

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-PK/133

- Applicant** : Mr. LI Chung Woon
- Site** : Lot 2166 S.B & GL (Part) in D.D. 91, Ping Kong, Sheung Shui, New Territories
- Site Area** : 1,080 m² (about)
- Land Lease** : (a) Block Government lease (demised for agricultural use) for Lot 2166 in D.D. 91; and
(b) Letter of Approval No. L6050 for the purposes of agricultural storages and pigsties and Modification of Tenancy No. 38870 for purposes of dwelling, shades, kitchen and latrine for Lot 2166 S.B in D.D. 91
- Plan** : Approved Ping Kong Outline Zoning Plan (OZP) No. S/NE-PK/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Warehouse for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary warehouse for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Ping Kong Outline Zoning Plan (OZP) No. S/NE-PK/11. According to the Notes of the OZP, temporary use not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use is not provided for in terms of the Plan. The southwestern portion of the Site is currently used for the applied use without a valid planning permission (**Plans A-2 and A-4c**).
- 1.2 According to the applicant, the proposed development involves the demolition of a farm shed for a 1-storey structure (7 m high) for a warehouse for daily necessities (**Drawing A-1**). The total floor area of the warehouse is about 1,080 m². There is no designated loading/unloading space within the Site and loading/unloading activities will take place inside the proposed warehouse. The Site is accessible via a local track leading to Fan Kam Road (**Plan A-1**). The proposed operation hours are from 10:00 a.m. to 11:00 p.m. from Mondays to Sundays. The site layout plan submitted by the applicant is at **Drawing A-1**.

1.3 In support of the application, the applicant has submitted the application form with attachments on 29.6.2018 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 9 of the Application Form at **Appendix I**. They can be summarised as follows:

- (a) the applicant is old and he is physically unfit for agricultural activities. The Site should not be abandoned and should be used for other alternative uses; and
- (b) the Site is far from commercial centres and the proposed warehouse can meet the needs of the growing retail and wholesale industry in the North District.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advises that the Site is not subject to any active enforcement cases. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorised development under the Town Planning Ordinance, enforcement action will be taken.

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Application

There is no similar application for temporary warehouse within the “AGR” zone in the vicinity of the Site in the Ping Kong area.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plans A-4a to A-4c)

7.1 The Site:

- (a) comprises three adjoining temporary structures, including two vacant structures in the northern and eastern parts of the Site and a structure in the southwestern part of the Site currently used as a warehouse without a valid planning permission (**Plans A-4a to A-4c**); and

- (b) is accessible via a local track leading to Fan Kam Road (**Plan A-1**).

7.2 The surrounding areas have the following characteristics:

- (a) surrounded by workshop and warehouses to its immediate north, northeast, south and west (**Plans A-2 and A-3**);
- (b) to its immediate east are some active agricultural land and to the further east are some temporary structures and storage;
- (c) to its further north and northeast are fallow agricultural land;
- (d) to its further south are vacant temporary structures and a warehouse and open storage; and
- (e) to its further west and northwest are temporary domestic structures, vacant structures, warehouses, car park and active agricultural land.

8. Planning Intention

The planning intention of the “AGR” zone in Ping Kong area is to primarily 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 summarised as follows:

Land Administration

9.1.1 Comment of the District Lands Officer/North, Lands Department (DLO/N, LandsD)

- (a) the mother Lot 2166 in D.D 91 is Old Schedule lot held under the Block Government lease (demised for agricultural use) without any guarantee of right of access. A Letter of Approval (“LoA”) No. L6050 and a Modification and of Tenancy No. 38870 were once issued to Lot 2166 S.B in D.D. 91 to cover temporary structures for the purposes of agricultural storages and pigsties; and to cover temporary structures for the purposes of dwelling, shades, kitchen and latrine respectively. As the existing structures and uses do not comply with the requirements under the LoA No. L6050, it will be cancelled accordingly;
- (b) portion of the mother Lot 2166 with an area of 0.14 acre, namely Lot 2166 S.A, was surrendered to the Government under memorial no. N33802 in 1916 by the ex-owner “The Royal Hong Kong Golf Club”. However, there is no surrender plan showing the surrender area in the memorial.

The lot designation was then amended from “Lots 2166 S.A and S.B” to “Lot 2166 S.B&GL” which included Lot 2166 S.B and ex-Lot 2166 S.A. The location of ex-Lot 2166 S.A currently designated as “GL” is subject to further verification. The applicant should make his own arrangement for acquiring access. The Government shall accept no responsibility in such arrangements;

- (c) the actual occupied area does not tally with the Site. Portion of the Government land was occupied without authorisation. Unauthorised structures were erected within and adjoining the Site. Portions of the adjoining Lots 2140, 2165 S.B RP and 3376 S.A and S.B in D.D. 91 were also occupied. The total built-over area and numbers of the structures are larger than those mentioned in the application. The structures are not acceptable under the leases concerned. His Office reserves the right to take enforcement actions against the unauthorised structures and illegal occupation of Government land; and
- (d) should the application be approved, the owners of the lots concerned shall apply to his Office for a Short Term Waiver (STW) and Short Term Tenancy (STT) covering all the actual occupation area. The application for STW and STT will be considered by Government in its landlord’s capacity and there is no guarantee that they will be approved. If the STW/STT are approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by his Office.

Traffic

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

- (a) the vehicular access to the Site is via a village track connecting with Fan Kam Road. The application is requested to provide the following transport-related information for her consideration:
 - (i) estimated average daily vehicular trip to/from the Site;
 - (ii) class of vehicles;
 - (iii) vehicular access points and its width;
 - (iv) vehicle loading/unloading and manoeuvring arrangement within the Site; and
 - (v) drawing to indicate the manoeuvring of vehicles at the proposed ingress/egress without reversing on the village track;
- (b) she cannot conclude her advice on the application at this stage; and
- (c) the village track is not under Transport Department’s management. The applicant shall check the land status of the access with the lands authority,

and clarify its management and maintenance responsibilities with the relevant lands and maintenance authorities accordingly.

Environment

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

- (a) he does not support the application as there are domestic structures in the vicinity of the Site, the closest one at about 25 m (**Plan A-2**);
- (b) there is no environmental complaints against the Site in the past three years; and
- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses”.

Landscape

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

- (a) she has reservations on the application from the landscape planning perspective;
- (b) according to the latest aerial photo of 2018, the Site is situated in an area of rural landscape character comprising of temporary structures, farmland (mostly abandoned) and scattered tree groups. The proposed temporary structure is not entirely incompatible with the existing site context;
- (c) her site record dated 12.7.2018 reveals that the Site (used to be a pigsty) is hard paved and mostly covered with temporary structure. There is no significant vegetation on site except young fruit tree of low amenity value. Adverse landscape impact arising from the proposed use within the Site is not anticipated. There is an existing local track connecting the Site to the public road;
- (d) approval of the application would set an undesirable precedent and encourage similar applications spread into the “AGR” zone which will lead to gradual degradation on the landscape character in the area; and
- (e) should the application be approved, approval condition on landscape is not recommended as the proposed structure will occupy the entire Site leaving no space for planting works.

Agriculture

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

The Site is occupied by an existing structure. Agricultural activities in the

vicinity are active. Agricultural infrastructures such as road access and water source are available. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agriculture point of view.

Drainage

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

- (a) he has no objection to the application from public drainage viewpoint;
- (b) should the application be approved, an approval condition to request the applicant to submit and implement a drainage proposal for the Site is recommended to ensure that the proposed development will not cause adverse drainage impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

Building Matters

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

- (a) there is no record of submission of the proposed temporary structures to the Building Authority for approval and the BD is not in a position to offer comments on their suitability for the use related to the application; and
- (b) the applicant should be reminded of the followings:
 - (i) if the existing structures are erected on leased land without approval of the BD (not being a New Territories Exempted House), they are unauthorized under the BO and should not be designated for any approved use under the application;
 - (ii) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are Unauthorized Buildings Works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
 - (iii) 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;
 - (iv) in connection with the above, the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulation 5 and 41D of the Building (Planning) Regulations respectively;

- (v) 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)Rs at the building plan submission stage; and
- (vi) detailed comments under the BO will be provided at building plan submission stage.

Fire Safety

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

- (a) he has no in-principle objection to the application subject to fire service installations (FSIs) and water supplies for firefighting being provided to the satisfaction of his department;
- (b) emergency vehicular access arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by BD; and
- (c) detailed fire safety requirements will be formulated upon receipt of formal submission of the general building plans.

Water Supply

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

- (a) he has no objection to the application; and
- (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.

District Officer's Comments

9.1.10 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals regarding the application. The Chairman of Sheung Shui District Rural Committee, the incumbent North District Council members of the subject constituency, the Indigenous Inhabitant Representative and Resident Representative of Ping Kong and the Chairman of "Association of Ping Kong Area Residents" object to the application mainly on the grounds that the access road is a narrow single carriageway with heavy traffic and the proposed development will cause traffic congestion and safety problems; and there is potential to develop the Ping Kong area in a comprehensive manner.

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

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD); and
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD).

10. Public Comments Received During Statutory Publication Period

On 6.7.2018, the application was published for public inspection. During the statutory public inspection period, six public comments were received (**Appendix II**). The Chairmen of Sheung Shui District Rural Committee and “Association of Ping Kong Area Residents” object to the application with the same comments conveyed by DO(N). A villager from Tai Lung Hang Village object to the application as the proposed development will intensify the existing problem of traffic congestion. The remaining three comments received from the Designing Hong Kong, Kadoorie Farm and Botanic Garden and an individual raise objection to the application mainly on the grounds that the application is not in line with the planning intention of “AGR” zone; the approval of the application will encourage the proliferation of brownfield sites; and the approval of the application would set an undesirable precedent to similar applications.

11. Planning Considerations and Assessments

- 11.1 The Site falls entirely within “AGR zone. The proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. In this regard, DAFC does not support the application from agriculture point of view since the Site possess potential for agricultural rehabilitation with agricultural activities in the vicinity and available agricultural infrastructures. The applicant has not provided strong planning justifications in the submission to merit a departure from the planning intention of the “AGR” zone, even on a temporary basis.
- 11.2 The Site is situated in an area of rural landscape character mainly comprising workshops, warehouses, active agricultural land and temporary / vacant domestic structures. The proposed development is considered not entirely incompatible with the surrounding land uses. Nevertheless, CTP/UD&L, PlanD has reservation on the application from landscape planning point of view since approval of the application would set an undesirable precedent and encourage similar applications in the “AGR” zone which will lead to gradual degradation on the landscape character in the area
- 11.3 C for T could not conclude her advice on the application as no information has been submitted by the applicant including the estimated average daily vehicular trip to/from the Site, class of vehicles, vehicular access points and its width and vehicle loading/unloading and manoeuvring arrangement within the Site. As such, the applicant fails to demonstrate that the proposed development would not generate adverse traffic impact on the surrounding area. DEP does not support the application

as there are domestic structures in the vicinity of the Site. Despite there is no substantial environmental complaints in the past three years, the applicant has not submitted any information to demonstrate that the proposed development would not cause adverse environmental impacts on surrounding areas. Other relevant Government departments consulted, including D of FS, CE/MN of DSD and CE/C of WSD, have no adverse comment on / no objection to the application.

11.4 Regarding the adverse public comments on the consideration of not in line with the planning intention of “AGR” zone; adverse traffic impacts; proliferation of brownfield sites; and the setting of an undesirable precedent, the Government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments in paragraph 10 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed temporary use under application is not in line with the planning intention of the “Agriculture” zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
- (b) the applicant fails to demonstrate in the submission that the proposed development would not cause adverse traffic and environmental impacts on the surrounding areas; and
- (c) the approval of the application would set an undesirable precedent the approval of the application will set an undesirable precedent for similar applications within the same “Agriculture” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

12.2 Alternatively, 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 **17.8.2021**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 11:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) 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 17.2.2019;
- (c) in relation to (b) 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 17.5.2019;

- (d) the submission of proposals for fire service installations and water supplies for firefighting 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 17.2.2019;
- (e) in relation to (d) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 17.5.2019;
- (f) the submission of traffic management measures within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 17.2.2019;
- (g) in relation to (f) above, the implementation of traffic management measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 17.5.2019;
- (h) if planning condition (a) 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;
- (i) if any of the above planning conditions (b), (c), (d), (e), (f) or (g) 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
- (j) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are at **Appendix III**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the 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 Attachments received on 29.6.2018
Appendix II	Public Comments
Appendix III	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3	Aerial Photo taken in 2018
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
AUGUST 2018**