

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-FTA/238

- Applicant** : Dragon Ace Investment Limited represented by R-riches Property Consultants Limited
- Site** : Lots 408 S.A RP (Part), 408 S.B RP (Part), 409, 410, 411, 412, 413, 414, 416, 417 RP, 418 S.A, 418 S.B, 423, 424, 425 RP and 436 (Part) in D.D. 89 and Adjoining Government Land (GL), Fu Tei Au, Sheung Shui, New Territories
- Site Area** : 15,724m² (about) (includes GL of about 374m², or 2.4% of the Site)
- Lease** : Block Government Lease (demised for agricultural use) (about 97.6% of the Site) [see details in paragraph 9.2.1(c)]
- Lots 411 (Part), 416 (Part), 423 (Part), 417 RP (Part) and 418 S.A (Part) are covered by Short Term Waivers (STWs) No. 1245, 1249, 1250 and 1269 respectively for office, ancillary use to a container yard and/or container vehicle park
 - The GL portion of the Site is covered by Short Term Tenancy (STT) No. STT 1469 for storage use
- Plans** : - Draft Fu Tei Au and Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/17 (at the time of submission)
- Approved Fu Tei Au and Sha Ling OZP No. S/NE-FTA/18 (currently in force)
- Zonings**¹ : - “Agriculture” (“AGR”) (about 73%)
- “Government, Institution or Community” (“G/IC”) (about 11.8%)
 - an area shown as ‘Road’ (about 13.8%)
- [No change to the “AGR” and “G/IC” zones and the area shown as ‘Road’ under the current OZP]
- Application** : Proposed Temporary Warehouse (Excluding Dangerous Goods Godown) with Ancillary Facilities for a Period of Three Years and Associated Filling of Land

¹ A small portion of land (i.e. about 227.9m² or 1.4% of the total site area) falls within an area zoned “Open Storage” (“OS”) on the OZP, and the proposed use is Column 1 use always permitted in the “OS” zone and filling of land does not require planning permission from the Town Planning Board (**Plan A-2**).

1. **The Proposal**

- 1.1 The applicant seeks planning permission for a proposed temporary warehouse (excluding dangerous goods godown) with ancillary facilities for a period of three years and associated filling of land at the application site (the Site) (**Plan A-1**). The Site falls largely within “AGR” zone and partly within “G/IC” zone and area shown as ‘Road’ on the OZP. According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years within the aforementioned zones requires planning permission from the Town Planning Board (the Board). Besides, in any area shown as ‘Road’, all uses or developments require planning permission from the Board. The Notes of the OZP also state that filling of land within the “AGR” zone requires planning permission from the Board. The Site is largely hard paved and subdivided into smaller areas for different operations, including logistics centre, open storage of containers and parking of container vehicles, etc. (partly covered with valid planning permission) (**Plans A-3 to A-4b**). It is accessible via a local road leading to Man Kam To Road (**Plan A-2**).
- 1.2 The proposed use consists of three 2-storey structures with building height of not more than 13m and a total floor area of about 17,248m² for storage of miscellaneous goods (such as packaged food, footwear, electronic goods and furniture, etc.) and related site office and washroom uses. A total of five parking spaces for private cars and four loading/unloading (L/UL) bays for medium goods vehicles and container vehicles are proposed within the Site. A large manoeuvring space will be reserved within the Site to ensure no queueing back of vehicles on the local road. Various traffic mitigation measures are proposed, including deploying staff to direct vehicle entering and exiting the Site, etc.
- 1.3 While the Site has been paved with concrete, the applicant proposes to further fill the entire area by not more than 0.8m in depth to create a flat surface for construction of structures and circulation area. No dismantling, maintenance, repairing, paint spraying or other workshop activities will be conducted within the Site. The operation hours of the proposed use are from 9:00 a.m. to 7:00 p.m. from Monday to Saturdays, and no operation on Sundays and public holidays. The layout plan and the land filling plan submitted by the applicant are shown in **Drawings A-1** and **A-2** respectively.
- 1.4 The southwestern part of the Site is the subject of ten previous applications for various temporary open storage/container vehicle park/logistic uses (**Plan A-1**), which were all approved by the Rural and New Town Planning Committee (the Committee) or the Board on review between 1998 and 2021. Details of the applications are summarized in paragraph 5.
- 1.5 In support of the application, the applicant has submitted the following documents:
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|-----|--|------------------------|
| (a) | Application Form with attachments received on 22.12.2023 | (Appendix I) |
| (b) | Supplementary Information (SI) received on 28.12.2023 | (Appendix Ia) |
| (c) | Further Information (FI) received on 31.1.2024* | (Appendix Ib) |
| (d) | FI received on 1.2.2024* | (Appendix Ic) |
| (e) | FI received on 26.2.2024* | (Appendix Id) |
| (f) | FI received on 22.4.2024* | (Appendix Ie) |
| (g) | FI received on 11.6.2024* | (Appendix If) |

** accepted and exempted from publication and recounting requirements*

- 1.6 On 16.2.2024 and 19.4.2024, the Committee agreed to the applicant's request to defer making a decision on the application for two months each to address departmental comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at **Appendices I, Ib, Id and Ie**, as summarized below:

- (a) the proposed use would support local warehouse and storage industries;
- (b) no active agricultural activities are found within the Site. The surrounding areas are intermixed with open storage yards, container vehicle park, warehouses, workshops and other port back-up uses. The proposed use is considered not incompatible with the surrounding environment;
- (c) part of the Site is the subject of several previous applications. The last application for temporary cargo handling and forwarding facility (logistics centre) for a period of three years was approved in 2021. The planning circumstances of the previously approved application are similar to the current one. Approval of the application is in line with the Board's previous decision;
- (d) hoardings will be erected along the peripheral boundary of the Site to minimize environmental nuisance to the surrounding uses. Besides, the applicant undertakes to strictly follow the 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' (Code of Practice) and the 'Professional Persons Environmental Consultative Committee Practice Notes (ProPECCPNs)' issued by the Environmental Protection Department (EPD);
- (e) should the application be approved, applications for STW and STT will be made to rectify the irregularities on the Site; and
- (f) adverse traffic impact arising from the proposed use is not anticipated.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not the "current land owner" of the private land portion of the Site 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.31B) by publishing notices in local newspapers and sending notice to the Sheung Shui District Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members' inspection. Regarding the portion of the Site falling within GL, TPB PG-No. 31B is not applicable.

4. Background

The Site is not subject to any active planning enforcement action.

5. Previous Applications

The southwestern part of the Site is the subject of ten previous applications (No. A/NE-FTA/22, 32, 41, 65, 72, 100, 110, 149, 181 and 199) for different uses including temporary open storage/container vehicle park/logistics centre uses. All the applications were approved by the Committee or the Board on review between 1998 and 2021 mainly on considerations that the developments were not incompatible with the surrounding land uses; unlikely to cause significant adverse traffic, drainage and landscape impacts on the surrounding areas; and in line with the then Town Planning Board Guidelines 13E in that there were previous approvals. Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.

6. Similar Application

There is no similar application for the same proposed use within the same “AGR” and “G/IC” zones in the vicinity of the Site in the Fu Tei Au and Sha Ling area over the past five years.

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

7.1 The Site is:

- (a) hard paved and subdivided into smaller areas occupying by different operations (such as logistics centre, open storage of containers and parking of container vehicles, etc.); and
- (b) accessible via a local road leading to Man Kam To Road.

7.2 The surrounding areas are intermixed with open storages/storage yards, vehicle repairing workshops, domestic structures, fallow/active agricultural land, vacant land and tree clusters.

8. Planning Intentions

- 8.1 The planning intention of the “AGR” zone is intended 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.
- 8.2 According to the Explanatory Statement of the OZP, as filling of land within the “AGR” zone may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.
- 8.3 The planning intention of the “G/IC” zone is primarily for the provision of Government, institution or community (GIC) facilities serving the needs of the local residents and/or a wider district, region or the 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 establishments.

9. Comments from Relevant Government Departments

9.1 Apart from the government departments as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided at **Appendices III** and **IV** respectively.

9.2 The following government departments do not support/ have concerns on the application:

Land Administration

9.2.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises Old Schedule Agricultural Lots 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. No right of access via GL is granted to the Site;
- (b) the Site is already being used for the uses under the application;
- (c) the private lots and portion of the GL in the Site are covered by the following STWs and STT. The applicant is not the waiverree/tenant of the STWs/STT. As there are breaches on the built-over-area and other aspects, her office reserves the rights to take enforcement action for irregularities as appropriate;

| STT/STW No. | Lot No (s) in D.D. 89 | Purpose |
|--------------------|------------------------------|--|
| STT 1469 | GL | Storage |
| STW 1245 | Lot 411 (Portion) | Office and ancillary use to a container yard |
| STW 1249 | Lot 416 (Portion) | Ancillary use to a container yard |
| | Lot 423 (Portion) | Office and ancillary use to a container yard |
| STW 1250 | Lot 417 RP (Portion) | Ancillary use to a container yard |
| STW 1269 | Lot 418 S.A (Portion) | Container vehicle park |

- (d) the following irregularities covered by the subject planning application have been detected by her office:

- (i) Unauthorized structures within the Site covered by the planning application

there are unauthorized structures on the application lots. LandsD has reservation on the planning application since the unauthorized structures on Lots 408 S.A RP, 408 S.B RP, 414 and 436 all in D.D. 89 are already subject to lease enforcement actions according to case priority. The lot owners should rectify the lease breaches as demanded by LandsD;

- (ii) Unlawful occupation of GL adjoining the said private lots with unauthorized structures covered by the planning application

the GL within the Site (about 374m²) has been fenced off/illegally occupied with unauthorized structures without any permission. Any occupation of GL without Government's prior approval is an offence under Cap. 28. Her office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;

- (e) the following irregularities not covered by the subject planning application have been detected by her office:

- (i) Unauthorized structures extended to the adjoining private lots not covered by the planning application

there are unauthorized structures extended from the Site to the adjoining private lots (i.e. Lots 404 S.A, 419 RP, 420 and 421 S.A in D.D. 89) which is not covered by the subject planning application. The lot owners should immediately rectify the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

- (ii) Unlawful occupation of GL with unauthorized structures not covered by the planning application

the GL adjoining the Site has been fenced off/illegally occupied with unauthorized structures without permission. The GL being illegally occupied is not included in the Site. Any occupation of GL without the Government's prior approval is an offence under Cap. 28. Her office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;

- (f) the lot owners/applicant shall remove the unauthorized structures and cease the illegal occupation of the GL immediately and include the adjoining GL not covered by the subject planning application in the application for further consideration by the relevant departments and, subject to the approval of the Board to the planning application which shall have reflected the rectification or amendment as aforesaid required, apply to her office for a STW and STT to permit the structures erected/to be erected and the occupation of GL. The applications for STW and STT will be considered by the Government in its capacity as a landlord and there is no guarantee that they will be approved. The STW and STT, if approved, will be subject to such terms and conditions including the payment of waiver fee/rent and administrative fee as considered appropriate to be imposed by LandsD. Given the proposed use is temporary in nature, only erection of temporary structures will be considered; and
- (g) unless and until the unauthorized structures and the unlawful occupation of GL are duly rectified by the lot owners/applicant or entirely included in the subject planning application, her office has objection to the application and it must be brought to the attention of the Board when the application is being considered.

Agriculture

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

- (a) does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation; and
- (b) agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc.

Environment

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

- (a) does not support the application from environmental perspective as there are sensitive receivers, i.e. residential dwellings/structures located in the vicinity of the Site (the nearest one at about 30m to the southwest) (**Plan A-2**) and the proposed use involves the use of heavy vehicles, environmental nuisance is expected; and
- (b) one substantiated complaint regarding disposal of chemical waste was received in 2021.

10. Public Comments Received During Statutory Publication Period

On 5.1.2024, the application was published for public inspection. During the statutory public inspection period, two public comments were received (**Appendix V**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Another comment from an individual objects to the application mainly on the ground that the proposed use encroaches onto the “G/IC” zone which is intended for provision of community facilities to support the growing community.

11. Planning Considerations and Assessments

11.1 The application is for a proposed temporary warehouse (excluding dangerous goods godown) with ancillary facilities for a period of three years and associated filling of land at the Site which is largely zoned “AGR” (about 73%), and partly zoned “G/IC” (about 11.8%) and within an area shown as ‘Road’ on the OZP. The proposed use is not in line with the planning intentions of the “AGR” and “G/IC” zones which are 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; and for the provision of GIC facilities serving the needs of the local residents and/or a wider district, region or the territory, respectively. DAFC does not support the application from agricultural perspective as the “AGR” portion of the Site possesses potential for agricultural rehabilitation. Nevertheless, there is currently no known development proposal and programme concerning the “GIC” portion of the Site and no proposed road works within the area shown as ‘Road’ within the Site. Taking into account the planning assessments below, the proposed use on a temporary basis of three years could be tolerated.

- 11.2 Filling of land within the “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the surrounding areas. In this regard, Chief Engineer/Mainland North, Drainage Services Department has no objection to the application from public drainage perspective. Should the application be approved, approval conditions requiring the applicant to submit and implement a Drainage Impact Assessment (DIA) are recommended in paragraph 12.2 below.
- 11.3 The Site is paved and occupied by different operations including logistics centre, open storage of containers and parking of container vehicles, etc. The proposed use is considered not incompatible with the surrounding area which comprises predominantly open storages/storage yards, vehicle repairing workshops, domestic structures, fallow/active agricultural land, vacant land and tree clusters. Significant adverse impact on the landscape character and existing landscape resources within the Site arising from the proposed use is not anticipated. Chief Town Planner/Urban Design & Landscape of Planning Department has no objection to the application from landscape planning perspective. Other relevant departments consulted, including Commissioner for Transport and Director of Fire Services, etc. have no adverse comment on or no objection to the application.
- 11.4 DEP does not support the application considering that environmental nuisance would be generated by the proposed use. Nevertheless, the Site abuts a local road in the southeast directly leading to Man Kam To Road (**Plan A-2**). No workshop activities will be carried out within the Site. The applicant also proposes to erect hoardings along the peripheral boundary of the Site and restrict the operation hours of the proposed use to minimize environmental nuisance to the surrounding uses. To address EPD’s concern, approval conditions restricting the operation hours and prohibiting any workshop activities within the Site are recommended in paragraph 12.2 below. The applicant will be reminded to implement the proposed environmental mitigation measures and to follow the revised ‘Code of Practice’ issued by the EPD.
- 11.5 In response to DLO/N, LandsD’s objection regarding the presence of unauthorized structures and the occupation of GL within and outside the Site which are subject to land control and lease enforcement actions, the applicant advises that he will rectify the matters and settle the land issues accordingly by applying STT/STW and demolish the concerned structures should the application be approved by the Board. The applicant will be advised to liaise with LandsD to deal with the land issues separately under the land administration regime.
- 11.6 The southwestern part of the Site is the subject of ten previous approvals for temporary open storage/container vehicle park/logistics centre uses (i.e. Applications No. A/NE-FTA/22, 32, 41, 65, 72, 100, 110, 149, 181 and 199), which were all granted between 1998 and 2021 mainly on considerations as mentioned in paragraph 5 above. The planning circumstances of the current application are considered similar to the approved applications. Approval of the current application is in line with the Committee’s previous decisions.
- 11.7 Regarding the objecting public comment as detailed in paragraph 10 above, government departments’ comments and planning assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments in paragraph 10, the Planning Department considers that the proposed use could be tolerated for a period of three 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 three years until 21.6.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m. on Mondays to Saturdays, 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 dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities, as proposed by the applicant, shall be carried out within the Site at any times during the planning approval period;
- (d) the submission of a Drainage Impact Assessment 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 21.12.2024;
- (e) in relation to (d) above, the implementation of the flood mitigation measures and drainage facilities as proposed in the Drainage Impact Assessment 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 21.3.2025;
- (f) in relation to (e) above, the implemented flood mitigation measures and drainage facilities should 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 21.12.2024;
- (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 21.3.2025;
- (i) the submission of traffic management measures including a temporary traffic implementation scheme within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 21.12.2024;
- (j) in relation to (i) above, the implementation of the accepted traffic management measures within **9** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 21.3.2025;

- (k) if any of the above planning condition (a), (b), (c) or (f) 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; and
- (l) if any of the above planning condition (d), (e), (g), (h), (i) or (j) 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.

Advisory Clauses

The recommended advisory clauses are 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 proposed use is not in line with the planning intentions of the "AGR" and "G/IC" zones which are 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; and for the provision of GIC facilities serving the needs of the local residents and/or a wider district, region or the territory, respectively. There is no strong justification in the submission for a departure from such 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 the 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

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| Appendix I | Application Form with Attachment received on 22.12.2023 |
| Appendix Ia | SI received on 28.12.2023 |
| Appendix Ib | FI received on 31.1.2024 |
| Appendix Ic | FI received on 1.2.2024 |
| Appendix Id | FI received on 26.2.2024 |
| Appendix Ie | FI received on 22.4.2024 |
| Appendix If | FI received on 11.6.2024 |
| Appendix II | Previous Applications |
| Appendix III | Government Departments' General Comments |
| Appendix IV | Recommended Advisory Clauses |
| Appendix V | Public Comments |
| Drawing A-1 | Layout Plan |
| Drawing A-2 | Land Filling Plan |

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|---------------------------|---------------|
| Plan A-1 | Location Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | UAV Photo |
| Plans A-4a to A-4b | Site Photos |

PLANNING DEPARTMENT
JUNE 2024