

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/757

- Applicant** : Mr. TSANG Sau Keung
- Site** : Lot 455 S.H ss.6 in D.D. 23, Tai Po, New Territories
- Site Area** : About 546m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Footpath and Access Road for Houses with Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed footpath and access road with filling of land at the application site (the Site) to serve the nearby village houses in San Tau Kok Village to the immediate southwest (**Plan A-1**). The Site falls within an area zoned “AGR”. According to the Notes of the OZP, private access road ancillary to house development(s) and filling of land within the “AGR” zone require planning permission from the Town Planning Board (the Board). The Site is currently vacant and mostly covered with grass. A small southeastern portion of the Site is covered by concrete paving and forms part of an existing footpath leading to Po Sam Pai Village (**Drawing A-1** and **Plan A-4a**).
- 1.2 According to the applicant, the proposed footpath and access road is about 5m wide. It will connect between two existing local tracks to form a continuous access to serve the adjacent village houses. The associated filling of land involves paving of an area of about 455m² (i.e. about 83% of the site area) and a depth of about 0.2m by concrete for construction of the proposed footpath and access road. The portion of existing footpath leading to Po Sam Pai Village and the remaining part of the Site will remain unchanged. The Site is accessible via a local track connecting to Tung Tsz Road and Ting Kok Road (**Plan A-1**). Layout plans submitted by the applicant are at **Drawing A-1**.
- 1.3 The Site is part of the subject of a previously rejected application No. A/NE-TK/739 submitted by the same applicant for a temporary private vehicle park

with pedestrian and vehicular access for a period of 3 years. Details of the previous application is set out in paragraph 5.1 below.

- 1.4 In support of the application, the applicant have submitted the following documents:
- (a) Application form and supplementary information (SI) (**Appendix I**) received on 15.7.2022 and 19.7.2022
 - (b) Further Information (FI) received on 24.8.2022 (**Appendix Ia**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 10 of the application form, SI and FI at **Appendices I to Ia** as summarized below:

- (a) the proposed development is to serve the nearby Houses No. 265, 267, 268, 275, 276, 278, 283, 285, 286, 287, 288 and 289 in San Tau Kok Village² (**Plan A-2**). In particular, the pedestrian and vehicular entrances/exits of Houses 287 and 289 adjoin the Site (**Drawing A-1**). The proposed development provides the only route for the residents to gain access to and park their vehicles within the garden area;
- (b) the proposed development could also be used by emergency vehicles;
- (c) the existing local tracks are too narrow to make way for oncoming vehicles. Also, roadside loading/unloading activities often block the way and cause obstruction to residents. By connecting between the existing local tracks, the proposed development will facilitate circulation of vehicles;
- (d) the proposed development will not result in adverse impact on the surrounding environment, local traffic, drainage facilities, water supplies and slopes;
- (e) the applicant has consulted the local residents and received no objection to the application. The proposed development will provide a flat and safe access to residents; and
- (f) the applicant will take up the maintenance responsibility of the Site.

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

The applicant is one of the two “current land owners”. He 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 obtaining consent from the other

² Most of these village houses fall within the “Village Type Development” (“V”) zone where ‘House (New Territories Exempted Houses (NTEHs) only)’ is always permitted. Some village houses (i.e. Houses No. 275, 286, 287 and 289) straddle on the “V” zone and the “AGR” zone, with planning approvals granted under Applications No. A/NE-TK/378, 381, 460 and 461 respectively (**Plan A-2**).

land owner. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

- 4.1 The Site is part of the subject of a planning enforcement case (No. E/NE-TK/167) against unauthorized development (UD) involving filling of land (**Plan A-2**). Enforcement Notice was issued on 11.10.2021. Reinstatement Notice was subsequently issued on 28.10.2021 requiring the owners to remove the leftover, debris and fill materials (including asphalt and hard paving), and to grass the Site by 28.1.2022. The Site has been reinstated with grass.
- 4.2 Past aerial photos reveal that vegetation within the Site and its immediate surroundings was cleared, and site formation works had been carried out since 2016 (**Plan A-3**).

5. Previous Application

- 5.1 The Site forms part of the subject of a previous application No. A/NE-TK/739 submitted by the same applicant for a temporary private vehicle park with pedestrian and vehicular access for a period of 3 years and filling of land. The application was rejected by the Rural and New Town Planning Committee (the Committee) on 28.1.2022 mainly on considerations that it was not in line with the planning intention of the "AGR" zone and caused adverse landscape impacts on the surrounding areas.
- 5.2 Details of the previous application are summarized at **Appendix II** and its location is shown on **Plans A-1** and **A-2**.

6. Similar Application

There is no similar application within the same "AGR" zone.

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

- 7.1 The Site is:
- (a) currently vacant and mostly covered with grass;
 - (b) with a small southeastern portion covered by concrete paving, forming part of an existing footpath leading to Po Sam Pai Village (**Drawing A-1** and **Plan A-4a**);
 - (c) situated near the northern fringe of San Tau Kok Village; and
 - (d) accessible via a local track connecting to Tung Tsz Road and Ting Kok Road (**Plan A-1**).

7.2 The surrounding areas have the following characters:

- (a) to the immediate southwest within the same “AGR” zone are areas occupied as private gardens of Houses No. 286, 287 and 289 without planning permission;
- (b) to the immediate south and about 40m to the east within the “V” zone are the village proper of San Tau Kok and Po Sam Pai respectively;
- (c) to the west is a dense woodland within the “Green Belt” (“GB”) zone;
- (d) to the northeast are some active agricultural lands.

8. 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.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site consists of Lot 455 S.H ss.6 in D.D. 23, which is held under Block Government Lease demised for agricultural purpose. No structure shall be erected on the lot without the prior approval from LandsD;
- (c) a recent site inspection revealed that the Site was vacant;
- (d) should the application be approved, the lot owners are required to submit an application for short term waiver (STW) to LandsD if they wish to erect any structures on the lot. However, there is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver fee and administrative fee as considered appropriate;

- (e) the applicant will likely make use of the government land adjoining Lot 451 RP for access to the Site. As such, no trees thereon shall be interfered with unless prior approval is obtained from LandsD. The maintenance and management responsibility of the village access road connecting Tung Tsz Road to the Site should be sorted out with the relevant government departments, prior to making use of it for ingress/egress purpose. Neither occupation nor works of any kind on government land is allowed without prior approval from LandsD. Moreover, the ingress may fall on the adjoining private lots outside the Site. The applicant should sort out the relevant issues with the lots owners concerned; and
- (f) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access (EVA) thereto.

Traffic

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

- (a) no in-principle objection to the application from traffic engineering point of view; and
- (b) the village access road connecting the Site with Tung Tsz Road is not under management by Transport Department (TD). Its land status, management, maintenance responsibilities should be clarified with the relevant lands and maintenance authorities accordingly in order to avoid potential land disputes.

Agriculture

9.1.3 Comment of the Director of Agriculture, Fisheries and Conservation (DAFC):

- the Site is zoned "AGR" and is currently a piece of abandoned land. There are active agricultural activities in the vicinity, and agricultural infrastructure such as road access and water source is 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 application is not supported from agricultural point of view.

Environment

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

- (a) no in-principle objection to the application;
- (b) no environmental complaint in relation to the Site was received in the past 3 years; and
- (c) the applicant is advised to implement appropriate pollution control measures to minimize short-term environmental impacts

during construction with reference to relevant publications/guidelines including “Recommended Pollution Control Clause for Construction Contracts”.

Landscape

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

- (a) the Site is vacant and mostly covered with grass. No existing tree is observed on the Site. Significant adverse impact on landscape resources arising from the proposed development is not anticipated;
- (b) based on the aerial photo taken in 2021, the Site is situated in an area of rural inland plains landscape character comprising mainly of vacant land, vegetated areas, village houses and temporary structures, with a dense woodland found at its west within the “GB” zone (**Plan A-3**). Nevertheless, there is no similar application that has been approved by the Board within the same “AGR” zone. There is concern that approval of the application may alter the landscape character and degrade the landscape quality of the “AGR” zone; and
- (c) given that the Site is not abutting major public frontage, should the application be approved, it is considered not necessary to impose landscape condition as the effect of landscape treatments on enhancing the quality of public realm is not apparent.

Drainage

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

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, an approval condition on submission and implementation of drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact to the adjacent areas; and
- (c) advisory comments are provided in paragraph (d) of **Appendix IV**.

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

- (a) Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);

- (c) Director of Fire Services (D of FS);
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (e) Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD); and
- (f) District Officer/Tai Po, Home Affairs Department (DO/TP, HAD).

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

On 22.7.2022, the application was published for public inspection. During the statutory public inspection period, a total of 14 public comments were received. Among them, 13 from local residents and individuals support the application mainly for providing convenience for local residents; facilitating circulation of vehicles; separating village houses from wild animals; and not causing adverse impacts on the surrounding areas. The remaining public comment from an individual objects to the application mainly for being a “destroy first, build later” case.

11. Planning Considerations and Assessments

- 11.1 The application seeks planning permission for a proposed footpath and access road with filling of land within the “AGR” zone. According to the applicant, the proposed access road and footpath is about 5m-wide and serves the nearby village houses. The filling of land would involve paving of an area of about 455m² (i.e. about 83% of the site area) and a depth of about 0.2m by concrete for constructing the proposed footpath and access road. The remaining area including the existing footpath would remain unchanged. The proposed 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 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. Although the applicant claims that the proposed development would serve the nearby village houses, in particular serving as the only pedestrian and vehicular access for Houses No. 287 and 289 of San Tau Kok Village, it should be noted that there are alternative pedestrian access to the said houses, and provision of vehicular access is not one of the requirements for Small House development. Besides, the proposed development leads to the private gardens of Houses No. 286, 287 and 289 which fall within the “AGR” zone and are not covered by any planning permission. In this regard, the application fails to demonstrate the need for the proposed development at the Site. There is no strong planning justification in the submission to justify the departure from the planning intention of the “AGR” zone.
- 11.2 The Site, situated near the northern fringe of San Tau Kok Village, is currently vacant and mostly covered with grass. The proposed development is not entirely incompatible with the surrounding environment which are predominantly vacant land, vegetated areas, village houses and temporary structures. However, CTP/UD&L, PlanD has concern that approval of the application may alter the landscape character and degrade the landscape quality of the “AGR” zone as there is no similar application being approved

within the same “AGR” zone. Other relevant government departments consulted, including C for T, DEP and CE/MN of DSD, have no objection to/no adverse comment on the application from technical aspects.

- 11.3 The Site is accessible via a local track connecting to Tung Tsz Road and Ting Kok Road. According to the applicant, the proposed development will provide a 5m-wide footpath and access road to form a continuous access and facilitate circulation of vehicles, and may also be used by emergency vehicles. However, the need for the provision of emergency vehicular access (EVA) for Small House developments have been assessed for the respective Small House grant applications by relevant departments.
- 11.4 The Site forms part of a previous planning application No. A/NE-TK/739 submitted by the same applicant for a temporary private vehicle park with pedestrian and vehicular access for a period of 3 years and filling of land. Under the previous application, the proposed access road was also claimed to be used by emergency vehicles and to facilitate circulation of vehicles. The previous application was rejected by the Committee on 28.1.2022 mainly for reasons of being not in line with the planning intention of the “AGR” zone and causing adverse landscape impacts on the surrounding areas. The circumstances for rejecting the previous application are largely applicable to the current application.
- 11.5 Regarding the public comments on the application as detailed in paragraph 10 above, 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 public comments mentioned in paragraph 10 above, Planning Department does not support the application for the following reasons:
 - the proposed 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. The applicant fails to demonstrate the need to provide the concerned footpath and access road for houses with associated filling of land. There is no strong planning justification for a departure from the planning intention.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 9.9.2026, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following approval condition and advisory clauses are also suggested for Members’ reference:

Approval Condition

- (a) the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix IV**.

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 date when the validity of the permission should expire.

14. Attachments

Appendix I	Application form and SI received on 15.7.2022 and 19.7.2022
Appendix Ia	FI received on 24.8.2022
Appendix II	Previous application
Appendix III	Public comments
Appendix IV	Recommended advisory clauses
Drawing A-1	Layout plan submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photos
Plans A-4a to A-4b	Site photos

**PLANNING DEPARTMENT
SEPTEMBER 2022**