

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/874

<u>Applicant</u>	:	洪家棣
<u>Site</u>	:	Lot 943 RP in D.D. 119, Kung Um Road, Yuen Long, New Territories
<u>Site Area</u>	:	620 m ² (about)
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/11
<u>Zoning</u>	:	“Green Belt” (“GB”)
<u>Application</u>	:	Proposed Animal Boarding Establishment

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed animal boarding establishment at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP for “GB” zone, ‘Animal Boarding Establishment’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is not the subject of any previous application and is currently covered by vegetation (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site is accessible from Kum Um Road to its east (**Plans A-2, A-3 and Drawing A-1**). According to the applicant, the proposed animal boarding establishment is intended to help aged stray dogs which need care and will accommodate around 50 dogs. A plan showing the vehicular access leading to the Site, site layout plan, and floor plan submitted by the applicant are at **Drawings A-1 to A-3** respectively.
- 1.3 The major development parameters of the application are summarized as follows:

Site Area	About 620m ²
Total Floor Area (Non-domestic)	500m ²
Plot Ratio	0.81
Site Coverage	40.32%

No. of Structure	1
Height of Structure	Not exceeding 6m (2-storey)
Operation Hours	24 hours daily

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

- (a) Application Form received on 19.12.2017 **(Appendix I)**
- (b) Supplementary information received on 21.12.2017 providing replacement pages of part 7 of the application form and a letter from the Inland Revenue Department confirmed that “Animal Home Limited” is a charitable institution or trust of a public character **(Appendix Ia)**
- (c) Supplementary information received on 27.12.2017 providing replacement pages of part 7 of the application form **(Appendix Ib)**
- (d) Further information received on 28.1.2018 providing responses to the comments of the Commissioner for Transport, the Chief Town Planner/Urban Design and Landscape, Planning Department and the Director of Environmental Protection **(Appendix Ic)**
- (e) Further information received on 29.1.2018 providing further responses to the comments of the Director of Environmental Protection and providing a plan showing vehicular access connecting the Site and Kung Um Road and a floor plan **(Appendix Id)**
- (f) Further information received on 31.1.2018 clarifying no domestic use is proposed within the Site and the method of sewage treatment **(Appendix Ie)**

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form in **Appendix I** and the Further Information in **Appendices Ia, Ib and Ic**. They can be summarized as follows:

- (a) The dog kennel run by the applicant, is the only charity organisation that would accept aged dogs and provide aging services for them.
- (b) There are increasing numbers of abandoned dogs and the applicant has received about 25 referral cases in average per year from other organisations. However, the existing dog kennel at the other site has limited space and is facing the problem of soil erosion, therefore the applicant cannot accept all the referral cases. Also, the

existing dogs (about 35 dogs) is also not adapted to the changes in the surrounding environment of the existing dog kennel and has limited space to live. The aging services for dogs is deteriorating.

- (c) The Site is remote from the existing residential cluster and would generate less impact. The applicant has also consulted the landowner and the warehouse owner nearby. They support the proposed animal boarding establishment. The landowner does not have any intention to develop the site in the time being.
- (d) The proposed development is in line with the principle of sustainable development. The applicant is proposed to set up a dog kennel with green element and would set up an organic farmland which use the dog dung as fertilizer.
- (e) The “Animal Home Limited” is a charitable institution or trust of a public character which is exempt from tax under section 88 of the Inland Revenue Ordinance.
- (f) Majority of the dogs being accommodated in the Site will be senior dogs (above 7 or 8 years old). The dogs will be taken care of by 5 to 6 staffs and there will be full time staff staying at the proposed development to look after the dogs. All dogs will stay inside the proposed compound and there will be designated area which is fenced off for the dogs’ daily exercise.
- (g) No domestic use is proposed in this application.
- (h) Noise barrier will be erected at the surrounding of the compound. Since there are few residents nearby, the proposed noise barrier will prevent any discomfort incurred.
- (i) During the construction period, portable toilet will be proposed. All sewage generated from the toilets/shower room/kitchen and the dogs will be collected in the septic tank, which will be cleaned periodically by Professional Desludging Services.

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 notice of the application outside the site and sending the notice to the Shap Pat Heung Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not subject to planning enforcement action.

5. **Town Planning Board Guidelines**

The Town Planning Board Guidelines for Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) are relevant to this application. The relevant assessment criteria are summarized as follows and detailed at **Appendix II**:

- (a) there is a general presumption against development (other than redevelopment) in “GB” zone. In general, the Town Planning Board (the Board) will only be prepared to approve applications for development in the context of requests to rezone to an appropriate use;
- (b) an application for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
- (c) the design and layout of any proposed development should be compatible with the surrounding areas. It should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, and cause any adverse visual impact on the surrounding environment;
- (d) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (e) the vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features.

6. **Previous Application**

The Site is not the subject of any previous application.

7. **Similar Application**

There is no similar application within the “GB” zone on the OZP.

8. **The Site and Its Surrounding Areas (Plans A-2 to A-4b)**

8.1 The Site is:

- (a) accessible from from Kung Um Road to its east via a local track (**Plans A-2 and A-3**); and
- (b) formed and currently covered by vegetation (**Plans A-2, A-4a and A-4b**).

8.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) mixed with fallow agricultural land, vacant land, warehouses/storage, open storage yards, car repair workshops and unused land;
- (b) scattered residential structures are found in the vicinity of the Site with the nearest one located about 70m to the southeast of the Site ;
- (c) to its west and south are fallow agricultural land;
- (d) to its north is a piece of vacant land; and
- (e) to its east and further north, warehouses are found. Also, to its further east is an area zoned “Undermined” where warehouses/storage, open storage yards, car repair workshops are found. They are mostly suspected unauthorized developments subject to enforcement action taken by the Planning Authority.

9. Planning Intention

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views are summarized as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises an Old Schedule Agricultural Lot held under Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The Site is accessible to Kung Um Road via Government land (GL) and private land. Her office does not provide maintenance works for the GL involved and does not guarantee any right-of-way to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to her office to permit the structures to be erected or regularize any irregularities

on site. Such application(s) will be considered by LandsD acting in the capacity of the landlord 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

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

- (a) No vehicle should be allowed to enter or exit the Site between 7:00 a.m. and 7:00 p.m.
- (b) The land status of the access road/path/track leading to the Site from Kung Um Road shall be checked with the lands authority.
- (c) The management and maintenance responsibilities of the access road/path/track shall be clarified with the relevant management and maintenance authorities accordingly.
- (d) The applicant is reminded that sufficient space within the Site should be provided for manoeuvring of vehicles. In addition, no vehicle queuing and no reverse movement of vehicles on public road are allowed.

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

- (a) The access arrangement should be commented by the Transport Department (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) His department shall not be responsible for the maintenance of any access connecting the Site and Kung Um Road.

Environment

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

- (a) The applicant indicated in the further information dated 28.1.2018 (**Appendix Ic**) that there are few residents nearby the proposed animal boarding establishment. Potential noise nuisance from dog barking and odour could be a concern if there are sensitive receivers nearby and if the facilities are not properly designed and maintained. As the applicant did not provide information such as design and operation details of the facilities as well as locations of nearby sensitive receivers to ascertain the environmental

acceptability, we cannot lend our support to the application at this stage.

- (b) Should the Board consider approving the application, the applicant should be reminded of his obligation to meet all statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures.

Nature Conservation and Animal Management

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

- (a) The Site falls in “Green Belt” zone. Based on past aerial photos, it is noted that the site was paved in March 2014. According to his recent site visit, the Site is currently vacant covered by common species of grass and shrubs, surrounded by secondary woodland of native species. The applicant has indicated in the application form that the proposed development would not involve any filling/excavation of land, site formation, diversion of stream or felling of trees. As such, he has no strong view on the application from nature conservation point of view, based on its existing site condition. Nonetheless, the history of the Site and the planning intention of the “GB” zone among others is advised to be considered. Should the application be approved, the applicant is advised to adopt necessary measures to avoid affecting the trees and woodland surrounding the Site during construction (including formation of access, if any) and operation.
- (b) It is noted that the Site possesses a high potential of agricultural rehabilitation. It would be more desirable to solely use the Site for farming. As such, he does not support the application from agricultural point of view.
- (c) The subject address does not associate with any licence granted by his department, nor have his department received any application regarding the address. Under the current legislation, any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from his department.
- (d) Regarding the public comments enquiring the actual demand for animal boarding facilities, his department does not have the statistics or data related to the demand of animal boarding facilities in Hong Kong.

Landscape

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

- (a) He objects to the application from the landscape planning perspective.
- (b) With reference to the aerial photo taken in 2014, the Site is located in the middle part of an undisturbed wooded slope with dense vegetation of mature trees. Nevertheless, according to aerial photo taken in 2015 and his site visit observations on 17.1.2018, the Site has already been formed and some hoarding structures implemented. An informal vehicular access (track), within “GB” zone but outside the application boundary, has also been formed with vegetation clearance. Significant adverse impact on existing landscape resources, such as resulting from blanket removal of fauna and flora (mature vegetation cover with naturally grown trees) had already been taken place. In addition, other landscape/natural features such as the natural topography, landform and topsoil had also been irreversibly changed and adversely impacted. Apart from the heavy disturbance on the environment (within the application site and possible encroachment connecting to public road within ‘GB’ zone) caused by the completed site formation, any potential or further effect on the surrounding natural habitat is unknown and should be assessed. In this regard, there is no information provided in the application.
- (c) In the application, there is no information (such as the extent, ground treatment, planting density, species of plants, maintenance and management approach) on the so-called “環保種植區” except an annotation of such on the proposed layout plan. The landscape compatibility and overall effectiveness of the proposed planting in the proposed “環保種植區” could not be ascertained. On the other hand, the practicality of spatial arrangement of the proposed “環保種植區” as in the middle core of the Site is in doubt. Any edge treatment to the Site, which is likely to be enclosed off from the surrounding “GB” area, is not mentioned in the application.
- (d) From landscape planning perspective, the proposal is not in line with the planning intention of this “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features. The existing site situation for the proposed use is not compatible with the surrounding from a landscape point of view. There is a general presumption against development within this zone. Approval of the application may set an undesirable precedent, likely encouraging other similar unauthorized development, in this area with high landscape sensitivity, without exploration of design option(s) and seeking prior planning approval.
- (e) With regards to the further information dated 28.1.2018 (**Appendix Ic**), as a landscape proposal is not provided, his concerns on the landscape compatibility and overall effectiveness of the proposed planting are not adequately addressed. Moreover, the proposed fruit trees are not likely able to compensate for the

loss of the landscape resources (such as mature trees).

- (f) As all existing vegetation within the Site has been removed, tree preservation proposal is no longer applicable. Nevertheless, should the application be approved, approval conditions requiring submission and implementation of a landscape proposal (including vegetation reinstatement to all disturbed ground) to the satisfaction of the Director of Planning or of the Board are recommended.

Drainage

10.1.7 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 the public drainage point of view.
- (b) Should the Board consider the application is acceptable from the planning point of view, approval conditions requiring the submission and implementation of a drainage proposal for the development to the satisfactions of the Director of Drainage Services or of the Board should be stipulated.
- (c) The applicant is advised to maintain all the drainage facilities on site in good condition and ensure that the proposed development would neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas, etc.

Fire Safety

10.1.8 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 proposal, 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. The applicant should be advised on the following points:
 - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - (ii) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) However, the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) The Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation (B(P)R)5 and emergency vehicular access shall be provided for all the buildings to be erected on the Site in accordance with the requirements under B(P)R 41D.
- (b) If the Site does not abut on a specified street having a width of not less than 4.5m, the development intensity shall be determined under B(P)R 19(3) during plan submission stage.
- (c) Detailed checking will be carried out upon formal submission of building plans.

Others

10.1.10 Comments of the Chief Engineer/Cross-boundary and Infrastructure Development, Planning Department (CE/CID, PlanD):

CEDD and PlanD jointly commissioned the “Planning and Engineering Study for Housing Sites in Yuen Long South (YLS) – Investigation” (the Study). The Site falls within the Study Area of YLS but outside the development area of YLS. Hence, the Site would not be affected by any development proposal under the Study.

District Officer’s Comments

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

The local consultation has been completed and his office has not received any comment from the village representatives in the vicinity regarding the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Project Manager (New Territories West), Civil Engineering and Development Department (PM(NTW), CEDD); and
- (d) Commissioner of Police (C of P).

11. Public Comments Received During the Statutory Publication Period

On 29.12.2017, the application was published for public inspection. During the first three

weeks of the statutory public inspection period, which ended on 19.1.2018, three public comment were received from a member of the public, Kadoorie Farm & Botanical Garden Corporation and Designing Hong Kong (**Appendices II-1 to II-3**) raising objection to the application for reasons of not in line with the planning intention of “GB” zone and there is a general presumption against development within this zone; approval will set an undesirable precedent and will cause cumulative effect of similar applications; and it is a case of ‘destroy first, develop later’.

12. Planning Considerations and Assessments

- 12.1 The subject application is for proposed animal boarding establishment, which involves a 2-storey of structure with a total gross floor area of 500m², at a site zoned “GB” on the OZP (**Plan A-1a**). The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. The proposed development is not in line with the planning intention of the “GB” zone and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention.
- 12.2 The Site is mainly surrounded by fallow agricultural land and vacant land, and forms part of a larger “GB” zone in the area (**Plans A-2 and A-3a**). The proposed development involving site formation and a 2-storey structure of 250m² footprint is considered not compatible with the surrounding areas which are of rural landscape character. While there are warehouses, open storage yards and car repair workshop to its further north and further east, they are suspected unauthorised developments subject to enforcement action being taken by the Planning Authority.
- 12.3 DAFC does not support the application from agricultural point of view and considers that the Site possesses a high potential of agricultural rehabilitation. It would be more desirable to solely use the Site for farming. CTP/UD&L, PlanD objects to the application from the landscape planning perspective. Significant adverse impact on existing landscape resources, such as extensive removal of vegetation had already been taken place, and the natural landform had also been changed and adversely impacted. No information is provided to demonstrate that the proposed development would not cause adverse impact on the existing natural landscape. CTP/UD&L, PlanD concerns that approval of the application may set an undesirable precedent and likely encouraging other similar unauthorised development in this area.
- 12.4 According to the relevant Town Planning Board Guidelines (TPB PG-No.10), there is a general presumption against development within this zone and an application for new development within “GB” zone will only be considered in exceptional circumstances. It must be justified with very strong planning grounds. The development should not affect the existing natural landscape and cause any adverse landscape impact on the surrounding areas. Taking into account paragraphs 12.2 and 12.3 above, the proposed development does not comply with TPB-PG No. 10 in that the development is not compatible with the surrounding areas and the development would affect the existing natural landscape and the integrity of the “GB” zone.

- 12.5 DEP does not support the application as potential noise nuisance from dog barking as well as odour and sewage generated from the proposed use could be a concern if there are sensitive receivers nearby and if the facilities are not properly designed and maintained. However, no information regarding the detailed design and operation details of the facilities as well as locations of nearby sensitive receivers to ascertain the environmental acceptability is provided. Thus, the applicant also fails to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas.
- 12.6 There is no any similar application within the “GB” zone on the OZP. Approval of the application would set an undesirable precedent for other similar uses to proliferate into the “GB” zone. The cumulative effect of approving such applications would result in a general degradation of the landscape quality of the green belt and undermine the intactness of the “GB” zone.
- 12.7 There are 3 public comments (**Appendices II-1 to II-3**) received during the statutory publication period all raising objection to the application on the grounds as summarized in paragraph 11 above. Regarding the public comments enquiring the actual demand for animal boarding facilities, DAFC does not have the statistics or data related to the demand of animal boarding facilities in Hong Kong. The planning considerations and assessments in paragraph 12.1 to 12.3 are also relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments as mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the development is not in line with the planning intention of “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the TPB Guidelines PG-No. 10 in that the proposed development would affect the existing natural landscape;
 - (c) the applicant has failed to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas; and
 - (d) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the landscape quality of the green belt.
- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 9.2.2022, and after the said date,

the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) the submission and implementation of fire service installations proposal to the satisfaction of the Director of Fire Services or of the Town Planning Board;

Advisory clauses

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

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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 date when the validity of the permission should expire.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

15. Attachments

- Appendix I** Application Form received on 19.12.2017
- Appendix Ia** Supplementary information received on 21.12.2017 providing replacement pages of part 7 of the application form and a letter from the Inland Revenue Department confirmed that "Animal Home Limited" is a charitable institution or trust of a public character
- Appendix Ib** Supplementary information received on 27.12.2017 providing replacement pages of part 7 of the application form
- Appendix Ic** Further information received on 28.1.2018 providing responses to the comments of the Commissioner for

Transport, the Chief Town Planner/Urban Design and Landscape, Planning Department and the Director of Environmental Protection

Appendix Id	Further information received on 29.1.2018 providing further responses to the comments of the Director of Environmental Protection and providing a plan showing vehicular access connecting the Site and Kung Um Road and a floor plan
Appendix Ie	Further information received on 31.1.2018 clarifying no domestic use is proposed within the Site and the method of sewage treatment
Appendix II	Extract of Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10)
Appendices III-1 to III-3	Public comments received during the statutory publication period
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Plan showing the Vehicular Access Leading to the Site
Drawing A-2	Site Layout Plan
Drawing A-3	Floor Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
FEBRUARY 2018**