

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-HLH/49

<u>Applicant</u>	:	Ms. FUNG Yin Wan Dorothy represented by Tang K.F Associates Limited
<u>Site</u>	:	Lot 629 in D.D. 84, Hung Lung Hang, New Territories
<u>Site Area</u>	:	624 m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Hung Lung Hang Outline Zoning Plan (OZP) No. S/NE-HLH/11
<u>Zoning</u>	:	“Agriculture” (“AGR”)
<u>Application</u>	:	Proposed Temporary Place of Recreation, Sports or Culture (Hobby Farm) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for a proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Hung Lung Hang OZP No. S/NE-HLH/11. According to the Notes of the OZP, ‘Place of Recreation, Sports or Culture (Hobby Farm)’ is a Column 2 use in “AGR” zone requiring planning permission from the Town Planning Board (the Board). The Site is currently vacant.
- 1.2 According to the applicant’s submission, the southern portion of the Site (about 63% or equivalent to 394 m²) will be used for farm area whereas the remaining portion of the Site (about 37% or equivalent to 230 m²) will be used for erecting structures and circulation. The proposed development involves three 1-storey temporary structures (about 2.4m high) with a total floor area of about 54 m² for storage of farm tools, flower shed and mobile toilet at the northern part of the Site. A 1m wide pedestrian access will be also provided along the eastern part of the Site (**Drawing A-1**). Two parking spaces for private vehicles (5m X 2.5m) is proposed within the Site. The Site is accessible from Ping Che Road via a local track (**Plan A-1**).
- 1.3 The farm area will be subdivided into 3 small plots for renting to visitors on a monthly or annual basis (**Drawing A-1**). It is estimated that there will be about two to four visitors for each plot of farm area, one or two staff will be deployed for handling farm work. The

operation hours are from 9:00 a.m. to 6:00 p.m. from Mondays to Sundays including public holidays. The proposed layout is at **Drawing A-1**.

- 1.4 The Site is the subject of two previous applications (No. A/NE-HLH/39 and 44) for temporary open storage of construction materials submitted by the same applicant under the current application. These applications were rejected by the Rural and New Town Planning Committee (the Committee) in January and September 2020 respectively. Details are set out in paragraph 5 below.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 2.11.2020 (Appendix I)
 - (b) Further Information (FI) received on 17.2.2021[^] (Appendix Ia)
 - (c) FI received on 22.3.2021[^] (Appendix Ib)
 - (d) FI received on 15.6.2021[^] (Appendix Ic)
 - (e) FI received on 24.7.2021[^] (Appendix Id)

[^] accepted and exempted from publication and recounting requirements

- 1.6 On 18.12.2020 and 16.4.2021, the Committee agreed to the applicant's request to defer making a decision on the application each for two months respectively to allow more time for the applicant to prepare of FI to address the departmental comments. The applicant submitted the FI (**Appendices Ia to Id**) on 17.2.2021, 22.3.2021, 15.6.2021 and 24.7.2021 and the application is re-scheduled for consideration by the Committee on 13.8.2021.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form at **Appendices I, Ia, Ib, Ic and Id**. They can be summarized as follows:

- (a) the Site was used for open storage of construction materials in support of the applicant's engineering company. An Enforcement Notice was received on 9.8.2019 requiring the applicant to discontinue the unauthorized development by a specified date. The applicant intends to retire and ceases operation of the business, and use the Site for the proposed hobby farm;
- (b) the proposed development can offer an opportunity for public enjoyment, and uplift the quality of life as well as achieve balanced development. The public engagement with regard to the New Agriculture Policy also reveals that the general public supports leisure agriculture;
- (c) the proposed development is in line with the planning intention of the "AGR" zone;
- (d) no adverse traffic impact is anticipated on the surrounding areas. Two parking spaces will be provided within the Site, visitors are also encouraged to use public transport service with walking distance of about 15 minutes;
- (e) the proposed development will not involve excavation of land/land filling activity;

- (f) no public announcement system will be used at the Site; and
- (g) the Site will be reinstated upon expiry of planning approval.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Chief Town Planner / Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advised that the Site is part of the subject of planning enforcement action against an unauthorized development (UD) involving storage (including deposit of containers). An Enforcement Notice (E/EN-HLH/112) was issued on 9.8.2019 to the notice recipients requiring the discontinuance of the UD by 9.11.2019. Site inspection revealed that the UD was discontinued and the Compliance Notice was issued on 16.7.2021. The Reinstatement Notice was issued on 27.7.2021 requiring the notice recipients to remove the leftover, debris and fill materials (including asphalt and hard paving) on the land and to grass the land by 27.10.2021. If the notice is not complied with, prosecution action may be taken. His office will closely monitor the Site according to the established procedures.

5. Previous Applications

- 5.1 The Site is the subject of two previous applications (No. A/NE-HLH/39 and 44) for temporary open storage of construction materials submitted by the same applicant under the current application. These applications were rejected by the Committee on 17.1.2020 and 1.9.2020 respectively mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone; the application did not comply with the Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 13E/13F); and the applicant failed to demonstrate that the development would not cause adverse traffic impact on the surrounding areas.
- 5.2 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 within or partly within the “AGR” zone in the vicinity of the Site in Hung Lung Hang area.

7. **The Site and Its Surrounding Areas** (Plans A-1 and A-2, aerial photos on **Plan A-3** and site photos on **Plans A-4a** and **A-4b**)

7.1 The Site is:

- (a) currently vacant and fenced off; and
- (b) accessible from Ping Che Road via a local track (**Plan A-1**).

7.2 The surrounding areas have the following characteristics:

- (a) rural character mixed with open storage yards, temporary structures for domestic and storage uses, tree clusters, fallow agricultural land, and vacant land;
- (b) to the north is temporary domestic structure and fallow agricultural land;
- (c) to the east is warehouse and vacant land; and
- (d) to the south and west are fallow agricultural/ vacant land and open storage yards.

8. **Planning Intention**

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.

9. **Comments from Relevant Government Departments**

9.1 The following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

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

- (a) the lot under application is an Old Schedule Lot held under Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicant should make his own arrangement for acquiring access to the Site, and there is no guarantee that any adjoining Government land will be allowed for vehicular access to the Site for the proposed use (**Plan A-2**);
- (b) according to the proposed development, a portable toilet would be erected within the Site. The applicant should note that any proposed toilet facility should meet the current health requirements; and

- (c) if the application is approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area and the proposed structures. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fee as considered appropriate by his office.

Agriculture and Nature Conservation

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

- taking into account the FI, he has no strong view against the application from agricultural point of view for the proposed use in considering that the Site will be used for agricultural activities, and will be reinstated upon the expiry of the planning permission.

Traffic

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

- (a) no in-principle objection to the application for a period of 3 years from traffic engineering viewpoint; and
- (b) having reviewed the FI submission, he considered that the temporary hobby farm development would not induce significant adverse traffic impact on the surrounding areas.

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

- he has no comment on the application from highways viewpoint. The access road to the Site is not maintained by Highways Department.

Environment

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

- (a) he has no objection to the application from environmental planning perspective provided that the applicant would minimize any noise from the proposed use such as prohibiting the use of public announcement system, portable loudspeakers or any form of audio amplification system; and
- (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" to minimize any potential environmental nuisance. If septic tank and soakaway system will

be used in case of unavailability of public sewer, its design and construction shall follow the requirements of EPD's Practice Note for Professional Person (ProPECC) PN 5/93 including Minimum Clearance Distance and Percolation Test requirements, and the design, construction, operation and maintenance of the septic tank and soakaway system should be duly certified by an Authorised Person.

Drainage

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

- (a) he has no in-principle objection to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent areas; and
- (c) the Site is in an area where no public sewerage connection is available.

Landscape

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

- (a) she has no in-principle objection to the application from landscape planning perspective;
- (b) the Site is located in an area of rural landscape character comprising cluster of trees, temporary structures and a densely vegetated woodland. The proposed development is considered not entirely incompatible with the existing surrounding environment; and
- (c) there is no major public frontage along the site boundary, should the Board approved the application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality realm is not apparent.

Fire Safety

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

- (a) he has no in-principle objection to the application subject to fire service installations (FSIs) being provided to the satisfaction of his department;

- (b) in consideration of the design/nature of the proposal, the applicant is advised to submit the relevant layout plans incorporated with the proposed FSIs to his department for approval. In preparing the submission, the applicant is advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSI 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 (BO) (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- he has no objection to the application and detailed advisory clauses are appended at **Appendix IV**.

District Officer's Comments

9.1.10 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- he has consulted the locals regarding the application. The First Vice-Chairman of Ta Kwu Ling District Rural Committee, the Indigenous Inhabitant Representative (IIRs) of Tai Po Tin and the Resident Representative (RR) of Sheung Shan Kai Wat object to the application mainly on the grounds of adverse traffic and environmental impacts. The incumbent of North District Council Member of the subject constituency, the IIR and RR of Lei Uk, the RR of Tai Po Tin, the IIR and RR of Ha Shan Kai Wat have no comment. The IIR of Sheung Shan Kai Wat did not respond to the consultation.

9.2 The following Government departments have no comment on/no objection to the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comments Received During Statutory Publication Period (Appendix III)

On 10.11.2020, the application was published for public inspection. During the statutory public inspection period, five public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Three comments from Kadoorie Farm and Botanic Garden Corporation, WWF-HK and Designing Hong Kong Limited object to the application mainly for the reasons that the application is not in line with the planning intention of the “AGR” zone; approval of the application would set an undesirable precedent for similar applications within the “AGR” zone and enforcement action against the unauthorized use has been carried out, “destroy first, apply later” approach should be deterred. The remaining individual raises concern on the remote location of the proposed development.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary hobby farm for a period of 3 years at the Site zoned “AGR” on the OZP (**Plan A-1**). According to the applicant, about 63% of the Site will be used for farm area. The proposed development is considered not in conflict with the planning intention of “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC has no strong view against the hobby farm from agricultural point of view. The approval of the application on a temporary basis for a period of 3 years would not frustrate the long term planning intention of “AGR” zone.
- 11.2 The Site is situated in an area of rural character mixed with tree groups, temporary structures and a densely vegetated woodland (**Plan A-3**). The proposed temporary hobby farm with three single-storey structures is considered not entirely incompatible with the landscape character of the area. CTP/UD&L, PlanD has no objection to the application from landscape planning perspective.
- 11.3 The Site is accessible from Ping Che Road via a local track. Having reviewed the FI submission, C for T has no in-principle objection to the proposed development. DEP has no objection to the application provided that no public announcement system will be used at the Site, and the applicant should be reminded to adopt the environmental mitigation measures and requirements as set out in ProPECC PN 5/93, the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites”. Other relevant Government departments consulted, including D of FS, CE/MN of DSD and CHE/NTE of HyD, have no adverse comment on/no objection to the application.
- 11.4 The Site is the subject of two previous planning applications (No. A/NE-HLH/39 and 44) for temporary open storage of construction materials submitted by the same applicant and rejected by the Committee in 2020. There is no similar application for temporary hobby farm within the “AGR” zone on the OZP.
- 11.5 Regarding the local objections conveyed by DO(N) of HAD and the adverse public comments as detailed in paragraphs 9.1.10 and 10 above respectively, the Government departments’ comments and the 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 local objections conveyed by DO(N) of HAD and the public comments mentioned in paragraphs 9.1.10 and 10 above, the Planning Department has no objection to the application.
- 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 13.8.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no public announcement system, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site at any time during the planning approval period;
- (c) 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 13.2.2022;
- (d) in relation to (c) above, the provision of drainage facilities 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 13.5.2022;
- (e) the submission of proposals for fire service installations and water supplies for fire-fighting 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 13.2.2022;
- (f) in relation to (e) above, the implementation of proposals for fire service installations and water supplies for fire-fighting 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 13.5.2022;
- (g) if any of the above planning conditions (a) or (b) 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;
- (h) if any of the above planning conditions (c), (d), (e) or (f) 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
- (i) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of Director of Planning or of the Town Planning Board.

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 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. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification given 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 with Attachments received on 2.11.2020
Appendix Ia	Further Information received on 17.2.2021
Appendix Ib	Further Information received on 22.3.2021
Appendix Ic	Further Information received on 15.6.2021
Appendix Id	Further Information received on 24.7.2021
Appendix II	Previous Applications
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Proposed Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2021**