

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

**APPLICATION NO. A/SK-TLS/53**

- Applicant** : Ms Leung Kit Yee
- Site** : Government Land adjoining Lot 1143 in D.D. 253, Tseng Lan Shue, Sai Kung, New Territories
- Site Area** : 180m<sup>2</sup>
- Land Status** : Government Land
- Plan** : Approved Tseng Lan Shue Outline Zoning Plan (OZP) No. S/SK-TLS/8
- Zonings** : “Village Type Development” (“V”) (about 140m<sup>2</sup> or 78%)  
‘Road’ (about 40m<sup>2</sup> or 22%)
- Application** : Temporary Private Garden 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 private garden use for a period of 3 years. The Site falls within an area mainly zoned “V” and partly designated as ‘Road’ on the approved Tseng Lan Shue Outline Zoning Plan (OZP) No. S/SK-TLS/8 (**Plans A-1 and A-2**).
- 1.2 A major part of the Site (about 155m<sup>2</sup> or 86%) (coloured yellow on **Plan A-2**) is covered by Short Term Tenancy (STT) for private garden use first granted in 1985 before the gazettal of the first statutory Tseng Lan Shue Interim Development Permission Area (IDPA) Plan No. IDPA/SK-TLS/1 on 12.10.1990. According to the Notes of the OZP, private garden within this portion of the Site is an existing use. For the remaining area of the Site (about 25m<sup>2</sup> or 14% ), temporary private garden for a period of 3 years requires planning permission from the Town Planning Board (the Board).
- 1.3 The Site is the subject of a previously approved application No. A/SK-TLS/46 for the same use submitted by the same applicant, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 27.3.2015 for three years. The previous planning permission expired on 27.3.2018. The Site is being used as private garden without valid planning permission.

1.4 The current proposal is the same as the previously approved scheme. According to the applicant, structures within the private garden under application include a porch (2m(L) x 2m(W) x 2.5m(H)) and a canopy of (1m(L) x 1m(W) x 2.5m(H)). The site plan submitted by the applicant is at **Drawing A-1**.

1.5 In support of the application, the applicant has submitted the Application Form dated 9.3.2018 at **Appendix I**.

## **2. Justifications from the Applicant**

The justifications put forward by the applicant in support of the application are detailed in Part 9 of the application form at **Appendix I** and summarized as follows:

- (a) the Site has been used as private garden with Short Term Tenancy (STT) No. SX2639 granted by the District Lands Office/Sai Kung, Lands Department; and
- (b) the Site is the subject of a previous planning approval (Application No. A/SK-TLS/46) until 27.3.2018. All approval conditions have been complied with.

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

As the application involves government land only, the “owner’s consent/notification” requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Section 12A and 16 of the Town Planning Ordinance (TPB GB-No. 31A) is not applicable to the application.

## **4. Previous Application**

The Site is the subject of a previous application No. A/SK-TLS/46 for the same temporary use submitted by the same applicant. The previous application was approved with conditions by the Committee on 27.3.2015 mainly on the grounds that the long-term planning intention of the area designated as ‘Road’ would not be jeopardized and the proposed use is not incompatible with the surrounding village environment. The time-limited approval conditions on the submission and implementation of landscape proposal were complied with by the specified dates. The previous planning permission expired on 27.3.2018.

## **5. Similar Application**

There is no similar application in the vicinity of the Site.

**6. The Site and Its Surrounding Areas (Plans A-1 to A-3 and Photos on Plans A-4a to A-4b)**

6.1 The Site is:

- (a) within the ‘village environs’ (‘VE’) of Tseng Lan Shue;
- (b) adjoining an existing 3-storey village house;
- (c) currently fenced off and used as a private garden; and
- (d) accessible via Pak Shek Toi Road which links to Clear Water Bay Road.

6.2 The surrounding areas have the following characteristics:

- (a) to the south and southeast are clusters of 3-storey village houses; and
- (b) to the north, northeast and west are vegetated slopes zoned “Green Belt” (“GB”).

**7. Planning Intentions**

7.1 The planning intention of “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. 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. Other commercial, community and recreational uses may be permitted on application to the Board.

7.2 The area shown as ‘Road’ is to make land reservation for road works and its ancillary uses.

**8. Comments from Relevant Government Departments**

8.1 The following government departments have been consulted and their views on the application are summarised as follows:

Land Administration

8.1.1 Comments of the District Lands Officer/Sai Kung, Lands Department (DLO/SK, Lands D):

- (a) no objection to the application;

- (b) STT No. SX 853 partly covering the Site commenced on 1.9.1984 was issued by the tenancy agreement dated 2.7.1985. STT No. SX 1730 partly covering the Site commenced on 1.4.1991 was issued by the tenancy agreement dated 23.11.~~1991~~**1992**;
- (c) subsequent to the granting of the planning permission for private garden use by the Board in April 2015, the STT No. 2639 commencing on 12.5.2000 was granted to the registered owner of G/F of the house erected on Lot No. 1143 in D.D. 253 for occupation of the Site for private garden purposes by the tenancy agreement dated 15.2.2016. The STT is still effective;
- (d) there is no Small House application on the Site. Notwithstanding that, the STT will be terminated for Small House development if so required; and
- (e) the Site falls wholly within the village environs of Tseng Lan Shue and her office has no information on the 10-year Small House Demand Forecast in Tseng Lan Shue and there are 47 outstanding Small House application in the village.

#### Traffic

##### 8.1.2 Comments of the Commissioner for Transport (C for T):

no comment on the application as there is no planned road improvement related to the Site.

#### Environment

##### 8.1.3 Comments of the Director of Environmental Protection (DEP):

- (a) no comment on the application; and
- (b) the applicant is advised to follow the 'Revised Code of Practice on Handling Environmental Aspects of Open Storage and other Temporary Uses' issued by the DEP.

#### Landscape

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

as the application is for renewal of 3 years temporary private garden (part of which is an existing use), any further landscape impact is therefore not anticipated. There is no planning objection, from a landscape planning perspective, to the application.

### Drainage

#### 8.1.5 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

provided that adequate stormwater drainage facilities will be provided in connection with the proposed development to deal with the surface runoff of the Site without causing any adverse drainage impacts or nuisance to the adjoining areas, he has no in-principle objection to the application from a drainage maintenance viewpoint.

### Water Supply

#### 8.1.6 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD):

- (a) no objection to the application;
- (b) existing water mains are affected. The applicant is required to either divert or protect the water mains found on site:
  - i. if diversion is required, existing water mains inside the proposed site are needed to be diverted outside the site boundary of the proposed development to lie in government land. A strip of land of minimum 1.5 metres in width should be provided for the diversion of the existing water main(s). The cost of diversion of existing water main(s) upon request will have to be borne by the applicant; and the applicant shall submit all the relevant proposal to WSD for consideration and agreement before the works commence; and
  - ii. if diversion is not required, the following conditions shall apply:
    - 1. existing water main(s) are affected and no development which requires resiting of water main(s) will be allowed;
    - 2. details of site formation works shall be submitted to the Director of Water Supplies (DWS) for approval prior to commencement of works;
    - 3. no structures shall be built or materials stored within 1.5 metres from the centre line(s) of water main(s). Free access shall be made available at all times for staff of the DWS or his contractor to carry out construction, inspection, operation, maintenance and repair works;

4. no trees or shrubs with penetrating roots may be planted within the Waterworks Reserve or in the vicinity of the water main(s). No change of existing site condition may be undertaken within the aforesaid area without the prior agreement of the DWS. Rigid root barriers may be required if the clear distance between the proposed tree and the pipe is 2.5 metres or less, and the barrier must extend below the invert level of the pipe;
5. no planting or obstruction of any kind except turfing shall be permitted within the space of 1.5 metres around the cover of any valve or within a distance of 1 metre from any hydrant outlet; and
6. tree planting may be prohibited in the event that the DWS considers that there is any likelihood of damage being caused to water main(s).

#### Geotechnical

- 8.1.7 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

he has no objection to the application provided that the area (except the side along the Pak Shek Toi Road and at the house) is fenced off along the boundary.

- 8.2 The following government departments have no objection to or comment on the application:

- (a) Chief Engineer(Works), Home Affairs Department (CE(Works), HAD);
- (b) District Officer/Sai Kung, Home Affairs Department (DO/SK, HAD);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC);
- (d) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
- (e) Director of Fire Services (D of FS).

### **9. Public Comment Received During Statutory Publication Period**

On 16.3.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 6.4.2018, one public comment was received from an individual of the public, raising concern on the private garden use on government land (**Appendix II**).

### **10. Planning Considerations and Assessments**

- 10.1 The Site falls within an area mainly zoned “V” and partly shown as ‘Road’ on the OZP. 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. The area shown as 'Road' is to make land reservation for road works and its ancillary uses. The proposed use is not in line with the planning intentions of the "V" zone and the area shown as 'Road'. As advised by DLO/SK, there is no Small House application on the Site and the STT for private garden use will be terminated for Small House development if so required. C for T advises that there is no planned road improvement on the area shown as 'Road'. In this connection, approval of the application on a temporary basis for 3 years would not frustrate the long term planning intention of the "V" zone and jeopardize future road improvement works.

- 10.2 The existing private garden is considered not incompatible with the surrounding land uses which are occupied by village houses at the south and east of the Site. According to DLO/SK, there are 47 outstanding Small House applications within Tseng Lan Shue. Based on the latest estimate of Planning Department, about 1.2 ha of land is available within the "V" zone ( or equivalent to 48 Small House sites). As such, land is still available to meet the outstanding Small House applications at the village.
- 10.3 A major part of the private garden at the Site is an existing use covered by STT first granted in 1985. The temporary private garden use at the Site for a period of 3 years was previously approved with conditions (Application No. A/SK-TLS/46) by the Committee on 27.3.2015. The current proposal is the same as the previously approved scheme submitted by the same applicant. Since the approval of the previous application, there has been no material change in planning circumstances. Relevant departments consulted including DEP, C for T and CHE/NTE of HyD have no objection to the application.
- 10.4 Regarding the public comment raising concern on the private garden use on government land, the assessments in paragraphs 10.1 to 10.3 above are relevant.

## **11. Planning Department's Views**

- 11.1 Based on the assessments made in paragraph 10 and having taken into account the public comment in paragraph 9, the Planning Department considers that the temporary private garden could be tolerated for a period of 3 years.
- 11.2 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 4.5.2021. The following conditions of approval and advisory clauses are also suggested for Members' consideration:

### *Approval conditions*

- (a) the existing boundary fence on the Site should be maintained at all times during the planning approval period;
- (b) if the above planning condition (a) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and

- (c) upon 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 III**.

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

the private garden use is not in line with the planning intentions of the Site zoned "V" and designated as 'Road'. 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 planning intention of the area designated as 'Road' is to make land reservation for access road to facilitate the traffic circulation.

**12. Decision Sought**

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 12.2 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.
- 12.3 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.

**13. Attachments**

<b>Appendix I</b>	Application form dated 9.3.2018
<b>Appendix II</b>	Public Comment
<b>Appendix III</b>	Advisory Clauses
<b>Drawing A-1</b>	Site plan submitted by the applicant
<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 &amp; 4b</b>	Site photos