

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/140

<u>Applicant</u>	:	Mr. NGAI Lik Fung
<u>Site</u>	:	Lot 113 in D.D. 39, Au Ha Village, Sha Tau Kok, New Territories
<u>Site Area</u>	:	About 420 m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11
<u>Zoning</u>	:	“Village Type Development” (“V”)
<u>Application</u>	:	Proposed Temporary Shop and Services (Metal Hardware and Construction Materials) with Ancillary Office and Storage Uses for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary shop and services (metal hardware and construction materials) with ancillary office and storage uses for a period of three years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “V” on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use requiring planning permission from the Town Planning Board (the Board). The Site is currently occupied by converted containers for storage use and parking of vehicles without valid planning permission.
- 1.2 The Site is accessible from Sha Tau Kok Road – Wo Hang (**Plan A-2**). According to the applicant, the proposed development mainly comprises three single-storey structures (with height ranging from about 3m to 4m) for storage of metal hardware and construction materials (Structures B and C) and an ancillary office/ staff rest room (Structure A), with a total floor area of about 200m² (**Drawing A-1**). Two light goods vehicle car parking spaces and one loading/unloading space for medium goods vehicle will be provided within the Site. The operation hours are from 9:00 a.m. to 6:00 p.m. from Mondays to Saturdays and no operation on Sundays and public holidays. A plan showing the layout of the Site is at **Drawing A-1**.

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

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|-----|--|---------------|
| (a) | Application Form with attachment received on 8.10.2021 | (Appendix I) |
| (b) | Supplementary Information received on 12.10.2021 | (Appendix Ia) |
| (c) | Supplementary Information received on 18.10.2021 | (Appendix Ib) |

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 7 of the application form at **Appendix I** and the supplementary information at **Appendices Ia and Ib**. They can be summarised as follows:

- (a) the applicant intends to operate a retail business selling aluminum products, sanitary fittings and metal hardware products. There is no similar shop and services for metal hardware/ construction materials provided in the vicinity of the area and the proposed development will serve the needs of local residents;
- (b) only light goods vehicle and medium goods vehicle would be used for transportation; and
- (c) the proposed development is small in scale and would not cause adverse environmental impact on the surroundings.

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 posting site notice and sending notice to the Sha Tau Kok District Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), storage use (including deposit of containers) and parking of vehicles were observed at the Site as revealed in site inspection on 3.11.2021. The suspected unauthorised uses on the Site would be subject to planning enforcement action. Warning letter was posted on Site on 3.11.2021.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

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

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

7.1 The Site is:

- (a) flat, partly paved and partly occupied by some trees and wild grasses;
- (b) currently occupied by converted containers for storage use and parking of vehicles without valid planning permission; and
- (c) accessible from Sha Tau Kok Road – Wo Hang (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate east and west are village houses in Au Ha village;
- (b) to its north is Sha Tau Kok Road – Wo Hang and further north are domestic structures with some unused land; and
- (c) to its south and south-east are some villages houses with parking of vehicles and active farmland respectively.

8. **Planning Intention**

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

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 Old Schedule Lot held under the 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 (GL) will be allowed for vehicular access to the Site for the proposed use (**Plan A-2**);

- (b) there are unauthorized structures erected on the lot without approval from her office. Her office reserves the right to take necessary lease enforcement actions against the structures on private lot as appropriate;
- (c) the existing total built-over-area and the number of existing structures do not tally with those mentioned in the planning parameters of the subject application;
- (d) the Site falls within the village 'environs' for Au Ha village. There is no outstanding small house application within the Site. She has no comment on the subject planning application from Small House policy perspective; and
- (e) if the application is approved, the owner(s) of the application lot concerned shall apply to her office for a Short Term Waiver (STW) to regularize the unauthorized structures on site. 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 will 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 fees as considered appropriate by her office.

Traffic

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

- she cannot render support to the application from the traffic engineering perspective unless the applicant could satisfactorily address her concerns:
 - (i) the applicant should carry out traffic review regarding the impact of the estimated traffic flow from the Site to Sha Tau Kok Road during peak hours;
 - (ii) the applicant should demonstrate the satisfactory maneuvering of vehicles from Sha Tau Kok Road to the Site (including entering and exiting the Site), preferably using the swept path analysis;
 - (iii) vehicular access should be no less than 7.3m wide;
 - (iv) it is noted that the Site is not directly connected to Sha Tau Kok Road. The applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
 - (v) the applicant should advise and justify the adequacy of parking spaces to be provided in the Site by advising the number of vehicles visiting the Site.

Environment

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

- (a) he does not support the application as there are some domestic structures in the vicinity of the Site (about 5m to the east) (**Plan A-2**); and
- (b) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses" (COP), and comply with all environmental protection/pollution control ordinances.

Drainage

9.1.4 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.

Fire Safety

9.1.5 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; and
- (b) 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.

Building Matters

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

- (a) he has no objection to the application; and
- (b) there is no record of approval by the Building Authority for the existing buildings/structures at the Site and BD is not in a position to offer comments on their suitability for the use related to the application. For any new proposed buildings, his advisory comments are at **Appendix III**.

District Officer's Comments

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

- he has consulted the locals regarding the application. The Chairman of Sha Tau Kok District Rural Committee, the incumbent North District Council member of subject constituency and the Chairman of Lung Shan Area Committee have no comment on the application. The Resident Representative and the Indigenous Inhabitant Representative of Au Ha Tsuen support the application as the proposed development would bring convenience to local villagers.

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (d) Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD).

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

On 19.10.2021, the application was published for public inspection. During the statutory public inspection period, four public comments were received. The Chairman of Sheung Shui Rural Committee indicates no comment on the application. Three individuals (including one local villager) object to the application mainly on the grounds that the use of medium goods vehicle would result in dust and noise impact; the proposed development near the "Green Belt" zone would cause adverse environmental impact to the surrounding; and the Site is a suspected unauthorised development.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary shop and services (metal hardware and construction materials) with ancillary office and storage at the Site zoned "V" on the OZP. The proposed development is not entirely in line with the planning intention of the "V" zone which is primarily intended for development of Small Houses by indigenous villagers. However, commercial, community and recreational uses in support of the village development may be permitted on application to the Board. According to DLO/N of LandsD, there is no Small House application approved or under processing at the Site. While temporary approval may not jeopardize the long-term planning intention of the Site, consideration should be given to whether the proposed use is in support of the village development subject to its compatibility with the surrounding environment and no adverse traffic, environmental and other impacts on the area.

- 11.2 The Site is situated in an area of rural landscape character comprising village houses, active farmland, vacant land and tree groups. The proposed single-storey development is considered not entirely incompatible with the surrounding area. CTP/UD&L, PlanD has no objection to the application from landscape planning perspective as significant landscape impact arising from the proposed development is not anticipated.
- 11.3 The Site is accessible from Sha Tau Kok Road – Wo Hang (**Plan A-2**). C for T does not support the application from the traffic engineering viewpoint as the applicant fails to demonstrate in the submission that the temporary development will not cause adverse traffic impact on the surrounding areas in that the applicant has not satisfactorily addressed the aspect of adequacy of car parking provisions and demonstration of satisfactory manoeuvring of vehicles etc. Also, DEP does not support the application as there are some domestic structures in the vicinity of the Site, which are subject to adverse environmental impact arising from the proposed development. Other relevant government departments consulted, including CE/MN of DSD, CE/C of WSD and D of FS, have no adverse comment on or no objection to the application.
- 11.4 The Site is not subject to any previous application. There is no similar application within the same “V” zone on the OZP.
- 11.5 Regarding the adverse public comments as detailed in paragraph 10 above, the government department’s comments and the planning assessment 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 does not support the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “V” zone which is primarily intended for development of Small Houses by indigenous villagers. There is no strong justification in the submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the applicant fails to demonstrate that the proposed development would not cause adverse traffic impact on the surrounding areas.
- 12.2 Alternatively, 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 26.11.2024. 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. 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) 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 26.5.2022;
- (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 26.8.2022;
- (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 26.5.2022;
- (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 26.8.2022;
- (g) the submission of a traffic review within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 26.5.2022;
- (h) in relation to (g) above, the implementation of traffic mitigation measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 26.8.2022;
- (i) 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; and
- (j) if any of the above planning conditions (c), (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.

Advisory Clauses

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

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

14. Attachments

Appendix I	Application Form with attachment received on 8.10.2021
Appendix Ia	Supplementary Information received on 12.10.2021
Appendix Ib	Supplementary Information received on 18.10.2021
Appendix II	Public Comments
Appendix III	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2021**