

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-TLS/58

- Applicant** : Ms Leung Kit Yee
- Site** : Government Land adjoining Lot 1143 in D.D. 253, Tseng Lan Shue, Sai Kung, New Territories
- Site Area** : 180m²
- Land Status** : Government Land
- Plan** : Approved Tseng Lan Shue Outline Zoning Plan (OZP) No. S/SK-TLS/8
- Zonings** : “Village Type Development” (“V”) (about 140m² or 78%)
‘Road’ (about 40m² or 22%)
- Application** : Renewal of Planning Approval for Temporary Private Garden for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for a temporary private garden use for a period of 3 years. The Site falls within an area mainly zoned “V” and partly shown as ‘Road’ on the approved Tseng Lan Shue Outline Zoning Plan (OZP) No. S/SK-TLS/8 (**Plans A-1 and A-2**).
- 1.2 A major part of the Site (about 155m² or 86%) (coloured yellow on **Plan A-2**) is covered by Short Term Tenancy (STT) for private garden use first granted in 1985 before the gazettal of the first statutory Tseng Lan Shue Interim Development Permission Area (IDPA) Plan No. IDPA/SK-TLS/1 on 12.10.1990. According to the Notes of the OZP, private garden within this portion of the Site is an existing use. For the remaining part of the Site (about 25m² or 14%), temporary private garden for a period of 3 years requires planning permission from the Town Planning Board (the Board).
- 1.3 The Site is the subject of two previously approved applications No. A/SK-TLS/46 and A/SK-TLS/53 for the same use submitted by the same applicant. The last application No. A/SK-TLS/53 was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 4.5.2018 and is valid until 4.5.2021.

- 1.4 The current proposal is the same as the previously approved scheme. According to the applicant, structures within the private garden under application include a porch (2m(L) x 2m(W) x 2.5m(H)) and a canopy of (1m(L) x 1m(W) x 2.5m(H)). The location plan and site plan submitted by the applicant are at **Drawings A-1 to A-2**.
- 1.5 In support of the application, the applicant has submitted the Application Form dated 1.3.2021 at **Appendix I**.

2. Justifications from the Applicant

The justifications put forward by the applicant in support of the application are detailed in Part 9 of the application form at **Appendix I** and summarized as follows:

- (a) the Site has been used as private garden with STT No. SX2639 granted by the District Lands Office/Sai Kung, Lands Department; and
- (b) the Site is the subject of a previous planning approval (Application No. A/SK-TLS/53) until 4.5.2021. All approval conditions have been complied with.

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

As the application involves government land only, the “owner’s consent/notification” requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Section 12A and 16 of the Town Planning Ordinance (TPB GB-No. 31A) is not applicable to the application.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C) are relevant to the application. The criteria for assessing applications for renewal of planning approval include:

- (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
- (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
- (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant government departments within the specified time limits;
- (d) whether the approval period sought is reasonable;
- (e) any other relevant considerations; and

- (f) the approval period for renewal should not be longer than the original validity period of the temporary approval.

5. Previous Application

- 5.1 The Site is the subject of two previous applications No. A/SK-TLS/46 and A/SK-TLS/53 for the same temporary use submitted by the same applicant.
- 5.2 The application No. A/SK-TLS/46 was approved with conditions by the Committee on 27.3.2015 mainly on the grounds that the long-term planning intention of the area designated as 'Road' would not be jeopardized and the proposed use is not incompatible with the surrounding village environment. All time-limited approval conditions for the submission and implementation of landscape proposal had been complied with.
- 5.3 The last application No. A/SK-TLS/53 was approved by the Committee on 4.5.2018. As all time-limited approval conditions as stipulated in the previous application had been fully complied with, no time-limited approval condition was imposed by the Committee for the planning approval. The planning approval will expire on 4.5.2021.
- 5.4 Details of previous applications are summarized at **Appendix II** and the locations are shown on **Plan A-2**.

6. Similar Application

There is no similar application in the vicinity of the Site.

7. The Site and Its Surrounding Areas (Plans A-1 to A-3 and Photos on Plans A-4a to A-4b)

- 7.1 The Site is:
 - (a) within the 'village environs' ('VE') of Tseng Lan Shue;
 - (b) adjoining an existing 3-storey village house;
 - (c) currently fenced off and used as a private garden; and
 - (d) accessible via Pak Shek Toi Road which links to Clear Water Bay Road.
- 7.2 The surrounding areas have the following characteristics:
 - (a) to the south and southeast are clusters of 3-storey village houses; and
 - (b) to the north, northeast and west are vegetated slopes zoned "Green Belt" ("GB").

8. Planning Intentions

- 8.1 The planning intention of “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.
- 8.2 The area shown as ‘Road’ is to make land reservation for road works.

9. Comments from Relevant Government Departments

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

Land Administration

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

- (a) no objection to the application;
- (b) the Site falls wholly within the village environs of Tseng Lan Shue and the boundary of the STT No. SX2639. Pursuant to the user restriction, and terms and conditions of the tenancy agreement governing the STT, parking of motor vehicle within the STT site is not permitted;
- (c) subsequent to the granting of the planning permission for private garden use by the Board in April 2015, the STT No. 2639 commencing on 12.5.2000 was granted to the registered owner of G/F of the house erected on Lot No. 1143 in D.D. 253 for occupation of the Site for private garden purposes by the tenancy agreement dated 15.2.2016. The STT is still valid;
- (d) there is no Small House application on the Site. Notwithstanding that, the STT will be terminated for Small House development if so required;
- (e) there is no information on the 10-year Small House Demand Forecast in Tseng Lan Shue and there are 63 outstanding Small House application in the village;

- (f) site inspections have been conducted and revealed that there was no motor vehicle parked within the Site. His office has reminded the tenant to strictly adhere to the user restriction; and
- (g) STT for private garden purpose are usually granted for a term of 6 calendar months and thereafter half-yearly subject to rent review every 5 years. The tenancy may be terminated at any time by either party giving to the other at least three calendar months' notice in writing to that effect to expire at any time, or any breach by the tenant of the terms and conditions of the tenancy.

Traffic

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

- (a) no objection in-principle to the application. There is no implementation programme for the planned road based on records of his Office; and
- (b) the applicant shall be reminded that vehicle parking shall not be allowed at the Site, and overgrown vegetation protruding from the fence wall and any object encroaching into or situating at the adjacent footpath and carriageway shall be removed to maintain clear sightline at Pak Shek Toi Road.

Environment

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

- (a) no comment on the application; and
- (b) the applicant is advised to follow the 'Revised Code of Practice on Handling Environmental Aspects of Open Storage and other Temporary Uses' issued by the DEP.

Landscape

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

- (a) no objection from landscape planning perspective; and
- (b) according to the aerial photo of 2020, the Site is used as a hard paved private garden. In view that the application is applying for the renewal of an existing use of the development, any further landscape impact arising from the continued use of the application is not anticipated.

Drainage

9.1.5 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

provided that adequate stormwater drainage facilities will be provided in connection with the proposed development to deal with the surface runoff of the Site without causing any adverse drainage impacts or nuisance to the adjoining areas, he has no in-principle objection to the application from a drainage maintenance viewpoint.

Water Supply

9.1.6 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD):

- (a) no objection to the application;
- (b) existing water mains are affected. The applicant is required to either divert or protect the water mains found on the Site; and
- (c) detailed comments regarding diversion of water mains are at **Appendix III**.

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

- (a) Chief Engineer(Works), Home Affairs Department (CE(Works), HAD);
- (b) District Officer/Sai Kung, Home Affairs Department (DO/SK, HAD);
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (d) Director of Agriculture, Fisheries and Conservation (DAFC);
- (e) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
- (f) Director of Fire Services (D of FS).

10. Public Comment Received During Statutory Publication Period

On 9.3.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 30.3.2021, two public comments were received from individuals, raising concerns on the location of the fence wall; the use of the private garden for car parking; and the renewal of STT for the Site (**Appendix IV**).

11. Planning Considerations and Assessments

11.1 The application is to seek for renewal of the planning approval under previous application No. A/SK-TLS/53 for temporary private garden for a period of 3 years. The Site falls within an area mainly zoned “V” and partly shown as

‘Road’ on the OZP. The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by government projects. The area shown as ‘Road’ is to make land reservation for road works. The proposed use is not in line with the planning intentions of the “V” zone and the area shown as ‘Road’. As advised by DLO/SK, there is no Small House application on the Site and the STT for private garden use will be terminated for Small House development if so required. C for T advises that there is no implementation programme on the area shown as ‘Road’. Approval of the application on a temporary basis for 3 years would not frustrate the long term planning intention of the “V” zone or jeopardize future road improvement works.

- 11.2 The existing private garden is considered not incompatible with the surrounding land uses which are occupied by village houses at the south and east of the Site. DLO/SK has no objection to the application and advises that there are 63 outstanding Small House applications within Tseng Lan Shue. Based on the latest estimate of Planning Department, about 9.2ha of land is available within the “V” zone (or equivalent to 368 Small House sites). As such, land is still available to meet the outstanding Small House applications at the village.
- 11.3 The Site is the subject of two previously approved applications for the same temporary use submitted by the same applicant. The application is generally in line with TPB Guidelines PG-No. 34C in that there has been no major change in planning circumstances since the granting of the previous approval under application No. A/SK-TLS/53; all time-limited approval conditions in the previous approval under application No. A/SK-TLS/46 have been complied with and no time-limited approval condition was imposed in the last planning approval; and the 3 years approval period sought is the same as the previous planning application. Relevant government departments have no adverse comments on/ no objection to the application on technical aspects.
- 11.4 Regarding the public comment raising concerns on the location of the fence wall and the use of the private garden, it is suggested to retain the approval condition for maintaining the existing boundary fence at all times as the last approved application and include advisory clauses reminding the applicant that non-permitted uses within the Site shall not be allowed. Besides, regarding the concern on the renewal of STT, comments of DLO/SK in paragraph 9.1.1 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 comment in paragraph 10, the Planning Department considers that the temporary private garden could be tolerated for a period of 3 years.
- 12.2 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 3 years, and be renewed from 5.5.2021 until 4.5.2024. The following conditions of approval and advisory clauses are also suggested for Members’ consideration:

Approval conditions

- (a) the existing boundary fence on the Site should be maintained at all times during the planning approval period;
- (b) if the above planning condition (a) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (c) 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 attached at **Appendix V**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' consideration:

the private garden use is not in line with the planning intentions of the "V" zone. The planning intention of the "V" zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers.

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 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.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form dated 1.3.2021
Appendix II	Previous Applications
Appendix III	Detailed Comments from relevant government departments
Appendix IV	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Location plan submitted by the applicant
Drawing A-2	Site plan submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plans A-4a & 4b	Site photos

**PLANNING DEPARTMENT
APRIL 2021**