

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/111

- Applicant** : Smart Happiness Limited represented by Metro Planning and Development Company Limited
- Site** : Lot 1149 (Part) in D.D. 125, Tseung Kong Wai , Ha Tsuen, Yuen Long
- Site Area** : 135 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Hung Shui Kiu and Ha Tsuen Outline Zoning Plan (OZP) No. S/HSK/2
- Zoning** : “Village Type Development” (“V”)
[Restricted to the maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Shop and Services (Real Estate Agency) 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 shop and services (real estate agency) for a period of 3 years (**Plan A-1**). The Site is the subject of a previous application No. A/YL-HT/973 for the same use, and is currently occupied by a real estate agency.
- 1.2 The Site is accessible from San Sik Road via a local track (**Plan A-3**). As shown on the layout Plan at **Drawing A-2**, the access to the site is at the eastern boundary. A total of 2 temporary structures with a total of floor area of 80m² are proposed. They include a single-storey (3.8m high) structure (60m²) for real estate agency and toilet use at the western part of the Site and another single-storey (3.8m high) structure (20m²) for conference use at the northern portion of the Site. The operation hours are from 9:00 a.m. to 8:00 p.m. daily. The proposed landscape plan and drainage plans submitted by the applicant are at **Drawings A-3 to A-5**.
- 1.3 A comparison of the major development parameters of the last approved application and the current application is given in the following table:

Major Development Parameters	Last Approved Application (A/YL-HT/973) (approved on 18.9.2015) (lapsed on 18.9.2018) (a)	Current Application (A/HSK/111) (b)	Difference (b) – (a)
Site Area	135 m ² (about)	135 m ² (about)	No change
Applied Use	Temporary Shop and Services (Real Estate Agency)	Temporary Shop and Services (Real Estate Agency)	No change
No. of Structures	2	2	No change
Total Floor Area	80m ²	80m ²	No change
Height of Structures	3.8m	3.8m	No change

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application Form received on 15.10.2018 **(Appendix I)**
- (b) Supplementary planning statement with site plans, location plan, proposed layout plan, proposed landscape and tree preservation plan, and drainage plans **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Supplementary Planning Statement at **Appendix Ia**. They can be summarized as follows:

- (a) The proposed development is the subject of a previous planning permission for the same use and the applicant had managed to comply with all the planning conditions imposed by the Town Planning Board (the Board).
- (b) The proposed development meets the planning intention of “V” zone to serve the needs of the nearby residents. The proposed temporary use would not jeopardize the building of New Territories Exempted House (NTEH) in the village in the long run.
- (c) The proposed development is primarily to serve the villagers and the nature and size of the proposed development, which is a kind of shop and service use, would not affect the character of the village. The proposed development is compatible with the surrounding environment.
- (d) There are also similar developments in the “V” zones in the surrounding areas that have been approved by the Board for temporary use.
- (e) There are no adverse traffic, environmental, landscape and drainage impacts from the development. The opening hours are proposed to be restricted from

9:00 a.m. to 8:00 p.m. daily.

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

The applicant is not a “current land owner” but 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. 31) by posting site notice and sending notice to the Ha Tsuen Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The site is currently not a subject of any active planning enforcement case. Notwithstanding, as the previous planning permission (A/YL-HT/973) on this site has lapsed on 18.9.2018, investigation is underway to ascertain whether the current use of the site constitutes an unauthorized development. If confirmed, the Planning Authority will instigate enforcement action under the Town Planning Ordinance.

5. Previous Applications

The site is the subject of a previous planning application No. A/YL-HT/973 for the same applied use by the same applicant, and it was approved by the Rural and New Town Planning Committee (the Committee) on 18.9.2015 for a period of 3 years. All the time-specific approval conditions had been complied with. However, the planning approval has lapsed on 18.9.2018.

6. Similar Applications

There are 11 similar applications No. A/YL-HT/889, 931, 955, 973, 980, 996, 1013 and 1069, as well as No. A/HSK/13, 58, 62 and 97 for temporary shop and services (real estate agency) uses within the same “V” zone. All these applications were approved by the Committee since 2005 taking into consideration that the applied uses were not incompatible with the surrounding uses. However, two of the applications (No. A/YL-HT/931 and A/YL-HT/1013) were subsequently revoked due to non-compliance with approval conditions. Particular of these applications and the decisions of the Committee are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

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

7.1 The site is:

- (a) currently occupied by 2 structures used as a real estate agency; and
- (b) accessible from San Sik Road via a local track.

7.2 The surrounding areas have the following characteristics:

- (a) predominately occupied by open storage of construction materials and vehicles, agricultural land and residential development at Tseung Kong Wai;
- (b) to its immediate north is a residential dwelling; to its further north and northeast is the village settlement of Tseung Kong Wai;
- (c) to its immediate east is a piece of unused land. Further east are some residential dwellings;
- (d) to its immediate west is fallow and cultivated agricultural land. Further west is a residential dwelling and a workshop;
- (e) to its south are some open storage yards of cars and construction materials; and
- (f) further south are temporary open storage yards with valid planning permissions under applications No. A/YL-HT/984 and A/HSK/45.

8. Planning Intention

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. 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 NTEH. Other commercial, community and recreational uses may be permitted on application to 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 Old Schedule Agricultural Lots held under Block Government Lease which contains the restriction that no structures are allowed to be erected without prior approval from the Government.

- (b) The site is accessible from San Sik Road via a local track located on both Government Land (GL) and private lot(s). DLO/YL provides no maintenance works to the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The subject lot is covered by a Short Term Waiver (STW) No.4569 for Temporary Shop and Services (Real Estate Agency) purposes.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) There is no Small House application received/under processing for the application site.
- (f) should planning approval be given to the subject planning application, the STW holder will need to apply to her office for modification of the STW conditions where appropriate and the lot owner(s) of the lot(s) without STW will need to apply to her office for permitting the structures to be erected or to regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Application(s) for any of the above will be considered by the LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application(s) 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 the LandsD.

Drainage

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

According to the information submitted by the Applicant, the drainage proposal was generally identical to the one submitted under the previous application no. A/YL-HT/973 on which he had no adverse comment. He has no objection in principle to the proposed development from a drainage point of view, he suggests that a condition should be stipulated requiring the Applicant to maintain the proposed drainage facilities should the application be approved.

Environment

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

- (a) There was no environmental complaint pertaining to the Site received in the past 3 years.

- (b) Should the application be approved, the applicant is reminded to follow the latest “Code of Practice (COP) on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any potential environmental nuisance.

Traffic

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

He has no objection in principle to the application from traffic engineering viewpoint.

9.1.5 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) The proposed access arrangement of the site from San Sik Road should be commented and approved by Transport Department.
- (b) Adequate drainage measures should be provided to prevent surface water running from the site to the nearby public roads and drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the site and San Sik Road.

Landscaping

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

She has no comment on the application from landscape planning point of view.

Fire Safety

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

- (a) He has no objection to the proposal subject to fire services installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the structures, 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.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs are to be installed should be clearly marked on the layout plans.

- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (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) There is no record of approval by the Building Authority for the structures existing at the site and Buildings Department (BD) is not in a position to offer comments on their suitability for the use related to the application.
- (b) If the existing structures (not being New Territories Exempted Houses) are erected on leased land without approval of BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any approved use under the captioned application.
- (c) 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 application site under the BO.
- (d) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on leased land in the site, the prior approval and consent of BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO.
- (e) 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 respectively.
- (f) 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 Building (Planning) Regulations at the building plan submission stage.

District Officer's Comment

9.1.9 Comments of the District Officer/ Yuen Long, Home Affairs Department (DLO/YL):

She has not received any comment from locals on the application.

9.1.10 The following Government departments have no comment on the application:

- (a) Chief Engineer/ Construction, Water Supplies Department (CE/C,WSD)
- (b) Commissioner of Police (C of P);
- (c) Project Manager (West), Civil Engineering and Development Department (PM/W, CEDD);
- (d) Chief Engineer/Sewerage Projects, DSD (CE/SP, DSD); and
- (e) Director of Agriculture, Fisheries and Conservation (DAFC).
- (f) Director of Electrical & Mechanical Services (DEMS)

10. Public Comments Received During Statutory Publication Period

On 23.10.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 13.11.2018, no public comment was received.

11. Planning Considerations and Assessment

- 11.1 The planning intention of “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. 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 NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. Whilst the applied development is not entirely in line with the planning intention of the “V” zone, DLO/YL advises that there is no Small House application at the Site. The applied development could provide commercial use to meet any of such demand in the area. Approval of the application on a temporary basis would not frustrate the long-term planning intention of the “V” zone.
- 11.2 The Site is located at the fringe of the village cluster at Tseung Kong Wai. The applied use is not incompatible with the surrounding land uses, which are predominantly residential in nature.
- 11.3 Given the small-scale of the proposed development, it is not expected to create any significant adverse environmental, visual, landscape, traffic or drainage impact on the surrounding areas. There is no adverse comment from the concerned Government departments on the application. The technical concerns raised by relevant departments could also be addressed by approval conditions as recommended in paragraph 12.2 below. Non-compliance with any of the approval conditions will result in revocation of the planning permission and unauthorized development on the site will be subject to enforcement action

by the Planning Authority.

- 11.4 The Committee has approved with conditions a previous application for shop and services (real estate agency) at the Site (**Plan A-1b**) and 11 similar applications within this “V” zone on the OZP since 2005 (Plan A-1a). Approval of the current application is in line with the Committee’s previous decisions.
- 11.5 No public comment on the application has been received.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11, the Planning Department has no objection to the proposed shop and services (real estate agency) on a temporary basis 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 **7.12.2021**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the site during the planning approval period;
- (b) ***the submission of a condition record of the existing drainage facilities within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 7.3.2019;***
- (c) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (d) the existing trees and landscape planting on the Site shall be maintained at all time during the planning approval period;
- (e) the submission of a 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 **7.6.2019**;
- (f) in relation to (e) above, the implementation of the fire service installations proposal 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 **7.9.2019**;
- (g) if any of the above planning conditions (a), (c) or (d) 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

- (h) if any of the above planning conditions *(b)*, *(e)* or *(f)* is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

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

- 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 "Village Type Development" zone which is primarily to designate both existing recognized villages and areas of land considered suitable for village expansion. There is no strong justification to deviate 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 reasons for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form received on 15.10.2018
Appendix Ia	Supplementary planning statement with site plan, location plan, proposed layout plan, landscape plan, and drainage plans
Appendix II	Previous application covering the application site
Appendix III	Similar applications within the subject "V" zone on the approved Ha Tsuen Outline Zoning Plan
Appendix IV	Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape and Tree Preservation Plan
Drawing A-4 to A-5	As-built Drainage Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan

Plan A-3
Plans A-4a to 4b

Aerial Photo
Site Photos

PLANNING DEPARTMENT
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