

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-HC/320

- Applicant:** MA Yuk Lan represented by Mr. CHEN Shu Man, Presely
- Site:** Lots 1067 R.P. (Part) and 1074 S.B (Part) in D.D. 244 and adjoining Government Land, Ho Chung New Village, Sai Kung, New Territories
- Site Area:** About 119.73m²
- Land Status:** (i) Government land (GL) (about 89m² or 74%)
(ii) Private land (about 30.73m² or 26%)
- Plan :** Approved Ho Chung Outline Zoning Plan (OZP) No. S/SK-HC/11
- Zonings:** Area shown as ‘Road’ (about 83.81m² or 70%)
“Village Type Development” (“V”) (about 35.92m² or 30%)
- 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 for a period of 3 years. The Site falls within an area partly shown as ‘Road’ and partly zoned “V” on the approved Ho Chung OZP No. S/SK-HC/11 (**Plan A-1**). According to the Notes of the OZP, temporary private garden at the Site which falls within the area designated as “Road” requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site is the subject of four previous applications No. A/SK-HC/126, 169, 236 and 239 of which applications No. A/SK-HC/236 and 239 were submitted by the same applicant of this application. Applications No. A/SK-HC/126, 169 and 239 for temporary private garden were approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on a temporary basis of 3 years on 17.2.2006, 23.1.2009 and 16.1.2015 respectively, while application No. A/SK-HC/236 for ‘House (private garden ancillary to New Territories Exempted House (NTEH))’ on a permanent basis was rejected by the Committee on 17.10.2014. The latest planning permission (No. A/SK-HC/239) lapsed on 16.1.2018. The Site is being used as private garden without valid planning permission.
- 1.3 In support of the application, the applicant has submitted the application form with attachments which was received on 3.7.2020 at **Appendix I**. The location plan is

at **Drawing A-1**.

2. Justification from the Applicant

The applicant did not provide any justification in support of the application.

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

The applicant is one of the “current land owner” of the private land portion of the Site and 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 sending registered mail to the current land owner. Detailed information would be deposited at the meeting for Members’ inspection. For the GL portion, the “owner’s consent/notification” requirements are not applicable.

4. Previous Applications (Plans A-1 and A-2)

4.1 The Site is the subject of four previous applications No. A/SK-HC/126, 169, 236 and 239. Applications No. A/SK-HC/126, 169 and 239 are for temporary private garden for a period of 3 years, while application No. A/SK-HC/236 is for ‘House (private garden ancillary to NTEH)’ on a permanent basis.

4.2 Applications No. A/SK-HC/126, 169 and 239 were approved with conditions by the Committee on temporary basis for a period of 3 years between 2006 and 2015, mainly on the grounds that the temporary approval would not jeopardize the long-term planning intention of the area and no significant adverse impacts were anticipated. The latest planning permission (i.e. application No. A/SK-HC/239) was subject to approval conditions including the submission and implementation of landscape proposal; and the reinstatement of the application site to an amenity area upon the expiry of the planning permission. The time-limited approval conditions on the submission and implementation of landscape proposal have been complied with by the applicant. The planning permission expired on 16.1.2018.

4.3 Application No. A/SK-HC/236 for ‘House (private garden ancillary to NTEH)’ on a permanent basis was rejected by the Committee on 17.10.2014 mainly on the grounds of not in line with the planning intention of the area designated as ‘Road’ and setting of undesirable precedent.

4.4 Details of the above previous applications are summarised at **Appendix II**.

5. Similar Applications (Plans A-1 and A-2)

5.1 There are six similar applications for private garden use (**Plan A-1**). Five applications (Applications No. A/SK-HC/128, 152, 213, 245 and 298) were

approved with conditions by the Committee between 2006 and 2017 for a period of 3 years mainly on similar grounds as mentioned in paragraph 4.2 above. Details of the similar applications are at **Appendix III** and their locations are at **Plan A-1**.

5.2 In addition, application No. A/SK-HC/319 for temporary private garden will be considered by the Committee in this same meeting.

6. The Site and its Surrounding Areas (Plans A-1 to A-2, Aerial Photo on Plan A-3 and Site Photos on Plan A-4)

6.1 The Site is:

- (a) within the ‘village environs’ (‘VE’) of Ho Chung Village;
- (b) within a residential development namely Dynasty Lodge;
- (c) adjoining an existing 3-storey village house;
- (d) is currently fenced off and used as private garden; and
- (e) accessible by a village road leading to Nam Pin Wai Road.

6.2 The surrounding areas are mainly rural in character with clusters of 3-storey village houses.

7. Planning Intention

7.1 The planning intention of the area designated as ‘Road’ is to make land reservation for road access to serve the local residents and as emergency vehicular access (EVA). The subject road reserve running north-south in Ho Chung New Village is intended to link up the Ho Chung, Nam Pin Wai, Mok Tse Che and Wo Mei Villages. It will facilitate the internal vehicular traffic circulation within the area and also serve as an emergency vehicular traffic circulation within the area and also serve as an EVA for the Ho Chung New Village.

7.2 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.

8. Comments from Relevant Government Departments

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

Land Administration

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

- (a) no objection to the application;
- (b) the Site involves the GL adjoining Lot No. 2068 in D.D. 244. The GL was granted by way of STT No. SX4674 for private garden purpose which is still valid;
- (c) there is no active project nor project under planning at the area concerned;
- (d) the application will affect the planned EVA in Ho Chung New Village;
- (e) the Site was not indicated in any “means of access for passage of fire services appliances”/ “EVA” clause in any of Building Licence of nearby affected village houses; and
- (f) the adjoining house is a NTEH.

Traffic

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

- (a) no objection in-principle to the application from traffic engineering perspective; and
- (b) currently there is no implementation programme for the planned road based on records of his Office.

8.1.3 Comments of Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

- (a) no comment on the application; and
- (b) no record of any planned road and any implementation programme for any planned road at the concerned location.

Environment

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

the applicant is advised to follow the latest ‘Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses’ issued by the Environmental Protection Department.

Landscape

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

- (a) no objection to the application from landscape planning point of view, as the development is considered not incompatible with the landscape setting in the proximity;
- (b) the Site, located at the southeastern portion of Ho Chung New Village, to the north of Nam Pin Wai Road, falls within an area partly shown as 'Road' and partly zoned "V" on the approved Ho Chung Outline Zoning Plan No. S/SK-HC/11. The Site was involved in 4 previous applications. The application No. A/SK-HC/239 for 'House (private garden ancillary to NTEH)' on a temporary basis for a period of 3 years was approved by the Committee of the Board on 16.1.2015;
- (c) according to the aerial photo of 2019, the Site is situated in an area of settled valleys landscape character dominated by village houses, car parking areas and scattered tree groups. Based on the aerial photo of 2019, vegetation is observed at the eastern portion and northwestern portion of the Site;
- (d) in view that the Site is not located in landscape sensitive zones and the proposed development is unlikely to cause significant adverse landscape and visual impact, it is opined that a landscape condition in planning permission is not required, should the application be approved by the Board; and
- (e) the applicant is reminded that approval of the planning application under Town Planning Ordinance does not imply approval of tree preservation/removal scheme under the Lease. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.

Drainage

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

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

Fire Safety

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

no specific comment on the application should no objection be raised by LandsD on the same application.

Water Supply

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

- (a) no objection to the application;
- (b) for provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards; and
- (c) if any uncharted water mains are affected, the applicant shall bear the cost of the necessary diversion works.

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

- (a) District Officer/Sai Kung, Home Affairs Department;
- (b) Chief Engineer (Works), Home Affairs Department;
- (c) Director of Agriculture, Fisheries and Conservation;
- (d) Head of the Geotechnical Engineering Office, the Civil Engineering and Development Department;
- (e) Chief Building Surveyor/ New Territories 2 & Rail, Buildings Department; and
- (f) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office, Development Bureau.

9. Public Comments Received During Statutory Publication Period

On 10.7.2020, the application was published for public comment. During the first three weeks of the statutory public inspection period, which ended on 31.7.2020, two public comments were received from the Village Committee of Ho Chung Village (with 4 signatures) and an individual. The Village Committee of Ho Chung Village objects to the application mainly on grounds of possible obstruction to the EVA; and the Site being fenced off for private garden use is mainly GL and will obstruct passageway of villagers. The individual commenter raises concerns on occupation of GL without planning approval since 2018 and obstruction to the EVA.

10. Planning Considerations and Assessments

- 10.1 The application is for temporary private garden adjoining an existing house at the Site which falls within an area partly shown as 'Road' (70%) and partly zoned "V" (30%) on the OZP. Temporary private garden use at the Site which falls within an area designated as "Road" requires planning permission from the Board. The planning intention of the area designated as 'Road' is to make land reservation for road access to serve the local residents and as EVA. While the temporary private garden use is not in line with the planning intention of the area designated as "Road", C for T and CHE/NTE, HyD advise that there is no implementation programme for the planned road in the area. In this connection, approval of the application on a temporary basis for 3 years could be tolerated and would not frustrate the long-term planning intention of the Site.
- 10.2 The temporary private garden under application is considered not incompatible with the surrounding land uses which are predominantly occupied by village type houses. Although DLO/SK LandsD advises that the application affects the planned EVA in Ho Chung New Village, both DLO/SK and D of FS have no objection to / no comment on the application. In view of the small scale of the proposal, it is not anticipated to have adverse traffic, landscape, environmental and infrastructural impacts on the surrounding areas. Relevant departments consulted including C for T, CTP/UD&L of PlanD, DEP, CE/MS of DSD, CE/Construction of WSD have no adverse comments on/ no objection to the application.
- 10.3 The Site is subject of a previously approved application No. A/SK-HC/239 for the same use submitted by the same applicant, and the approval conditions regarding the landscape proposal have been complied with. The planning permission expired on 16.1.2018 and the Site is currently used by the applicant without valid planning permission. Nevertheless, there is no change in planning circumstances since the approval of the previous application. In addition, five similar applications for temporary private garden uses involving four other sites in the vicinity were also approved by the Committee.
- 10.4 Two public comments have been received raising concerns on occupation of GL and obstruction of passageway. In this regard, the assessments in paragraphs 10.1 and 10.2 above are relevant.

11. Planning Department's View

- 11.1 Based on the assessments made in paragraph 10 and having taken into account the public comments mentioned 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 21.8.2023. The following approval condition and advisory clauses are also suggested for Members' reference:

Approval Condition

upon the expiry of the planning permission, the reinstatement of the application 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**.

11.3 There is no strong reason to recommend rejection of the application.

12. Decision Sought

12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the 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 date when the validity of the permission should expire.

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

Appendix I	Application form with attachments received on 3.7.2020
Appendix II	Previous applications
Appendix III	Similar applications
Appendix IV	Public Comments
Appendix V	Advisory clauses
Drawing A-1	Location Plan submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos