

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/233

- Applicant** : Group Gain Land Development Ltd. represented by Mr. Kwok Chi Man
- Site** : Lot 121 (Part) in D.D. 128, Ha Tsuen, Yuen Long
- Site Area** : 630m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Hung Shui Kiu and Ha Tsuen (HSK and HT) Outline Zoning Plan (OZP) No. S/HSK/2
- Zoning** : “Village Type Development” (“V”) (72.6%); and
[Restricted to maximum building height of 3 storeys (8.23m)]
“Government, Institution or Community” (“G/IC”) (27.4%)
[Restricted to maximum building height of 3 storeys]
- Application** : Proposed Temporary Shop and Services 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 shop and services use for a period of 3 years (**Plan A-1**). The Site falls mainly within the “V” zone (72.6%) with minor portion within “G/IC” (27.4%) zone on the approved HSK and HT OZP No. S/HSK/2. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use in both “V” and “G/IC” zones which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by a converted container structure, a mobile toilet and some debris for storage purpose without valid planning permission.
- 1.2 The Site is accessible from Kai Pak Ling Road via a local track (**Plan A-2 and Drawing A-1**) and the ingress/egress point at the south-western part of the Site. As shown on the proposed layout plan at **Drawing A-2**, a 3m high single-storey structure (with a floor area of 230m²) is proposed for the selling of construction materials. About 1-2 workers from nearby residents will be employed for the shop. Two light goods vehicle parking spaces (7m x 3.5m each) will be provided. A manoeuvring circle will be provided near the entrance. The operation hours are from 9 a.m. to 7 p.m. Mondays to Saturdays. There will be no operations on Sundays and public holidays.

1.3 In support of the application, the applicant has submitted the following document:

Application Form with Supplementary Planning Statement (**Appendix I**)
and plans received on 8.6.2020

1.4 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 7.8.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. The application is now scheduled for consideration by the Committee at this meeting.

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 I**. They can be summarized as follows:

- (a) The proposed development is a Column 2 use in both the “G/IC” and “V” zones. The applied use would not contravene the planning intentions of the “G/IC” and “V” zones and would not affect the long-term land use.
- (b) The proposed development is neither a warehouse nor open storage yard and is of small scale and temporary in nature. Large scale construction materials will be directly transported to the customers via the supplier and will not be sold within the Site.
- (c) The proposed development is not incompatible with the surrounding rural environment.
- (d) No neon lights will be installed for the store and there will also be no workshop activities. No toxic nor polluting materials will be stored at the proposed development. There will be no night time operation and the opening hours will be restricted from 9:00 a.m. to 7:00 p.m. and no noise nuisance will be generated to the nearby residents. Given the small size of the proposed development, it would have no adverse environmental and traffic impacts on the surrounding areas.

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. 31A) 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 storage use on the Site would be subject to planning enforcement action.

5. Previous Application

The Site is not the subject of any previous planning application.

6. Similar Application

There is one similar application (No. A/HSK/193) for shop and services (showroom) with ancillary office (display for solar panels and ancillary facility) uses within the same “G/IC” zone. It was rejected by the Committee on 29.11.2019 taking into consideration that the development is not in line with the planning intention of “G/IC” zone, not compatible with the surrounding land uses and the approval of the application would set an undesirable precedent for similar applications. Details of the application and the decision of the Committee are summarized at **Appendix II** and its location is shown on **Plan A-1**.

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

7.1 The Site is:

- (a) currently occupied by a converted container structure, a mobile toilet and some debris for storage use without valid planning permission; and
- (b) accessible from Kai Pak Ling Road via a local track.

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate north are some village houses and residential dwellings (the nearest one being about 5m away);
- (b) to its east are grassland, storage and open storage of construction materials and machinery;
- (c) to its immediate south are some parking of vehicles and a storage. To its further south are vehicle repair workshop, yards of open storage of construction materials, plastics containers and tyres, and a fish farm (under valid planning permission); and
- (d) to its immediate west is grassland and to its further west is an open storage of recycling materials.

8. Planning Intention

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. 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 (NTEH). Other commercial, community and recreational uses may be permitted on application to the Town Planning Board.

- 8.2 The “G/IC” zone is primarily intended for provision of Government, institution or community facilities serving the needs of the local residents and/or wider district, region or territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organization providing social services to meet community needs, and other institutional establishment.

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 an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) According to his record, there is no Small House application approved/under processing for the Site, and there are 2 small house applications under processing in the vicinity of the Site.
- (c) Should the planning application be approved, the lot owner(s) of the lot(s) without Short Term Waiver will need to apply to his 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. Application(s) for any of the above will be considered by 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 rent or fee, as may be imposed by LandsD.

Traffic

- 9.1.2 Comment of the Assistant Commissioner for Transport/ New Territories, Transport Department (AC for T/NT, TD):

- (a) He has no adverse comment on the application from traffic engineering point of view
- (b) Sufficient manoeuvring space shall be provided within the Site. No vehicles are allowed to queue back to public roads or reverse onto/from public roads.
- (c) The local track leading to the Site is not under TD’s purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

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

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Kai Pak Ling Road.

Environment

9.1.4 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 applicant be approved, the applicant is reminded to follow the latest 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites' to minimize any potential environmental nuisance.

Drainage

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

- (a) He has no objection in principle to the proposed development from a drainage point of view.
- (b) Should the application be approved, he would suggest imposing planning conditions requiring the applicant to submit a drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of his Division.
- (c) The applicant is reminded that the development should neither obstruct overland flow nor adversely affect existing stream course, natural streams, village drains, ditches and the adjacent areas.
- (d) The applicant should consult DLO/YL and seek consent from the relevant owners for any works to be carried out outside the Site before commencement of the drainage works.

Building Matters

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

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorized building works

(UBW) under the Buildings Ordinance (BO). An Authorized Person should be appointed as the coordinator for the proposed building works in accordance with the BO.

- (b) For UBW erected on leased land, enforcement action may be taken by the 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.
- (c) 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 (B(P)R) respectively.
- (d) 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)R at the building plan submission stage.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service 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.

Long-Term Development

9.1.8 Comments of the Project Manager (West), Civil Engineering and Development Department (PM/W, CEDD):

- (a) He has no objection to the application for temporary use for 3 years, which should be considered in accordance with the provisions of the existing OZP and infrastructure capacities.
- (b) The Site falls within the boundary of Hung Shui Kiu/Ha Tsuen New Development Area (HSK/HT NDA). According to the Planning and Engineering Study for the HSK/HT NDA and the latest plan, to ensure

timely and orderly implementation, the development of HSK/HT NDA and relevant site formation and infrastructure works would be implemented in five stages, viz. Advance Works and Stage 1 to Stage 4. The lot(s) concerned falls within a site under Stage 4 Works in the latest programme of the HSK/HT NDA. While the detailed implementation programme for the project is still being formulated, it is envisaged that clearance of the Site will not be arranged before the first population intake of the HSK/HT NDA expected in 2024.

Nature Conservation

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

- (a) The nearby area of the Site is disturbed.
- (b) Noting from the application materials that the proposed development will not involve any tree felling, pond filling, land excavation or cutting of watercourse, he has no comment on the application from nature conservation point of view.

District Officer's Comments

9.1.10 Comments of the District Officer/Yuen Long, Home Affairs Department (DO/YL, HAD):

- (a) He has no comment on the application from departmental point of view.
- (b) His office has not received any comment from the locals on the application.

9.2 The following Government department has no comment on the application:

Chief Engineer/Construction, Water supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 16.6.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment was received. The commenter considered that the Site is close to residential places and there is a lack of G/IC facilities in the area (**Appendix III**).

11. Planning Considerations and Assessments

11.1 The application is for temporary shop and services use for a period of 3 years at a site falls mainly within "V" zone (about 72.6%) with minor portion within "G/IC" zone (27.4%) on the OZP. The planning intention of the "V" zone is to designate both existing recognized villages and areas of land considered suitable for village expansion while that for the "G/IC" zone is primarily intended for provision of Government, institution or community facilities serving the needs of the local

residents and/or wider district, region or territory. Whilst the applied development is not in line with planning intentions of the “V” and “G/IC” zones, the implementation programme for this part of NDA is still being formulated, and PM/W of CEDD has no objection to the temporary use for a period of 3 years at the Site. DLO/YL advises that there is no Small House application approved/under processing for the Site. In this regard, approval of the application on a temporary basis of 3 years would not jeopardize the long-term development of the Site. However, should the application be approved, it is suggested to include an advisory clause stating that the Site may be resumed by the Government at any time during the planning approval period for the implementation of government projects.

- 11.2 The Site is located at the fringe of the “V” zone. While the proposed temporary use of shops and services for the selling of construction materials is not entirely compatible with the surrounding land use, in particular the village houses within the zone, the applied use is of small scale with transportation of goods using only light goods vehicles. Significant environmental impacts to the surrounding areas is not anticipated.
- 11.3 There is no adverse comment from concerned Government departments including DEP. There has not been any environmental complaint pertaining to the Site in the past three years. Furthermore, relevant approval conditions have been recommended in paragraph 12.2 to address the possible environmental nuisances or the technical requirements of the other concerned Government departments. Any non-compliance with these approval conditions would result in revocation of the planning permission and any unauthorized development on the Site would be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will be advised to follow the ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites’ in order to minimize the possible environmental impacts on the nearby sensitive receivers.
- 11.4 The Committee has rejected one similar application for shop and services (showroom) with ancillary office (display for solar panels and ancillary facility) which falls entirely within the same “G/IC” zone on the OZP in 2019. For the current application, the Site falls mainly within the “V” zone (72.6%) with minor portion within “G/IC” zone (27.4%) on the OZP. It is also noted that the applied use of the current application is of small scale and can serve the needs of the nearby villagers.
- 11.5 There is one public comment received on the application during statutory publication period as summarised in paragraph 10. The planning considerations and assessments in the above paragraphs are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above and having taken into account the public comment mentioned in paragraph 10, the Planning Department has no objection to the proposed temporary shops and services 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 **15.9.2023**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no workshop activity, as proposed by the applicant, is allowed on the Site at any time during the planning approval period;
- (d) the submission of a drainage proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **15.3.2021**;
- (e) in relation to (d) above, the implementation of the drainage proposal within **9** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **15.6.2021**;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) 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 **15.3.2021**;
- (h) in relation to (g) 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 **15.6.2021**;
- (i) if any of the above planning conditions (a), (b), (c) or (f) 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
- (j) if any of the above planning conditions (d), (e), (g) or (h) 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 intentions of the "V" and "G/IC" zones which are to designate both existing recognized villages and areas of land considered suitable for village expansion, and for the provision of Government, institution or community facilities serving the needs of the local residents and/or wider district, region or territory respectively. There is no strong justification given in the submission to deviate from the planning intentions, 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 reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form with annex and plans received on 8.6.2020
Appendix II	Similar Application within the Same "V" and "G/IC" Zones on the Approved Hung Shui Kiu and Ha Tsuen OZP No. S/HSK/2
Appendix III	Public Comment
Appendix IV	Advisory Clauses
Drawing A-1	Proposed Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos