

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/714

- Applicant** : Smart Long Development Limited
- Site** : Lot 217 (Part) in D.D. 84, Ping Che, New Territories
- Site Area** : About 630m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Open Storage of Construction Machinery and Construction Materials for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary open storage of construction machinery and construction materials for a period of three years. The Site falls within an area zoned “AGR” on the approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14 (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is largely vacant and some construction materials are found on it.
- 1.2 The Site is accessible from Ping Che Road via a local road with an ingress/egress point at the west of the Site (**Plans A-1 and A-2**). According to the applicant, the whole site will be used for open storage with one private car parking space and one medium goods vehicle parking space to be provided in the southern part of the Site (**Drawing A-1**). The proposed development will operate between 9:00am and 6:00pm from Mondays to Saturdays and no operation on Sundays and public holidays.
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 4.1.2023 (**Appendix I**)
 - (b) Further Information (FI) received on 22.3.2023 (**Appendix Ia**)
 - (c) FI received on 18.4.2023 (**Appendix Ib**)

- 1.4 On 3.3.2023, the Committee agreed to the applicants' request to defer making a decision on the application for two months to allow more time for the applicants to address departmental comments.

2. Justifications from the Applicant

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

- (a) the applied use is not incompatible with the surrounding land uses which are predominantly occupied by open storage yards and warehouses;
- (b) the Site is already formed and all existing structures within the Site will be removed;
- (c) the proposed use is temporary in nature, which would not jeopardize the long-term planning intention of "AGR" zone; and
- (d) no significant adverse environmental and noise impacts are anticipated.

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

The applicant is not a "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 Ta Kwu Ling District Rural Committee (TKLDRC) by registered post. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 13G for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No.13G) promulgated on 14.4.2023 is relevant to this application. The Site falls within Category 2 area under TPB PG-No. 13G. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

The Site is currently subject to active planning enforcement action against unauthorized workshop and storage uses. Enforcement Notice (EN) was issued on 26.10.2022 requiring the discontinuation of the unauthorized development (UD). Recent site inspection after expiry of the EN revealed that UD was largely discontinued. The Site would be kept under close monitoring according to the established procedures.

6. Previous Application

There is no previous application for the Site.

7. Similar Applications

- 7.1 There are 15 similar applications (No. A/NE-TKL/390, 443, 454, 460, 480, 514, 553, 555, 564, 622, 625, 642, 671, 695, 707) involving eight sites for temporary open storage uses within the same “AGR” zone in the vicinity of the Site in Ping Che and Ta Kwu Ling area (**Plan A-1**). 12 applications were approved with conditions between September 2012 and September 2022. The applications generally complied with the previous version of TPB PG-No. 13G in that no major adverse departmental comments were received on the applications, and the concerns of the relevant government departments could be addressed through implementation of approval conditions. Application No. A/NE-TKL/390, 460 and 564 were revoked on 21.3.2013, 13.6.2015 and 4.10.2020 respectively due to non-compliance with approval conditions.
- 7.2 The remaining three applications (No. A/NE-TKL/480, 514 and 625) involving two sites were rejected by the Committee between September 2014 and October 2019 mainly for reasons of not in compliance with the previous version of TPB PG-No. 13G in that no previous planning approvals were granted to the sites concerned; adverse departmental comments on the applications; no/insufficient information to demonstrate that the developments would not generate adverse environmental and traffic impacts on the surrounding areas; and setting of undesirable precedent for other similar applications within the “AGR” zone.
- 7.3 Details of the similar applications are summarized at **Appendix III** and the locations are shown on **Plan A-1**.

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

- 8.1 The Site is:
- (a) largely vacant with some construction materials found on it; and
 - (b) accessible from Ping Che Road via a local road.
- 8.2 The surrounding areas are of rural fringe landscape characters comprising open storage/workshop uses, active/fallow agricultural land and vacant land with tree clusters within two “Green Belt” zones.

9. Planning Intention

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.

10. Comments from Relevant Government Departments

- 10.1 Apart from the government departments as set out in paragraphs 10.2 and 10.3 below, other government departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments are provided at **Appendices IV** and **V** respectively.

10.2 The following government departments do not support the application:

Land Administration

10.2.1 Comments of the District Lands Office/North, Lands Department (DLO/N, LandsD):

- there are unauthorized structures erected on the lot. The lot owner(s) should immediately rectify the lease breaches and this office reserves the rights to take necessary lease enforcement action against the breaches without separate notice.

Agriculture and Nature Conservation

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

- the Site falls within the “AGR” zone and is abandoned. The 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. As the Site possesses potential for agricultural rehabilitation, the proposed development is not supported from agricultural perspective.

10.3 The following government department has relayed the following local views on the application:

District Officer's Comments

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

- (a) he has consulted the locals regarding the application. The Resident Representative (RR) of Chow Tin Tsuen supports the application;
- (b) the Indigenous Inhabitant Representative (IIR) of Tai Po Tin and the incumbent North District Councilor of N16 Constituency object to the application on the grounds that the traffic facilities in the area would be overloaded as there are too many existing warehouses in the area; the usage of heavy vehicles on the surrounding roads will cause adverse impact; and the residents reflect that amount of heavy vehicular flow would cause environmental impact and pressure on the existing roads; and
- (c) the Chairman of Fung Shui Area Committee, the IIR and the RR of Lei Uk and the IIR of Chow Tin Tsuen have no comment; and
- (d) the TKLDRC, the IIR of Chow Tin Tsuen and the RR of Tai Po Tin did not reply to the consultation.

11. Public Comments Received During Statutory Publication Period (Appendix VI)

On 13.1.2023, the application was published for public inspection. During the statutory public inspection period, two public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. An individual raises concerns on the application mainly on the grounds that the application is an extension of the approved application¹ adjacent to the Site (**Plan A-2**); the application is an inappropriate use of farmland; and the application would attract similar brownfield operations in the AGR zone.

12. Planning Considerations and Assessments

- 12.1 The application is for a temporary open storage of construction machinery and materials for a period of three years at the Site zoned “AGR”. The applied use is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard 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 does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. Nevertheless, approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone.
- 12.2 The Site falls within Category 2 areas under the TPB PG-No. 13G. The following considerations in the Guidelines are relevant:
- Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of three years, subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.
- 12.3 The Site is located in an area of rural fringe landscape character comprising open storage uses, active/fallow agricultural land and vacant land. In this regard, Chief Town Planner/Urban Design & Landscape Section, has no objection to the application from landscape planning perspective since significant adverse impacts on the landscape character and existing landscape resources arising from the applied use is not anticipated.
- 12.4 Commissioner for Transport has no objection to the application from the traffic engineering point of view. To address the concerns on the possible environmental nuisances or the technical requirements of the concerned government departments, relevant approval conditions including restriction of the operation hours at the Site have been recommended in paragraph 13.2 below. Should the application be approved, the applicant will also be advised to follow the ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites’ to minimize the possible environmental impacts on the surrounding areas. Other concerned government departments, including Chief Engineer/ Mainland North, Drainage Services Department and Director of Fire Services have no objection to or no adverse comment on the application.

¹ Application No. A/NE-TKL/699 was approved by the Committee on 25.11.2022 for proposed temporary training centre for construction industry with ancillary office for a period of three years. It is located to the immediate northeast of the Site and involves different use.

- 12.5 The application generally complies with the TPB PG-No. 13G in that no major adverse departmental comments have been received on the application and the concerns of the relevant government departments can be addressed through implementation of approval conditions.
- 12.6 There are 15 similar applications including eight sites for temporary open storage use within the same “AGR” zone in the vicinity of the Site in Ping Che and Ta Kwu Ling area, 12 of them were approved between September 2012 and September 2022 mainly on the grounds that the applications generally complied with the previous version of TPG PG-No. 13G in that no major adverse departmental comments were received and the concerns of the relevant government departments could be addressed through implementation of approval conditions. The planning considerations of the current application are similar to the approved applications.
- 12.7 Regarding the DLO/N of LandsD’s concern on unauthorized structures, the applicant would be advised to liaise with LandsD to rectify the matter and settle the land issue accordingly.
- 12.8 Regarding the local comments conveyed by DO (N) of HAD and public comments on the application as detailed in paragraphs 10.3 and 11 respectively, government departments’ comments and planning assessments above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account local comments conveyed by DO (N) of HAD and public comments as detailed in paragraphs 10.3 and 11 respectively, the Planning Department considers that the temporary development could be tolerated for a period of three years.
- 13.2 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 19.5.2026. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation from 6:00 p.m. to 9:00 a.m., 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 19.11.2023;
- (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 19.2.2024;
- (e) in relation to (d) above, the implemented drainage facilities shall be

maintained at all times during the planning approval period;

- (f) the provision of fire extinguisher(s) within **6** weeks from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 30.6.2023;
- (g) the submission of proposals 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 19.11.2023;
- (h) in relation to (g) above, the provision of 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 19.2.2024;
- (i) 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;
- (j) if any of the above planning condition (c), (d), (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 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 V**.

13.3 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 agricultural land / farm / fish ponds for agricultural purposes and 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, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 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.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicants.

15. Attachments

Appendix I	Application Form with Attachments received on 4.1.2023
Appendix Ia	FI received on 22.3.2023
Appendix Ib	FI received on 18.4.2023
Appendix II	Relevant Extracts of TPB Guidelines No. TPB PG-No. 13G
Appendix III	Similar Applications
Appendix IV	Government Departments' General Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comments
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
MAY 2023**