

Withdrawn by Applicant

RNTPC Paper No. A/SK-HC/345
For Consideration by the
Rural and New Town
Planning Committee on 22.9.2023

APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-HC/345

<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 11m ² (including about 6m ² GL (about 55%))
<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 and filling of land in the “AGR” zone require planning permission from the Town Planning Board (the Board). The Site is formed and largely occupied by a concrete structure which is being used as a security guard room together with other related uses, including lavatory, porch and two bollards. The guard room forms part and parcel of a wider security system with fence walls that fence 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 7.5m² and height of one storey (2.8m) (**Drawing A-2**), is to provide an indoor workspace for the caretaker who is 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 application form with attachments which was received on 8.8.2023 (**Appendix I**).

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 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 building height and scale of the existing structure are 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”. It would not be used for domestic use; and
- (d) adequate mitigation measures and good practices will be adopted to minimise adverse impacts (if any) on the surrounding areas.

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

The applicant is the sole “current land owner” of the Site. 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 five separate planning permissions¹.

¹ 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.

These applications were approved between 2007 and 2008 before the Rural and New Town Planning Committee (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 (Plans A-1 and A-2)

- 5.1 The Site forms part of four previous applications (No. A/SK-HC/13, 95, 97 and 115) covering significantly greater site area (including part of the “fenced residential development”). Application No. A/SK-HC/13 was for 12 no. of 3-storey village-type houses and applications No. A/SK-HC/95, 97 and 115 were for temporary open storage of various construction materials. These applications, which were for different proposed uses, are not relevant to the current application.
- 5.2 The Site is also the subject of a planning application No. A/SK-HC/343 by the same applicant for the same use with a smaller site area covering only part of the concrete structure on site. Before the scheduled date for consideration by the Committee on 14.7.2023, the application was withdrawn by the applicant on 12.7.2023.

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 largely occupied by a concrete structure and two bollards and used as a security guard room;
 - (b) located entirely within the ‘village environs’ of Ho Chung and partly within the Ho Chung Site of Archaeological Interest (SAI); and
 - (c) accessible from Nam Pin Wai Road via a village road to the south of the Site.
- 7.2 The surrounding areas have the following characteristics:
- (a) to its immediate north, east and southeast is a fenced area comprising 11 NTEHs which are the subject 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 immediate south is a village road leading from Nam Pin Wai Road; to the further south is vacant land and dense woodland within the “Green Belt” zone; and to the further north is Ho Chung Lowland Pumping Station; and
- (c) to the further east is Ho Chung New Village and to the further west is cultivated/fallow farmland intermixed with 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 adverse comment 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 unauthorized building works (UBW) were erected 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 prior approval of the Government. 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, with ancillary uses, was

erected and straddling on the subject lot and the adjoining GL without the Government's prior approval. It is regarded as UBW which breaches the lease conditions of the subject lot and is subject to land enforcement actions. Application for regularisation of UBW by way of Short Term Waiver and Short Term Tenancy 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 an area of 11m² has reflected the total occupation area mentioned above; and

(d) other advisory comments are detailed at **Appendix III**.

10. Public Comments Received During Statutory Publication Period

During the public inspection period, a total of 11 public comments were received from individuals. Amongst them, nine support the application mainly on the grounds that the security guard room can enhance the security of the area and the applied use would not create negative impact on the environment. Whilst, one public comment objects to the encroachment on GL of the Site. The remaining public comment expresses aspiration for provision of commercial and hotel facilities (**Appendix IV**).

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 view 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 the necessary planning permission. Although the adjoining 11 NTEHs within the "fenced residential development" were the subject of planning permissions previously granted by the Committee, 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 the built 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 7.5m² 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 considers that the applied use is not incompatible with the surrounding environment and significant landscape impact from the application is not anticipated. Nevertheless, it should be noted that the applied security guard room forms part and parcel of a wider security system that fence 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 UBW was erected without the Government’s prior approval. While land administration issues should be handled separately, the applicant should rectify the UBW as appropriate. Other departments consulted have no in-principle objection to/ no adverse comments on the application.
- 11.4 As regards the public comments as detailed in paragraph 10, the departmental comments and planning assessments in paragraphs 11.1 to 11.3 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above and having taken into account the public comments mentioned in paragraph 10 above, 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 are akin to ancillary facilities to a low-rise residential development, is not in line with the planning intention of the “Agriculture” (“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. The applicant fails to provide strong justification in the submission for a departure from the planning intention of the “AGR” zone, 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 22.9.2026. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) the submission of proposals for fire service installations and water supplies for firefighting 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 22.3.2024;

- (b) in relation to (a) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 22.6.2024; and
- (c) if any of the above planning condition (a) or (b) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall be 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 attachments received on 8.8.2023
Appendix II	Government departments' general comments
Appendix III	Recommended advisory clauses
Appendix IV	Public comments
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