

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/244

- Applicant** : Smart Happiness Limited represented by Ever United Planning and Development Limited
- Site** : Lots 1119 (Part), 1120 (Part) and 1121 RP (Part) in D.D. 125 and adjoining Government Land (GL), Ha Tsuen, Yuen Long
- Site Area** : About 1,054m² (including about 9m² GL (about 0.9%))
- 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”)
[Restricted to maximum building height of 3 storeys (8.23m)]
- Application** : Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning approval to use the application site (the Site) for temporary shop and services (real estate agency) for a period of 3 years (**Plan A-1a**). According to the Notes of the OZP for “V” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary permission for the use for a period of 3 years. The Site is currently being used for the applied use with valid planning permission (**Plans A-4a and 4b**).
- 1.2 The Site is related to four previous applications for the temporary vehicle park and shop and services uses (**Plan A-1b**). The last application No. A/HSK/13 for the same use was approved by the Rural and New Town Planning Committee (the Committee) of the Board with conditions on 22.9.2017 for a period of 3 years. All the time-limited approval conditions for the application have been complied with and the permission is valid up to 22.9.2020. The current application is submitted by the same applicant at the same site with a reduction in the number of structures and total floor area.

1.3 The Site is accessible from San Sik Road via a local track with the ingress/egress point located at the northern side of the Site (**Drawing A-1, Plans A-2 and A-3**). As shown on the layout plan at **Drawing A-2**, there are three temporary structures with a total floor area of about 178m², including a two-storey 6.5m high structure for real estate agency (with a floor area of not exceeding 160m²) and two single-storey 3m high electricity meter rooms (both with a floor area of not exceeding 9m² each). Four private car parking spaces and a manoeuvring circle are proposed in the open area. The as-planted landscape and tree preservation plan and as-built drainage plan are at **Drawings A-3 and A-4** respectively. The proposed operation hours are from 9:00 a.m. to 8:00 p.m. daily including Sundays and public holidays.

1.4 A comparison of the major development parameters of the current application and the last approved application is given in the following table:

Major Development Parameters	Last Approved Application (A/HSK/13) (a)	Current Application (A/HSK/244) (b)	Difference (b) - (a)
Applied Use	Temporary shop and services (real estate agency)(3 years)		Same
Site Area	1,054m ²		Same
No. of Structures	6	3	-3 (-50%)
Total Floor Area	403m ²	178m ²	-225m ² (-56%)
No. of Parking Spaces	4 for private car (2.5m x 5m each)		Same
Operation Hours	9:00 a.m. to 8:00 p.m. daily (including Sundays and public holidays)		Same

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

- (a) Application Form received on 8.7.2020 **(Appendix I)**
- (b) Supplementary Planning Statement with plans **(Appendix Ia)**

2. Justifications from the Applicant

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

- (a) The Site is subject to a previous planning permission (No. A/HSK/13) for the same use which will be expired on 22.9.2020. The number of temporary structures and total floor area in the current application have been reduced.
- (b) The proposed development meets the planning intention of the “V” zone which aims to serve the daily needs of residents.
- (c) The proposed use is a Column 2 use in the “V” zone which is always permitted on the ground floor of a New Territories Exempted House (NTEH). The Site is not approved for Small House development and the proposed use is temporary in nature. It will not jeopardize the planning intention of the “V” zone in the long run.

- (d) The proposed development, which is for shop and services, is clean, tidy and free from nuisance. Considering the scale, nature, form and layout of the proposed development, they are compatible with the surrounding environment and would not affect the character of the village.
- (e) All approval conditions for the previous planning application have been complied with.
- (f) The proposed development will generate an insignificant increase in traffic flow even in peak hours. It is deemed to have no significant impact on the traffic condition of Ha Tsuen area.

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 publishing notices in local newspapers. Detailed information would be deposited at the meeting for Members’ inspection. The “Owner’s Consent/Notification” Requirements under TPB PG-No. 31A are not applicable to the Government land portion.

4. Background

The use is not subject to planning enforcement action.

5. Previous Applications

- 5.1 The Site is the subject of four previous applications (No. A/YL-HT/719, 915 and 955 and A/HSK/13) for temporary vehicle park and temporary shop and services (real estate agency). Details of these applications are summarized at **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 All four applications were approved by the Committee between 2011 and 2017 on similar considerations that the applied uses were not incompatible with the surrounding areas, would cater for some needs of the nearby villagers and no major adverse comments from concerned Government departments. However, the permissions for the first two applications for temporary vehicle park were subsequently revoked due to non-compliance with time-limited approval conditions.
- 5.3 Compared with the last application, the current application is submitted by the same applicant for the same use on the same site with a reduction in number of structures and total floor area.

6. Similar Applications

There are eight similar applications (No. A/HSK/58, 62, 97, 111, 120, 130, 143 and 212) for temporary shop and services (real estate agency) with/without convenient store and showroom within the same “V” zone between 2018 and 2020. All of these applications were approved by the Committee on similar considerations as mentioned in para. 5.2

above. Particulars of these applications and the decisions of the Committee are summarized at **Appendix III** and their locations are shown on **Plan A-1a**.

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

7.1 The Site is:

- (a) currently used for the applied use under valid planning permission; and
- (b) accessible from San Sik Road via a local track.

7.2 The surrounding areas have the following characteristics:

- (a) to its north and northeast are residential dwellings (closest being about 6m away) and a car park; further northeast across the nullah are clusters of residential dwellings, a residential development named King's Garden, a car park, vacant land and a temporary structure for real estate agency use under valid planning permission;
- (b) to its east are vacant land and a residential development named Purmerend Villas;
- (c) to its south are cultivated agricultural lands and vacant land; further south in the adjacent "Open Space" zone are an open storage yard of construction machinery and material under valid planning permission, an open storage yard of recycling materials, temporary structures for residential and storage uses and vacant land; and
- (d) to its west and northwest are clusters of residential dwellings, and a residential development named Villa Oasis, and a parking yard of vehicles.

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 (OSALs) and GL. The OSALs are held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without prior approval of the Government.
- (b) Lot No. 1119 in D.D. 125 is covered by Short Term Waiver No. 5169 (STW5169) for the purposes of Temporary Shop and Services (Real Estate Agency).
- (c) No permission is given for occupation of the GL included in the Site (about 9m² subject to verification). The act of occupation of GL without Government's prior approval is not allowed.
- (d) According to his record, there are no Small House applications approved/under processing within the Site. There are 12 Small House applications approved in the vicinity.
- (e) Should the application be approved, the lot owner(s) of the lot(s) without STW will need to apply to his office for permitting the structures to be erected or to regularise any irregularities on site, if any. The STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. The applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. 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 premium 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 viewpoint.
- (b) Sufficient manoeuvring spaces 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 San Sik Road.

Environment

9.1.4 Comment of the Director of Environmental Protection (DEP):

Should the application be approved, the applicant is reminded to follow the relevant mitigation measures and requirements in the latest “Code of Practice (COP) on Handling the 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 application from a drainage point of view.
- (b) The application is for the same use under planning approval of the previous application No. A/HSK/13. According to the applicant, the existing drainage facilities would be maintained. Should the application be approved, he suggests that a condition should be stipulated requiring the Applicant to maintain the proposed drainage facilities and submit condition record of the drainage facilities to the satisfaction of his Division.
- (c) The applicant should be reminded that the required condition record should include coloured photos showing the current condition of the drainage facilities and a layout plan indicating the locations of the photos taken. The submitted photos should cover all internal surface channels, catch pits, sand traps, manholes, terminal catch pits/manholes and the downstream discharge path as indicated on the submitted drainage proposal.

Building Matters

9.1.6 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 (BA) for the existing structures at the Site.
- (b) If the existing structures (not being a NTEH) are erected on leased land without the approval of BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any approved use under the application.

- (c) 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 application site under the BO.
- (d) 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 BD should be obtained, otherwise they are UBW. An Authorized Person 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 (B(P)R) 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 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 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 plan.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the BO, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comment

9.1.8 Comments of 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 departments have no comment on the application:

- (a) Project Manager (New Territories West), Civil Engineering and Development Department (PM/NTW, CEDD);
- (b) Director of Agriculture, Fisheries and Conservation (DAFC); and
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 17.7.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment from an individual was received. The commenter objected to the application for the reason that there should not be commercial activities in the rural/residential area which will affect the future town planning (**Appendix IV**).

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (real estate agency) at a site zoned “V” 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. 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. Although the temporary shop and services (real estate agency) use is not entirely in line with the planning intention of the “V” zone, it could provide real estate agency service to meet any such demand in the area. DLO/YL of LandsD advises that no Small House application within the Site has been received. Approval of the application on a temporary basis of 3 years would not jeopardise the long-term development of the area.
- 11.2 The temporary use under application is not incompatible with the existing land use for the area, which is predominately occupied by village houses.
- 11.3 There is no adverse comment from the concerned Government departments, including DEP, AC for T/NT of TD and CE/MN of DSD. Significant environmental, traffic and drainage impact on the surrounding area is not expected. Besides, relevant approval conditions have been recommended in paragraph 12.2 to minimize any possible nuisances or to address the technical requirements of the concerned Government departments. Any non-compliance with these approval conditions would result in revocation of the planning permission and any unauthorised 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 There has been no major change in planning circumstances of the Site and the surrounding areas since the granting of the previous planning approval, and the applicant has complied with all the approval conditions attached to the permission.
- 11.5 The Committee has approved two previous applications for the same applied use on the Site since 2015 and eight similar applications within the subject “V” zone for similar temporary shop and services (real estate agency) between 2018 and 2020. Approval of the subject application is in line with the Committee’s previous decisions.

- 11.6 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 temporary shop and services (real estate agency) 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 **4.9.2023**. 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) no vehicle is allowed to queue back to or reverse onto/from the public road at any time during the planning approval period;
- (c) the existing trees on the Site shall be maintained at all times during the planning approval period;
- (d) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) the submission of a condition record of the existing drainage facilities within **3** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **4.12.2020**;
- (f) the submission of a fire service installations proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **4.3.2021**;
- (g) in relation to (f) above, the implementation of the fire service installations proposal within **9** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **4.6.2021**;
- (h) if any of the above planning conditions (a), (b), (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
- (i) if any of the above planning conditions (e), (f) or (g) 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 V**.

- 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 in the submission for 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), 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 received on 8.7.2020
Appendix Ia	Supplementary Planning Statement with plans
Appendix II	Previous Applications covering the Application Site
Appendix III	Similar Applications within the subject "V" Zone on the approved Hung Shui Kiu and Ha Tsuen Outline Zoning Plan
Appendix IV	Public Comment
Appendix V	Advisory Clauses
Drawing A-1	Proposed Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	As-planted Landscape and Tree Preservation Plan
Drawing A-4	As-built Drainage Plan
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Applications Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2020**