

TPB Paper No. 10631

**For Consideration by
the Town Planning Board on 22.5.2020**

**REVIEW OF APPLICATION NO. A/NE-TK/674
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Car Park (Private Cards only) for a Period of Three Years
in “Agriculture” Zone**

**Lots 722 S.A (Part), 722 RP (Part), 725 RP (Part), 762 (Part) and 763 RP in D.D. 29 and
adjoining Government Land, Ting Kok, Tai Po, New Territories**

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1. Background

- 1.1 On 22.8.2019, the applicant, Mr. LEUNG Pak Keung, sought planning permission for a proposed temporary car park (private cars only) for a period of three years at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19 (**Plan R-1**).
- 1.2 On 18.10.2019, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention of “AGR” zone, even on a temporary basis;
 - (b) the applicant fails to demonstrate in the submission that the development would not cause adverse landscape impact to the area; and
 - (c) approval of the application would set an undesirable precedent for other similar applications in the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the landscape character of the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-TK/674 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 18.10.2019 (Annex B)
 - (c) Secretary of Town Planning Board’s letter dated 1.11.2019 (Annex C)

- 1.4 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 28.2.2020 for consideration of the review application has been rescheduled, and the Board has agreed to adjourn consideration of the application. The review application is now scheduled for consideration by the Board at this meeting.

2. Application for Review

On 22.11.2019, the applicant applied, under s.17(1) of the Ordinance, for review of the RNTPC's decision to reject the application (**Annex D1**). On 11.12.2019, the applicant submitted written representations to support the review application (**Annex D2**).

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in his written representations at **Annex D2**. They can be summarised as follows:

- (a) illegal occupancy and parking is serious at Shan Liu Road, which has caused difficulties for vehicular flow, especially at night times when the residents are off from work. The congestion and pedestrian-vehicle conflicts there may cause casualty one day;
- (b) Shan Liu Road is the only access road for the many villagers and residents in the east of Ting Kok. Illegal parking at the road has adversely obstructed the commuting of them to Ting Kok Road. Hence, many affected villagers demand the Board to change the land use to satisfy their parking need;
- (c) to solve the parking problem, the applicant has sought collaboration with the land owners of the Site to provide land for car park use. As the Site is zoned "AGR", planning permission is required;
- (d) the proposed car park will be operated 24 hours daily for private cars only;
- (e) apart from the concerns from a few Government departments, there is no fundamental objection to the application. To address those concerns, the applicant would appoint authorized persons to submit detailed design reports to the relevant departments for consideration upon the approval of the application;
- (f) in response to the comments of Chief Town Planner/Urban Design and Landscape, Planning Department, regarding a direct conflict between the proposed parking space and an existing *Ficus microcarpa* (細葉榕), the applicant would prohibit parking at the concerned location. Detailed proposal would be submitted upon approval of the application;
- (g) to satisfy District Lands Officer/Tai Po, Lands Department's requirement, all Government land would be excluded from the Site. All parking spaces would be restricted on private land. Detailed proposal would be submitted upon approval of the application; and
- (h) the illegal parking problem in the eastern part of Ting Kok Village and Shan Liu

Village should be resolved immediately. Shan Liu Road was planned over 40 years ago, which could not meet the need of the increasing number of villagers and private cars in the past 20 years.

4. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site was the subject of a previous enforcement case (No. E/NE-TK/118) against unauthorized development involving parking of vehicles (**Plan R-2**). Enforcement Notice (EN) was issued on 1.2.2018 requiring the notice recipients to discontinue the unauthorized development by 1.4.2018 and Compliance Notice (CN) was issued on 9.11.2018. On 19.11.2018, Reinstatement Notice (RN) was issued requiring the notice recipients to remove the leftovers, debris and to grass the area (i.e. Lot 725 RP (part) and adjoining Government land) by 19.2.2019. The owners of Lot 725RP failed to comply with the RN upon expiry. The case is now under monitoring according to established procedures.

5. **The Section 16 Application**

The Site and its Surrounding Areas (Plans R-1, R-2, R-3 and R-4)

5.1 The situation of the Site and the surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has not been any major change in planning circumstances of the area since then.

5.2 The Site is:

- (a) mainly hard-paved and currently vacant;
- (b) situated near the northern fringe of Ting Kok Village and adjoins Shan Liu Road; and
- (c) bounded by woodland and undergrowth to the north and east.

5.3 The surrounding areas are predominantly rural in character with village houses, scattered tree groups and woodland. The village proper of Ting Kok is situated about 35m to the south of the Site across Shan Liu Road. Pak Sin Leng Country Park is located about 50m to the east of the Site.

Planning Intention

5.4 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

Previous Application

- 5.5 The Site is part of the subject of a previous application (No. A/NE-TK/629) submitted by different applicants (also landowners of the Site) for the same use for a period of three years, which was rejected by the RNTPC on 9.2.2018 for the reasons of adverse landscape impact to the area; and setting of undesirable precedent for other similar applications in the “AGR” zone and resulting in a general degradation of the landscape character of the area. Compared with that previous application, the site area in the current application has been reduced slightly from 2,006m² to 1,994m² and the number of parking spaces is reduced from 70 to 68.
- 5.6 Details of the above application are summarized at Appendix II of **Annex A** and its location is shown on **Plans R-1** and **R-2**.

Similar Application

- 5.7 There is no similar application for the same use within the same “AGR” zone.

6. Comments from Relevant Government Departments

- 6.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 9 of **Annex A**.
- 6.2 For the review application, relevant Government departments have been further consulted and their views on the review application and public comments are summarized as follows:

Landscape

- 6.2.1 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
- (a) it is noted that the applicant proposes to preserve the existing *Ficus microcarpa* (細葉榕) by prohibiting parking near the tree in the review application. However, comparing the aerial photos taken from 12.4.2014 and 3.6.2015 (**Plan R-3**), it is apparent that the vegetation has been cleared within and outside the Site prior to the submission of the application. Approval of this application would set an undesirable precedent to encourage vegetation clearance prior to application. The cumulative effect of approving similar applications would result in degradation of landscape character and cause adverse landscape impact to the area; and
 - (b) he maintains his previous views on the s.16 application which are recapitulated below:
 - (i) some reservations on the application from landscape planning perspective;
 - (ii) the Site is situated in an area of rural landscape character

comprising Small Houses and woodland patches. Given the nature of the proposed development and its proximity to the village settlement, it is not entirely incompatible with the surrounding landscape character; and

- (iii) in view that the Site is not bounded by prominent public frontage, should the application be approved by the Board, it is considered unnecessary to impose any condition for submission and implementation of landscaping proposal.

Traffic

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

- (a) according to the applicant's submission at s.16 stage, there is sufficient space within the Site for manoeuvring of vehicles. He therefore has no in-principle objection to the application from traffic engineering point of view; and
- (b) for the review application, the applicant has indicated that the Site will exclude Government land to address the concerns of the DLO/TP, LandsD. Since the applicant has not submitted a revised parking layout for the reduced site area for his consideration, he is unable to advise whether the proposal with exclusion of Government land is acceptable or not from traffic engineering point of view.

6.2.3 Comments of the Commissioner of Police (C of P):

- (a) record check revealed there are 48 records related to vehicle obstruction and traffic complaints in Shan Liu Road in the past year which is around 4 complaints per month. Site visit was conducted by the patrol sub-unit and it was revealed that there does exist illegal parking but still vehicles flow could be smooth back and forth the road;
- (b) it appears that there is illegal parking but traffic flow is still acceptable as reflected from the record that only about four complaints per month were received from citizens in the past year; and
- (c) he maintains his previous views on the s.16 application which are recapitulated below:
 - (i) no objection to the application;
 - (ii) it is suggested to obtain relevant authorization from other Government departments;
 - (iii) it is essential to ensure all residents of the area concerned are informed. No obstruction shall be caused by the visitor vehicles and no inflicted danger to the vehicles travelling along at the same time; and
 - (iv) the applicant should provide details for the contact persons and

telephone number to the residents of that area, so that the residents could reach the organizer in case of any enquiries.

- 6.3 The following Government departments have no further comments on the review application and public comments, and maintain their previous views on the s.16 application in paragraph 9 of **Annex A**, which are recapitulated as follows:

Land Administration

- 6.3.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no direct grant of Short Term Tenancy (STT) will be considered in respect of the Government land in the Site and the applicant is required to exclude such Government land from the application;
- (b) the five private lots in the Site are held under Block Government Lease demised for agricultural purpose. No structure shall be erected thereon without prior approval from LandsD. As regards the Government land, neither occupation nor works of any kind thereon is allowed without prior approval from LandsD;
- (c) the recent inspection revealed that the Site was vacant;
- (d) should the application be approved by the Board, the applicant is required to submit Short Term Waiver (STW) applications to LandsD if he wishes to erect structures on the private lots. However, there is no guarantee at this stage that the STW applications would be approved. If the STW applications are approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver and administrative fees as considered appropriate; and
- (e) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access thereto.

Traffic

- 6.3.2 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

- (a) no adverse comment on the application; and
- (b) the section of Shan Liu Road adjacent to the Site is under HyD's maintenance purview. However, part of the area between roadside verge of Shan Liu Road and the Site is on unallocated Government land which is outside HyD's maintenance purview. If vehicular access to the Site is approved, the applicant is required to sort out the maintenance responsibility of the above area with LandsD.

Environment

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

- (a) no comment on the application;
- (b) the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”; and
- (c) there was no environmental complaint related to the Site received in the past three years.

Drainage

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

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, an approval condition on submission and implementation of drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact to the adjacent areas;
- (c) there is no existing DSD maintained public drains available for connection in the area. The applicant should have his own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The applicant should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (d) there are existing public sewers in the vicinity of the Site; and
- (e) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant lot owners should be sought.

Agriculture

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

the Site is paved. Nevertheless, the Site possesses potential for agricultural rehabilitation. As such, he has reservation on the application from agricultural development point of view.

Fire Safety

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

- (a) no in-principle objection to the application subject to fire service installations (FSIs) being provided to his satisfaction;
- (b) in consideration of the design/nature of the application, FSIs are anticipated to be required. Therefore, the applicant is advised to submit the relevant layout plans incorporated with the proposed FSIs for his approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy, and the location of the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (c) 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.

6.4 The following Government departments maintain their previous views of having no comment on the review application:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) Project Manager/North, Civil Engineering and Development Department;
- (d) Director of Electrical and Mechanical Services; and
- (e) District Officer/Tai Po, Home Affairs Department.

7. Public Comments Received During Statutory Publication Periods (Annex E)

- 7.1 On 29.11.2019 and 20.12.2019, the review application was published for public inspection. During the statutory public inspection periods, seven public comments were received. Four of them were submitted by WWF-HK, The Hong Kong Bird Watching Society (submitted two comments) and Designing Hong Kong Limited raising objection to the review application mainly on the grounds of being not in line with the planning intention of “AGR” zone; being the subject of unauthorized development; being a “destroy first, build later” case; causing adverse traffic, environmental and ecological impacts; and setting undesirable precedent. The remaining three public comments were submitted by local villagers raising concerns on the illegal parking problem at Shan Liu Road.

- 7.2 Five public comments, all objecting to the application, received at the s.16 application stage are set out in paragraph 10 of **Annex A**.

8. Planning Considerations and Assessments

- 8.1 The application is for a review of the RNTPC's decision on 18.10.2019 to reject the application for a proposed temporary public vehicle park for 68 private car parking spaces for a period of three years mainly on the grounds of being not in line with the planning intention of the "AGR" zone; causing adverse landscape impact; and setting undesirable precedent.
- 8.2 To support the review application, the applicant puts forward justifications including mainly that parking near the existing *Ficus microcarpa* on the Site will be prohibited to preserve the tree; Government land will be excluded from the Site to meet the requirement of DLO/TP, LandsD; and there is a significant parking demand in Ting Kok Village and Shan Liu Village which has led to serious illegal parking problem on Shan Liu Road.
- 8.3 The Site is situated near the northern fringe of Ting Kok Village and adjoins Shan Liu Road. It is mainly hard-paved, with a *Ficus microcarpa* (細葉榕) of mature size at the southern boundary (**Plans R-2, R-4a and R-4b**). In the review application, the applicant states that parking near the existing tree would be prohibited and the detailed proposal will be submitted upon approval of the application. Whilst the proposed development is considered not entirely incompatible with the surrounding areas which are predominantly rural in character with village houses, scattered tree groups and woodland, CTP/UD&L of PlanD advises that according to the past aerial photos (**Plan R-3**), vegetation has been cleared within and outside the Site prior to submission of the application. Therefore, he maintains some reservations on the review application from the landscape planning point of view as approval of this application will set an undesirable precedent to encourage vegetation clearance prior to application and the cumulative effect would result in degradation of landscape character and cause adverse landscape impact to the area.
- 8.4 About 34.8% of the Site is on Government land (**Plan R-2**). DLO/TP, LandsD advises that the applicant is required to exclude the Government land concerned from the application as no direct grant of STT will be considered by LandsD. In the review application, the applicant agrees to exclude the Government land and restrict all parking spaces on private land. However, he has not submitted any details of the revised proposal, such as the revised site boundary and the number and layout of parking spaces. Based on the applicant's submission at s.16 stage, there would be about 30 car parking spaces falling within Government land. Excluding Government land will have major implications on the number and layout of parking spaces as well as the manoeuvring spaces for vehicles that could be provided in the proposed car park. In the lack of a revised parking layout for the reduced site area, C for T advises that he is unable to confirm whether the proposal with exclusion of Government land is acceptable from traffic engineering point of view.
- 8.5 The applicant argues that there is significant parking demand in Ting Kok Village and Shan Liu Tsuen and the proposed development will resolve the serious problem of illegal parking on Shan Liu Road near the Site. In this regard, C of P advises that

while there is illegal parking, the traffic flow along Shan Liu Road is still acceptable.

- 8.6 The proposed development is not in line with the planning intention of the “AGR” zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC has reservation on the application from agricultural development point of view as the Site possesses potential for agricultural rehabilitation. The applicant has not provided any strong planning justifications in the review submission to justify a departure from the planning intention of “AGR” zone, even on a temporary basis.
- 8.7 The Site is part of the subject of a previous application (No. A/NE-TK/629) submitted by different applicants for the same use for a period of three years, which was rejected by the RNTPC on 9.2.2018 for the reasons of adverse landscape impact to the area; and setting of undesirable precedent for other similar applications in the “AGR” zone and resulting in a general degradation of the landscape character of the area. Compared with that previous application, the site area in the current application has been reduced slightly from 2,006m² to 1,994m² and the number of parking spaces is reduced from 70 to 68. The scale of the proposals under both applications are similar. Furthermore, there has been no material change in planning circumstances since the rejection of the previous application.
- 8.8 There is no similar application for the same use within the same “AGR” zone. As such, approving the application would set an undesirable precedent for similar applications in the “AGR” zone and the cumulative effect of approving such similar applications will result in a general degradation of the landscape character of the area.
- 8.9 Regarding the public comments raising objections and concerns relating to the review application as mentioned in paragraph 7.1 above, Government departments’ comments and the planning assessments above are relevant.

9. Planning Department’s Views

- 9.1 Based on the assessments made in paragraph 8, having taken into the public comments mentioned in paragraph 7.1 above and given that there is no change in the planning circumstances since the consideration of the subject application by the RNTPC, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention of “AGR” zone, even on a temporary basis;
 - (b) the applicant fails to demonstrate in the submission that the development would not result in adverse landscape impact on the area; and
 - (c) the approval of the application would set an undesirable precedent for other

similar applications in the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the landscape character of the area.

- 9.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 27.322.5.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no vehicle without valid licence issued under the Road Traffic (Registration and Licensing of Vehicles) Regulations is allowed to be parked/stored on the Site at any time during the planning approval period;
- (b) only private car as defined in the Road Traffic Ordinance is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (c) a notice should be posted at a prominent location of the Site to indicate that only private car as defined in the Road Traffic Ordinance is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) the provision of peripheral fencing on the Site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 27.922.11.2020;
- (e) the submission of a drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 27.922.11.2020;
- (f) in relation to (e) above, the implementation of the drainage proposal within 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 27.12.202022.2.2021;
- (g) the submission of a fire service installations and water supplies for fire-fighting 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 27.922.11.2020;
- (h) in relation to (g) above, the implementation of the fire service installations and water supplies for fire-fighting 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 27.12.202022.2.2021;
- (i) if any of the above planning conditions (a), (b) or (c) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (j) if any of the above planning conditions (d), (e), (f), (g) or (h) is not complied

with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and

- (k) upon expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

9.3 The recommended advisory clauses are attached at **Annex F**.

10. Decision Sought

- 10.1 The Board is invited to consider the application for a review of the RNTPC’s decision and decide whether to accede to the application.
- 10.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 10.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permission, and the date when the validity of the permission should expire.

11. Attachments

Drawing R-1	Site plan submitted by the applicant
Plan R-1	Location plan
Plan R-2	Site plan
Plan R-3	Aerial photos
Plans R-4a and 4b	Site photos
Annex A	RNTPC Paper No. A/NE-TK/674
Annex B	Extract of minutes of the RNTPC meeting held on 18.10.2019
Annex C	Secretary of the Town Planning Board’s letter dated 1.11.2019
Annex D1	Letter received on 22.11.2019 from the applicant applying for a review of the RNTPC’s decision
Annex D2	Further information received on 11.12.2019 from the applicant
Annex E	Public Comments
Annex F	Recommended Advisory Clauses

**PLANNING DEPARTMENT
MARCH/MAY 2020**