

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

APPLICATION NO. A/NE-TK/676

<u>Applicants</u>	Mr. CHAN Keung and Ms. LAM Yuk Fong Rita
<u>Site</u>	Lots 1830 (Part), 1738 S.B ss.3 (Part) in D.D. 17 and adjoining Government land, Lung Mei, Tai Po, New Territories
<u>Site Area</u>	104 m ² (including about 29 m ² Government land)
<u>Lease</u>	Partly New Grant Lot demised for non-industrial purposes and partly Block Government Lease demised for agricultural purpose
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zonings</u>	“Village Type Development” (“V”) (about 71% of the Site) “Agriculture” (“AGR”) (about 29% of the Site)
<u>Application</u>	Renewal of Planning Approval for Temporary ‘Private Garden Ancillary to New Territories Exempted House (NTEH)’ For a Period of Three Years

1. The Proposal

- 1.1 The applicants seek renewal of planning approval for a temporary private garden adjoining their NTEH for a period of three years at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of OZP. The Site is currently used for the applied use with valid planning permission until 23.12.2019.
- 1.2 The Site is the subject of three previous applications (No. A/NE-TK/335, 480 and 596) covering the same site for the same use submitted by the same applicants and approved by the Rural and New Town Planning Committee (the Committee) on a temporary basis for a period of three years in 2010, 2013 and 2016 respectively. The proposal under current application is the same as the last approved planning application No. A/NE-TK/596. The applicants have complied with the relevant approval conditions including mainly the maintenance of the existing trees and landscape plantings.
- 1.3 In support of the application, the applicants have submitted an application

form with attachments (**Appendix I**).

2. **Justifications from the Applicants**

The justifications put forth by the applicants in support of the application are detailed in Part 7 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the applied use at the Site has been approved for many years. The situation of the garden remains unchanged so far. There are landscape plantings in the garden in accordance with the approval conditions. The garden is welcomed by the neighbours;
- (b) the Site is not located on any vehicular/pedestrian access of the village. The area outside the garden is residual Government land after the drainage works conducted by the Government;
- (c) the extension of the planning approval would not have impact on town planning and future development; and
- (d) the applied use with landscape plantings is a proper way to utilize the Site.

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

For the portion of private land, the applicants are the sole “current land owners” of the Site. Detailed information would be deposited at the meeting for Members’ inspection. As for the portion of Government land within the Site, the “owner’s consent/notification” 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) are not applicable.

4. **Town Planning Board Guidelines**

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

5. **Previous Applications**

- 5.1 The Site is the subject of three previous applications (No. A/NE-TK/335, 480 and 596) covering the same site for the same use submitted by the same applicants and approved by the Committee on a temporary basis for a period of three years in 2010, 2013 and 2016 respectively. The planning approvals were granted mainly on considerations that the private garden use would not frustrate the long term planning intention of “AGR” zone and was not incompatible with the surrounding uses which were predominantly rural in character with clusters of village houses in the vicinity. The planning

permission of the last application will be valid until 23.12.2019. The current application is the same as the last approved planning application No. A/NE-TK/596. The applicants have complied with the relevant approval conditions including mainly the maintenance of the existing trees and landscape plantings.

5.2 Details of the above applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2**.

6. Similar Application

There is no similar application for temporary private garden within the same “AGR” zone.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2 and photos on Plans A-3 and A-4)

7.1 The Site is :

- (a) paved, fenced off and currently used as a private garden of the adjoining house with trees and landscape plantings;
- (b) partly within the village ‘environs’ (‘VE’) of Lung Mei and Tai Mei Tuk; and
- (c) located at the western fringe of Ng Uk Tsuen and accessible via a local track.

7.2 The surrounding areas are predominantly rural in character with clusters of village houses to the east of the Site. To the west, there is a local track and fallow agricultural land.

8. Planning Intentions

8.1 The planning intention of the “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.

8.2 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 on the application are summarized as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, Lands D):

- (a) no objection to the application;
- (b) the Site consists of two private lots in D.D. 17 and the adjoining Government land. Lot 1738 S.B ss.3 is held under the Block Government Lease demised for agricultural purpose and no structure shall be erected on the lot without prior approval from LandsD. Lot 1830 is held under New Grant No. 13096 commenced from 7.12.1995 demised for non-industrial purposes with a built-over area of not exceeding 65.03m² and a height of not exceeding 8.23m, and no other structure shall be erected without prior approval from LandsD;
- (c) the part of the Site on Government land is covered by a valid Short Term Tenancy (STT) No. 1570 granted to the applicants. It was granted with a term of five years certain commenced from 15.11.2007 and thereafter half-yearly. The permitted use for "private garden excluding vehicle parking purpose" with only boundary walls and fences are permitted under the tenancy;
- (d) a recent inspection revealed that some unauthorized structures such as a canopy, a shade, a storage and a flower bed were found on the Site without prior approval from LandsD. The applicants are required to clear any existing structures not covered by any approval immediately. Otherwise, appropriate enforcement action will be taken in due course;
- (e) there is no guarantee to the grant of right of way to the Site or approval of Emergency Vehicular Access (EVA) thereto; and
- (f) no Small House application was received in respect of the Site.

Building Matters

9.1.2 Comments of Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) no objection to the application under the Buildings Ordinance (BO); and
- (b) detailed advisory comments under BO are at **Appendix IV**.

Landscape

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

- (a) no objection to the application from the landscape planning perspective;
- (b) the Site is situated in an area of rural landscape character comprising natural woodland and village houses. The applied use is not incompatible with the surrounding environment. Comparing the aerial photos taken in 2016 and 2018, there is no significant change to the surrounding landscape setting since the last application (No. A/NE-TK/596) was approved. Further significant adverse landscape impact due to the applied use is not anticipated; and
- (c) should the application be approved, given that adequate landscape had been already implemented within the Site, the condition for submission and implementation of landscaping proposal is not recommended.

Agriculture

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

as it is noted that the Site is for continuation of the private garden, he has no comment on the application.

9.2 The following Government departments have no objection to/comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Engineer/Mainland North, Drainage Services Department;
- (c) Chief Highway Engineer/New Territories East, Highways Department;
- (d) Commissioner for Transport;
- (e) Director of Fire Services;
- (f) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (g) Project Manager/New Territories North, Civil Engineering and Development Department;
- (h) Director of Electrical and Mechanical Services; and
- (i) District Officer/Tai Po, Home Affairs Department.

10. Public Comment Received During Statutory Publication Period (Appendix V)

On 4.10.2019, the application was published for public inspection. During the statutory public inspection period, one public comment from an individual was received objecting to the application mainly for reasons that the private garden is too large and unnecessary; fencing off the Site will reduce road surface and cause inconvenience to residents; and the Government land within the Site would be required for future planning in the village.

11. Planning Considerations and Assessments

11.1 The Site falls partly within “V” zone (about 71%) and “AGR” zone (about 29%). The application is for the renewal of planning permission granted under a previous application (No. A/NE-TK/596) for a private garden for the adjoining NTEH. Whilst the use is not in line with the planning intention of “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes, the concerned area and its vicinity is within the village proper and has been paved. DAFC has no comment on the application as the Site is for continuation of the private garden. Approval of the application on a temporary basis for 3 years would not frustrate the long-term planning intention of the subject “V” and “AGR” zones.

11.2 The Site is paved, fenced off and currently used as a private garden with trees and landscape plantings. The applied use is not incompatible with the surrounding environment comprising mainly natural woodland and village houses. The CTP/UD&L of PlanD has no objection to the application as there is no significant change to the surrounding landscape setting since the last application (No. A/NE-TK/596) was approved and further significant adverse landscape impact due to the applied use is not anticipated. DLO/TP has no objection to the application but requires the applicants to clear the unauthorized structures erected on the Site. Other relevant Government departments including CE/C of WSD, D of FS, C for T and CE/MN of DSD have no objection to or no adverse comment on the application.

11.3 The Site is the subject of three previous applications (No. A/NE-TK/335, 480 and 596) covering the same site for the same use submitted by the same applicants and approved by the Committee on a temporary basis for a period of three years in 2010, 2013 and 2016 respectively. The planning approvals were granted mainly on considerations that the private garden use would not frustrate the long-term planning intention of “AGR” zone and was not incompatible with the surrounding uses which were predominantly rural in character with clusters of village houses in the vicinity. The planning permission of the last application will be valid until 23.12.2019. The applicants have complied with the relevant approval conditions including mainly the maintenance of the existing trees and landscape plantings. The proposal under current application is the same as the last approved application No. A/NE-TK/596 and there has been no material change in planning circumstances since the previous approval was granted. The renewal of the

planning approval is not expected to have any adverse planning implications. The approval period sought, i.e. three years, is the same as the last permission and is considered reasonable. As such, the applied private garden use complies with the TPB PG-34B for renewal of planning approval.

- 11.4 Regarding the public comment raising objection to the application on the grounds as detailed in paragraph 10 above, Government departments' comments and the planning assessments in above paragraphs are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, the Planning Department considers that the temporary use under application could be tolerated for a period of three 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 three years, and be renewed from 24.12.2019 until 23.12.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the existing trees and landscape plantings on the Site shall 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 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.

[same conditions as the last approved application No. A/NE-TK/596]

Advisory Clauses

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

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference :
- the use is not in line with the planning intention of the "AGR" zone which is 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 to justify a 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) 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 applicants.

14. Attachments

Appendix I	Application form and attachments
Appendix II	Relevant Extracts of TPB Guidelines No. 34B on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
Appendix III	Previous Application
Appendix IV	Detailed advisory comments from Buildings Department
Appendix V	Public Comment
Appendix VI	Advisory Clause
Drawing A-1	Layout Plan submitted by the applicants
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
NOVEMBER 2019**