

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-KTS/508

- Applicants** : Mr. Jim Wai Kin represented by R-riches Property Consultants Limited
- Sites** : Lots 599 S.K and 599S.L in D.D. 98, Kwu Tung South, Sheung Shui, New Territories
- Site Areas** : About 344 m²
- Leases** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/18
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Animal Boarding Establishment for a Period of 5 Years and Filling of Land

1. The Proposals

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary animal boarding establishment for a period of 5 years. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use under the “AGR” zone which requires planning permission from the Town Planning Board (the Board). Filling of land in “AGR” zone also requires planning permission from the Board. The Site is formed and occupied by the applied structures, i.e. an enclosed structure and a 3-side opened canopy (**Plans A-2 to A-4**).
- 1.2 The proposed development involves two existing structures at the Site with total floor area (GFA) of about 333m² and building height of about 4m including an animal boarding establishment (dog kennel) (about 186m²) and a canopy (about 147m²) for parking/circulation space/rain shelter. The whole site has been filled with concrete by not more than 0.2m in depth (from 14.8mPD to 15mPD) for site formation of structures and circulation space. The proposed development will operate from 9:00a.m. to 6:00p.m. daily (except for overnight animal boarding services). According to the applicant, not more than 20 dogs will be accommodated at the Site. The enclosed structure will be equipped with soundproofing materials, mechanical ventilation and air-conditioning systems. No public announcement system, whistle blowing, portable loud speaker, or any form of audio amplification system will be used at the Site. The

applicant states that four staff members will be working at the Site while two of them will stay overnight. Two private car parking spaces will be provided for staff. No visitor is allowed at the Site. The Site is accessible from Kwu Tung Road via a local track. The site layout plan and land filling plan submitted by the applicant are at **Drawings A-1 and A-2.**

1.3 In support of the application, the applicant has submitted the following document:

- | | |
|-------------------------------------------------|----------------------|
| (a) Application Form received on 19.4.2022 | (Appendix I) |
| (b) Further Information (FI01) dated 19.5.2022* | (Appendix Ia) |
| (c) FI02 dated 24.5.2022* | (Appendix Ib) |
| (d) FI03 dated 31.5.2022* | (Appendix Ic) |

*exempted from publication

2. Justifications from the Applicant

The justifications put forth by the applicant in support of his application are detailed in the Application Form at **Appendices I and Ic** as summarized below:

- (a) The proposed development is on temporary basis which will not frustrate the long-term planning intention of the “AGR” zone. The applicant will reinstate the Site to an amenity area upon expiry of the planning permission.
- (b) Sufficient maneuvering space will be provided at the Site to ensure no queuing, turning back outside the Site and onto public road. Adverse traffic impact to the nearby road network is not anticipated.
- (c) The proposed development would not generate significant adverse environmental, drainage and landscape impacts on the surrounding areas.
- (d) All dogs will be kept within the enclosed structure at all time, i.e. 24-hour daily, including public holiday .

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

The applicant is not the “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 taking reasonable steps to give notification to the owner including posting site notices and sending notices to the Sheung Shui Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to any planning enforcement action.

5. Previous Application

There is no previous application at the Site

6. Similar Application

There is one similar application (No. A/NE-KTS/453) for animal boarding establishment (kennel) within the same “AGR” zone in the vicinity of the Site rejected by the Committee in June 2017 for the reason that (i) the proposed development was not in line with the planning intention of the “AGR” zone; (ii) the applicant failed to demonstrate that the proposed development would not generate adverse environmental impacts on the surrounding areas; and (iii) approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such application would lead to further degradation of the environment in the “AGR” zone. Details of this application is summarized at **Appendix II** and its location is shown on **Plan A-1**.

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

7.1 The Site is:

- (a) formed and currently occupied by an enclosed structure and a 3-side opened canopy which are the same as the proposed structures under application; and
- (b) accessible from Kwu Tung Road via a local track.

7.2 The surrounding area is rural in character intermixed with domestic structures, cultivated/fallow agricultural land, plant nursery, vegetated land and vacant land:

- (a) to its immediate east is a ruin structure and to the further east are fallow agricultural land and Sheung Yue River; and
- (b) to its immediate north and west are domestic structures and to the further west is a hill slope.

8. Planning Intention

8.1 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.

8.2 According to the Explanatory Statement of the OZP, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

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/no adverse comment on the application. Their general comments on the application and advisory comments are provided in **Appendices III and IV** respectively.
- 9.2 The following government departments have objection to/adverse comments on the application:

Agriculture and Nature Conservation

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

- (a) The Site falls within the “AGR” zone and currently comprises a paved vacant land and structures. The agricultural activities are active in the vicinity and agricultural infrastructures such as footpath and water sources are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application for the proposed use and land-filling is not supported from agricultural point of view.
- (b) The Site does not associate with any licence granted by his department, nor has he received any application regarding the Site. A Boarding Establishment Licence from his department is required. His other advisory comments are at **Appendix IV**.

Local views

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

- (a) He has consulted the locals. The North District Council member of the subject Constituency and two Resident Representatives (RRs) of Hang Tau object to the application mainly on the grounds that the proposed development is close to residential dwellings and involves filling of land; it would generate adverse hygiene, noise and environmental impacts on the surrounding area as well as nuisance to nearby residents affecting their daily life; and animal boarding is not suitable for the “AGR” zone.
- (b) The Chairman of Sheung Shui District Rural Committee and the Chairman of Fung Shui Area Committee have no comment on the application.

10. Public Comments Received During the Statutory Publication Period

- 10.1 The application was published for public inspection. During the statutory publication period, a total of 9 public comments (**Appendix V**) was received, including 6 objecting comments from representatives of Ki Lun villagers with 94 signatures and 5 other individuals. One supporting comment from an individual states that the proposed development provides a resting place for hikers. One comment from Kadoorie Farm & Botanic Garden Corporation urges the Board to investigate the status of the Site before making a decision. The remaining one from an individual indicates no comment on the proposal.
- 10.2 The main reasons of the objecting comments are as follows:
- (a) The proposed development would have adverse hygiene, noise, odour and sewerage impacts on the surrounding area and residents nearby. The proposed development is located close to a number of residential dwellings. It would cause nuisance and adversely affect physical and mental health of nearby residents, in particularly children and the elderly.
 - (b) The Site is designated for agricultural use. Animal boarding is not suitable for the “AGR” zone. There is no justification in approving what is a ‘Destroy to Build’ application for farm land located between “Green Belt” zone and a river. Farm land is for growing crops.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment for a period of 5 years and filling of land. According to the applicant, the Site has been filled by not more than 0.2m in depth and the applied two structures have been erected on the Site. The Site is zoned “AGR” on the OZP and the planning intention is primarily for retaining and safeguarding good quality agricultural land/farm/fish ponds for agricultural purposes, and for retaining fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed use is not entirely in line with the planning intention of the “AGR” zone. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. Nevertheless, taking into account the nature and scale of the proposed development, approval of the application on a temporary basis would not jeopardize the long-term planning intention of the “AGR” zone. Filling of land within “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) and Director of Environmental Protection have no adverse comment from the drainage and environmental perspectives.
- 11.2 The proposed use within the existing structures with 4m in height at the Site is considered not incompatible with the surrounding area which is rural in character intermixed with domestic structures, cultivated/fallow agricultural land, plant nursery, vegetated land and vacant land (**Plans A-2 and A-3**). The applicant states that all the animals will be kept indoor. No public announcement system, whistle blowing,

portable loud speaker, or any form of audio amplification system will be used at the Site. DEP has no objection to the application from environmental planning perspective.

- 11.3 Other relevant departments consulted including Commissioner for Transport, CE/MN, DSD, Chief Town Planner/Urban Design & Landscape, Planning Department and Director of Fire Services have no objection to/ adverse comment on the application. To minimize any potential environmental nuisances and to address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. Should the application be approved, the applicant will also be advised to follow the latest 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' in order to minimize the possible environmental impacts on the surrounding areas.
- 11.4 There is one similar application (No. A/NE-KTS/453) for a permanent animal boarding establishment (kennel) within the same "AGR" zone in the vicinity of the Site in the past 5 years (**Plan A-1**) rejected by the Committee in June 2017 for reasons as stated in paragraph 6 above. Since the circumstances of the rejected similar application is different from the current application which is temporary in nature and adverse environmental impacts on the surrounding areas is not anticipated, approval of this application is considered acceptable.
- 11.5 Six of the nine public comments object to the application as stated in paragraph 10 above. The departmental 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 mentioned in paragraph 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 permissions shall be valid on a temporary basis for a period of 5 years until 10.6.2027. 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. (except overnight animal boarding), as proposed by the applicant, is allowed at the Site during the planning approval period;
- (b) no public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used at 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 10.12.2022;

- (d) in relation to (c) 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 10.3.2023;
- (e) in relation to (d) above, the implemented drainage facilities at the Site shall be maintained at all times during the planning approval period;
- (f) the submission of proposal for fire service installations 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 10.12.2022;
- (g) in relation to (f) above, the implementation of proposal for fire service installations 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 10.3.2023;
- (h) if any of the above planning condition (a), (b) or (e) 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
- (i) if any of the above planning condition (c), (d), (f) or (g) 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 attached 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 development is not in line with the planning intention of the "AGR" zone which is 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 planning 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 the permission should be valid on a temporary basis.

- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form received on 19.4.2022
Appendix Ia	FI01 dated 19.5.2022
Appendix Ib	FI02 dated 24.5.2022
Appendix Ic	FI03 dated 31.5.2022
Appendix II	Similar application
Appendix III	Government departments' general comments
Appendix IV	Recommended advisory clauses
Appendix V	Public comments
Drawing A-1	Site layout plan
Drawing A-2	Land filling 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
JUNE 2022**