relation to (j) above, the provision of fire service installations 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 20.4.2019;
- (l) if any of the above planning conditions (a), (b), (c), (d) or (i) 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 (e), (f), (g), (h), (j) 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 attached at **Appendix V**.

- 12.3 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 “R(D)” zone which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board. There is no strong planning justification given in the submission for the 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 plans received on 3.4.2018
Appendix Ia	FI received on 14.5.2018
Appendix Ib	FI received on 21.5.2018
Appendix Ic	FI received on 6.6.2018
Appendix Id	FI received on 8.6.2018
Appendix Ie	FI received on 9.7.2018
Appendix II	Previous s.16 applications covering the application site
Appendix III	Detailed comments from CTP/UD&L of PlanD

Appendices IV-1 and IV-2	Public comments received during the statutory publication period
Appendix V	Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Vehicular Access Plan
Plan A-1a	Location Plan
Plan A-1b	Previous Application Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
JULY 2018**