

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-HC/354

- Applicant** : Ms. LAM Yeuk Yin represented by Mr. YEUNG Siu Fung
- Site** : Lot 429 S.B (Part) in D.D. 244 and Adjoining Government Land (GL),
Ho Chung New Village, Sai Kung, New Territories
- Site Area** : About 282.33m² (including about 216.77m² (about 77%) of GL)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Ho Chung Outline Zoning Plan (OZP) No. S/SK-HC/12
(currently in force)
- Approved Ho Chung OZP No. S/SK-HC/11
(at the time of submission)
- Zoning** : “Agriculture” (“AGR”)
[no change on the current OZP]
- Application** : Temporary Private Garden for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for a temporary private garden for a period of three years. The Site falls within an area zoned “AGR” on the OZP (**Plan A-1**). According to the Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years requires planning permission from the Town Planning Board (the Board). The Site is enclosed by fence wall and currently used as a private garden for the adjoining New Territories Exempted House (NTEH) (i.e. No. 450, Ho Chung New Village at Lot 2194 in D.D. 244 which is the subject of an approved planning application No. A/SK-HC/167) (**Plan A-2**) without planning permission.
- 1.2 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on (**Appendix I**)
30.4.2024

- (b) Further Information (FI) received on 19.8.2024* and 20.8.2024* (Appendix Ia)
- (c) FI received on 14.10.2024[#] (Appendix Ib)
- (d) FI received on 24.10.2024[#] (Appendix Ic)
- (e) FI received on 5.11.2024[#] (Appendix Id)
- (f) FI received on 25.11.2024[#] (Appendix Ie)
- (g) FI received on 29.11.2024[#] (Appendix If)

**accepted but not exempted from publication and recounting requirements*

[#]accepted and exempted from publication and recounting requirements

- 1.3 On 21.6.2024 and 4.10.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to the applicant's requests to defer making a decision on the application for two months each.

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 and FIs at **Appendices I to Ie** and summarised below:

- (a) the private garden and fence wall were built before the applicant bought the subject lot and adjoining house and the erection of fence wall is for protection against trespassers and wild animals;
- (b) the existing greenhouse will be removed and other unauthorised structures within the Site would be cleared upon approval;
- (c) no development proposal at the Site at the moment and no excavation of land will be carried out at the Site in future to preserve archaeological remains if present;
- (d) risk assessment report demonstrated that no contamination to the Water Gathering Ground (WGG) will be induced by the applied use and no pesticides and fertilizers will be used;
- (e) no blockage of traffic flow induced by the fence wall is anticipated; and
- (f) the applicant will voluntarily surrender the subject lot and the adjoining house at Lot 2194 in D.D. 244 for public development in future if required.

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 above requirements are not applicable.

4. Background

The Site is currently not subject to planning enforcement action.

5. Previous Applications

- 5.1 Part of the Site is the subject of two previous applications No. A/SK-HC/13 and 167 for house development, which were submitted by different applicants. Application No. A/SK-HC/13 for 12 3-storey village-type houses was rejected by the Committee on 7.10.1994.
- 5.2 Application No. A/SK-HC/167 for one house (NTEH – Small House) (without private garden proposed) was approved by the Committee on 7.11.2008 mainly on the grounds that land available within “V” zone of Ho Chung Village (including Nam Pin Wai) could not fully meet the future Small House demand at the time of consideration and the site and its surrounding area were not under active cultivation. The house has been completed, i.e. No. 450, Ho Chung New Village.
- 5.3 Details of the previous applications are at **Appendix II** and their locations are shown on **Plans A-1** and **A-2**. The two previous applications are not relevant to the current application.

6. Similar Application

- 6.1 There was one similar application No. A/SK-HC/300 for temporary private swimming pool and garden use for a period of three years slightly encroaching into the same “AGR” zone while the remaining part was within “V” zone, which was approved by the Committee on 4.1.2019 mainly on the grounds that only a small portion of the proposed use (i.e. about 10m² or 8%) fell within the “AGR” zone; adverse traffic, environmental, landscape, drainage and water supply impacts were not anticipated; and was the subject of an approved application for the same temporary swimming pool use by the same applicant and all approval conditions were complied with. The permission lapsed on 4.1.2022.
- 6.2 Details of the similar application are at **Appendix III** and its location is shown on **Plan A-1**.

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

- 7.1 The Site is:
 - (a) completely enclosed by fence wall, partly paved and currently used as a private garden, with a greenhouse and a trellis erected, serving the adjoining NTEH (No. 450, Ho Chung New Village);

- (b) located entirely within the village ‘environs’ of Ho Chung and the Ho Chung Site of Archaeological Interest (SAI);
- (c) partly falls within the WGG and waterworks reserve; and
- (d) served by an access road leading to Nam Pin Wai Road.

7.2 The surrounding areas are of settled valleys landscape predominated by tree groups, scrubland, Small Houses and low-rise residential development. To the further east is the village cluster of Ho Chung New Village which is zoned “V”. To the further west is dense woodland intermixed with active cultivation.

8. Planning Intention

The planning intention of “AGR” zone is 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 Bureau/Departments

- 9.1 Apart from the government departments as set out in paragraphs 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and recommended advisory clauses are provided at **Appendices IV** and **V** respectively.
- 9.2 The following government bureau/department has adverse comment or does not support the application:

Agriculture

- 9.2.1 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):
 - (a) the Site is generally vacant or occupied by some structures. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available; and
 - (b) the Site can be used for agricultural activities such as open-field cultivation, greenhouse, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the applied use is not supported from agricultural perspective.

Archaeological and Heritage Preservation

9.2.2 Comments of the Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office, Development Bureau (ES(AM), AMO, DEVB):

- (a) the Site falls within Ho Chung SAI entirely. As such, AMO's prior comment and agreement should be sought before implementation of any works including but not limited to excavation, digging, site formation, construction works etc. However, the proposed constructions works, regrettably, had been carried out at the Site **without** prior consultation with AMO not to mention agreement from AMO. No remedial action could be done to reverse the damages already imposed to Ho Chung SAI where the application site is situated;
- (b) she reiterates that pursuant to the Antiquities and Monuments Ordinance (Cap.53), any person who discovers, or knows of the discovery of an antiquity or supposed antiquity shall forthwith report the discovery to the Authority or to a designated person. A person who discovers an antiquity or supposed antiquity shall take all reasonable measures to protect it. Besides, work falls within SAI(s) should be submitted to AMO for consideration and agreement before commencement;
- (c) at present, the construction works had already been conducted in the Site. It is unknown whether or not there was discovery stipulated in the Antiquities and Monuments Ordinance during the course of works and the impact on the archaeological resources. In this connection, the applicant is requested to provide further supplementary information to address AMO's comment with clear photos, shop drawing(s) or any other equivalent materials illustrating the details (e.g. locations, sizes and construction materials) before, during and after the construction of the porch and greenhouse for AMO's assessment on the impact of the works on Ho Chung SAI;
- (d) in addition, despite the applicant's advice that there will not be any digging at the site in future and no development proposal in the area at the moment, it is obligatory for the applicant to seek AMO's comment if the development parameter and scope of works will require excavation and site formation at the Site; and
- (e) the applicant has yet provided the supplementary information (including the required photos and possible follow-up materials) to AMO's satisfaction.

10. Public Comments Received During Statutory Publication Periods

On 10.5.2024 and 30.8.2024, the application was published for public inspection. During the statutory public inspection periods, two public comments were received from the same individual objecting to the application mainly on the ground that it would set a precedent of development encroaching into the “AGR” zone and GL prior to obtaining approval (**Appendix VI**).

11. Planning Considerations and Assessments

- 11.1 The application is for temporary private garden for a period of three years at the Site which falls within an area zoned “AGR” on the OZP (**Plan A-1**). The Site is completely enclosed by fence wall, partly paved and currently used as a private garden without planning permission, with mainly a greenhouse and a trellis erected, serving the adjoining NTEH (No. 450, Ho Chung New Village) (**Plans A-3** and **A-4**). 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. The temporary private garden, although applied for a period of three years, is not in line with the planning intention of the “AGR” zone. DAFC does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation for open-field cultivation, greenhouse, plant nurseries, etc., agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. Active cultivation activities are observed to the immediate west of the Site.
- 11.2 District Lands Officer/Sai Kung, Lands Department advises that some irregularities within (e.g. GL being fenced off/illegally occupied with a portion of a greenhouse, a portion of a trellis, a canopy and a pond) and outside (e.g. a raised flower bed) the Site are detected by his office. The lot owner should immediately rectify/regularise the lease breaches. While the Site falls entirely within the Ho Chung SAI, ES(AM), AMO, DEVB considers that the applicant has yet to provide information for her assessment of the archaeological impact arisen from the applied use. She further advises that no remedial action could be done to reverse the damages already imposed to the Ho Chung SAI which have been done without prior consultation or agreement with AMO.
- 11.3 In view of small scale of the private garden, the applied use is not incompatible with the surrounding areas which are predominantly rural in character comprising mainly village houses and scrubland. No adverse traffic, landscape and environmental impacts are also anticipated. Other relevant departments consulted including the Commissioner for Transport, the Director of Environmental Protection, the Chief Engineer/Mainland South, Drainage Services Department, the Chief Engineer/Construction, Water Supplies Department, the Director of Fire Services and the Chief Town Planner/Urban Design and Landscape, Planning Department have no adverse comments on or no objection to the application.

- 11.4 There is one similar application encroaching onto the same “AGR” zone while the remaining area zoned “V” which was for private swimming pool and garden use. This application was approved on grounds that the portion encroached onto the “AGR” zone was very minor (about 8%) and there was previous approval for the swimming pool use. The circumstances of the similar application are different from the current application as the Site falls entirely within the “AGR” zone and there is concern on agricultural perspectives.
- 11.5 Regarding the objecting public comments as detailed in paragraph 10 above, departmental comments in paragraph 9 and planning assessments in paragraphs 11.1 to 11.4 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 reason:

the temporary private garden is not in line with the planning intention of “Agriculture” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. There is no strong justification given 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 **6.12.2027**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the submission of a fire service installations proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **6.6.2025**;
- (b) in relation to (a) above, the implementation of the fire service installations proposal within **9** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **6.9.2025**;
- (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; and

- (d) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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 30.4.2024
Appendix Ia	FI received on 19.8.2024 and 20.8.2024
Appendix Ib	FI received on 14.10.2024
Appendix Ic	FI received on 24.10.2024
Appendix Id	FI received on 5.11.2024
Appendix Ie	FI received on 25.11.2024
Appendix If	FI received on 29.11.2024
Appendix II	Previous Applications
Appendix III	Similar Application
Appendix IV	Government Departments' General Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comments
Drawing A-1	Layout Plan
Drawing A-2	Proposed Sand Trap and Septic Tank Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4c	Site Photos