

Withdrawn by Applicant

RNTPC Paper No. A/SK-HC/343A
For Consideration by the
Rural and New Town
Planning Committee on 14.7.2023

APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-HC/343

<u>Applicant</u>	: Mr Wong Choi Ping represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 435 S.D ss.1 S.A (Part) in D.D. 244 and Adjoining Government Land (GL), Ho Chung, Sai Kung, New Territories
<u>Site Area</u>	: About 4m ² (including about 1m ² GL (about 25%))
<u>Lease</u>	: Old Schedule Agricultural Lot held under Block Government Lease
<u>Plan</u>	: Approved Ho Chung Outline Zoning Plan (OZP) No. S/SK-HC/11
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	Temporary Security Guard Room for a Period of 3 Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for regularising a temporary security guard room for a period of three years and associated filling of land at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the OZP. The applied use is neither a Column 1 nor Column 2 use in the “AGR” zone. According to the Notes of the OZP, temporary use/development of any land or buildings not exceeding a period of three years require planning permission from the Town Planning Board (the Board). Besides, filling of land in the “AGR” zone requires permission from the Board. The Site is currently occupied by a concrete structure on formed land and being used as a security guard room. The guard room forms part and parcel of a wider security system with fence walls and bollards that fences off an area comprising 11 New Territories Exempted Houses (NTEHs) with prior planning permissions (see paragraph 4.1 below for more details), and private gardens and private vehicle parks without planning permission. According to the applicant’s submission, such fenced area forms a “fenced residential development” (**Drawing A-1** and **Plan A-2**).

- 1.2 According to the applicant, the existing structure, with a floor area of about 4m² and a height of one storey (2.8m) (**Drawing A-2**), is to provide an indoor workspace for the caretaker responsible for the security of the “fenced residential development”. The Site has already been filled with not more than 0.2m in depth for the existing structure. The maximum number of staff to be accommodated in the security guard room is two. The development will not be used for domestic use. The Site is accessible from a local track branching off Nam Pin Wai Road to its south (**Plan A-3**).
- 1.3 Location plan and layout plan submitted by the applicant are at **Drawings A-1** and **A-2** respectively.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 20.3.2023 (**Appendix I**)
 - (b) Further Information (FI) received on 23.6.2023 (**Appendix Ia**)
[accepted and exempted from publication and recounting requirements]
- 1.5 On 19.5.2023, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer making a decision on the application for two months as requested by the applicant.

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 FI at **Appendix Ia** and summarised below:

- (a) the application is on a temporary basis and will not frustrate the long term planning intention of the “AGR” zone;
- (b) the existing structure at such a height and scale is insignificant and not incompatible with the surroundings dominated by NTEHs. Land filling at the Site was necessary to form a flat surface for the existing structure;
- (c) the development is intended to provide a workspace for the caretaker to monitor the surrounding area for any illegal or suspicious activity, as well as to ensure the security and safety of the “fenced residential development”;
- (d) adequate mitigation measures and good practices will be adopted to minimise adverse impacts (if any) on the surrounding areas; and
- (e) a letter of an Indigenous Inhabitant Representative of Ho Chung and a petition letter from villagers of Ho Chung are attached in the FI (**Appendix Ia**), urging the Board to approve the application on sympathetic ground for enhancement of security in the village.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection. For the GL portion, the “owner’s consent/notification” requirements are not applicable.

4. Background

4.1 Within the “fenced residential development” adjoining the Site (**Plan A-2**), 11 NTEHs have been developed under four separate planning permissions (i.e. Applications No. 140 for two NTEHs, No. 143 for three NTEHs, No. 147 for three NTEHs, No. 153 for two NTEHs and No. 164 for one NTEH respectively). These applications were approved between 2007 and 2008 before the Committee of the Board has formally adopted a more cautious approach in considering applications for Small House development since 2015. Construction of the said NTEHs was completed around 2012 to 2015.

4.2 The Site is currently not subject to any active planning enforcement action. Subject to collection of sufficient evidence, appropriate planning enforcement action may be undertaken.

5. Previous Applications (Plan A-1)

The Site was the subject of four previous applications (No. A/SK-HC/13, 95, 97 and 115) covering significantly larger site area (including part of the “fenced residential development”). Application No. A/SK-HC/13 for 12 three-storey village-type houses was rejected by the Committee on 7.10.1994 mainly on grounds of not in line with the planning intention of the “AGR” zone. Applications No. A/SK-HC/95, 97 and 115 for temporary open storage of various construction materials were rejected by the Committee between 2001 and 2004 on grounds of, amongst others, not in line with the planning intention of the “AGR” zone and not compatible with the surrounding environment. These previous applications are for different uses covering larger sites which are not relevant to the current application.

6. Similar Application

There is no similar application for temporary security guard room within the “AGR” zone on the OZP.

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

7.1 The Site is:

- (a) paved and currently occupied by a small concrete structure used as a security guard room;

- (b) located entirely within the village ‘environs’ of Ho Chung and the Ho Chung Site of Archaeological Interest (SAI); and
- (c) accessible from Nam Pin Wai Road via a village road to the west of the Site.

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate north, east and south is a fenced area comprising 11 NTEHs which are the subjects of planning approvals as detailed in paragraph 4.1 above. Adjoining these NTEHs are private gardens and private vehicle parks without planning permission;
- (b) to the further north is Ho Chung Lowland Pumping Station, Ho Chung Village Office, some tree groups, vacant land and Ho Chung River. Across Ho Chung River to its north is the village proper of Ho Chung;
- (c) to the further east are some vacant land and Ho Chung New Village. To the further south are vacant land, a waterworks facility, and dense woodland within the “Green Belt” zone; and
- (d) to the immediate west is a village road leading from Nam Pin Wai Road and to the further west are a juxtaposition of cultivated/fallow farmland, temporary structures and dwellings.

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 Apart from the government departments as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices II and III** respectively.

9.2 The following government department has objection to/reservation on the application.

Lands Administration

Comments of the District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD):

- (a) there is adverse comment on the application as it involved unauthorized building works (UBWs) without Government's prior approval;
- (b) the Site comprises an Old Schedule Agriculture Lot, i.e. Lot 435 S.D ss. 1 S.A (Part) in D.D. 244 held under the Block Government Lease which contains the restriction that no structures are allowed or to be erected without the prior approval of the Government and adjoining GL in Sai Kung Ho Chung New Village. No permission is given for the occupation of GL included in the Site. Any occupation of GL without Government's prior approval is not allowed;
- (c) the temporary security guard room and ancillary uses were erected and straddling on the Lot and the adjoining GL without Government's prior approval. It is regarded as UBWs which breach the lease conditions of the subject private lot and is subject to land enforcement actions. Application for regularisation of UBWs by way of Short Term Waiver (STW) and Short Term Tenancy (STT) was received by DLO/SK. It was revealed in his site inspection that the site area for the subject guard room, with ancillary uses, is about 11m², including the guard room, lavatory, porch and two bollards erected on a platform formed on the GL for security purpose. The application for only an area of 4m² has not fully reflected the total occupation area mentioned above;
- (d) the applicant should amend the area of the Site to 11m² (about) to cover the UBWs mentioned above. Should planning approval be given, the lot owner(s) of the private lot without STW will need to apply to DLO/SK for a STW to permit the structures erected, and/or regularise any irregularities on site, if any. Besides, given the applied use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered; and
- (e) application(s) for any of the above will be considered by LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by LandsD.

10. Public Comment Received During Statutory Publication Period

On 28.3.2023, the application was published for public inspection. During the statutory public inspection period, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for regularisation of a temporary security guard room for a period of three years with associated filling of land at the Site which falls within the "AGR" zone on the OZP. The planning intention of the "AGR"

zone is 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. While the Director of Agriculture, Fisheries and Conservation has no comment on the application in considering that the Site is already completely developed and the potential for agricultural rehabilitation is low, it should be noted that the filling of land and construction of the existing structure at the Site have been undertaken without having obtained necessary planning permission. Although the adjoining 11 NTEHs within the “fenced residential development” were the subject of planning permissions granted by the Committee under Applications No. A/SK-HC/140, 143, 147 and 164 respectively, such planning approvals do not entail condonation of using the land adjoining the permitted NTEHs for non-NTEH developments, such as security guard room, private gardens and private vehicle parks, which are akin to ancillary facilities to low-rise residential development. Thus, the applicant’s claim that the applied security guard room is intended to secure the “fenced residential development” is considered not justified. Although the application for the security guard room is claimed to be on a temporary basis for three years, given the nature of use and that the UBWs in question involve a concrete structure, it is unlikely a temporary facility. There is no strong planning justification given in the submission for a departure from the planning intention of the “AGR” zone, even on a temporary basis.

- 11.2 The applied security guard room with a floor area of 4m² and a building height of one storey (2.8m) is rather small in scale on its own. The Chief Town Planner/Urban Design and Landscape, Planning Department has no adverse comment on the application from urban design and landscape perspectives. Given its small scale and nature, it is considered that the applied use may not be incompatible with the surrounding areas. Nevertheless, it should be noted that the applied security guard room forms part and parcel of a wider security system that fences off a far larger area which has not been covered by valid planning permission or the current application.
- 11.3 DLO/SK, LandsD has adverse comment on the application as UBWs were erected without Government’s prior approval. DLO/SK, LandsD also points out that the site area under the current planning application has not fully reflected the total occupation area of UBWs. While land administration issues should be handled separately, the applicant should rectify the UBWs at once. Other departments consulted have no adverse comments on/ no in-principle objection to the application.
- 11.4 During the statutory public inspection period, no public comment on the application was received.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11, the Planning Department does not support the application for the following reason:

the applied security guard room with associated filling of land serving a fenced residential development of New Territories Exempted Houses with private gardens and private vehicle parks adjoining, which is akin to an ancillary facility to a low-rise residential development, is not in line with the planning intention of the “Agriculture” 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. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

- 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 three years until 14.7.2026. 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 attachments received on 20.3.2023
Appendix Ia	FI received on 23.6.2023
Appendix II	Government departments’ general comments
Appendix III	Recommended advisory clauses
Drawing A-1	Location plan submitted by the applicant
Drawing A-2	Layout plan submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos