

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/TM-SKW/117**

- Applicant** : Ms. CHING Yan-yan, Linus
- Site** : Lots 1379(Part), 1380(Part) and 1381(Part) in D.D. 375, So Kwun Wat, Tuen Mun, New Territories
- Site Area** : About 233.3m<sup>2</sup>
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft So Kwun Wat Outline Zoning Plan (OZP) No. S/TM-SKW/14
- Zoning** : “Green Belt” (“GB”)
- Application** : Filling of Land for Permitted Agricultural Use

**1. The Proposal**

- 1.1 The applicant seeks planning permission to regularise the filling of land for permitted agricultural use at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP for the “GB” zone, whilst ‘Agricultural Use’ is always permitted, any filling of land requires planning permission from the Town Planning Board (the Board). The Site comprises two parcels of land paved with gravel without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Site is currently accessible via a local track branching off from So Kwun Wat Tsuen Road (**Plan A-2**). According to the applicant, the Site which forms part of a larger self-cultivation farm has already been filled with gravel of a depth of about 0.05 to 0.1m serving as a rainwater retention layer to facilitate water infiltration to the original land surface. 27 fixed planters with a total planting area of about 50m<sup>2</sup> are placed on top of the filled area for planting of vegetables and fruits. (**Drawing A-1**).
- 1.3 In support of the application, the applicant has submitted the following documents:
- |     |                                                                     |                        |
|-----|---------------------------------------------------------------------|------------------------|
| (a) | Application Form received on 5.10.2022                              | ( <b>Appendix I</b> )  |
| (b) | Supplementary Information (SI) received on 7.10.2022 and 10.10.2022 | ( <b>Appendix Ia</b> ) |
| (c) | Further Information (FI) received on 7.11.2022*                     | ( <b>Appendix Ib</b> ) |
| (d) | FI received on 2.12.2022*                                           | ( <b>Appendix Ic</b> ) |
- \* *accepted and exempted from publication requirements*

- 1.4 The Rural and New Town Planning Committee (the Committee) of the Board agreed on 25.11.2022 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 at **Appendices I to Ic**. They can be summarised as follows:

- (a) The Site was randomly covered by weeds and wild grasses (some with certain height) and left vacant without management for years. Upon the applicant's taking up of the management of the Site, she notes that agricultural use is always permitted under "GB" zone. As such, removing weeds and wild grasses were necessary before making up a farmland for self-cultivation.
- (b) The soil in the Site is undesirable for direct cultivation. As such, planters filled with appropriate soil are used for cultivation instead. In order to avoid flooding situation during rainy days and stabilise the position of planters in strong wind situation, the Site is filled with gravel, and planters are placed on top of the filled land.
- (c) The two converted containers located in between the Site are used as farm houses for storing farm tools/materials, seeds germination and hydroponics farming. A number of movable small planters/ pots for planting of herbs, crops and vegetables would also be placed in between the two portions of land (**Drawing A-1**).
- (d) The filling of land is for self-cultivation purpose. The farm will not be rented to other users and therefore no significant traffic will be generated.
- (e) The gravel layer has limited depth which will not block water flow to the original land surface. After paving, water can infiltrate into the original land or ground through space/gap among gravel. The paving of gravel does not induce changes in original ground condition including gradient and flow direction. Therefore, gravel paving itself can be considered as a natural drainage system.

## **3. Compliance with the "Owner's Consent/Notification" Requirements**

The applicant is not a "current land owner" but 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 taking reasonable steps to notify the owners by registered mails. Detailed information would be deposited at the meeting for Members' inspection.

## **4. Town Planning Board Guidelines**

The Town Planning Board Guidelines for 'Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance' (TPB PG-No. 10) are relevant to the application. The relevant assessment criteria are detailed at **Appendix II**.

## 5. **Background**

The Site and the larger farm are the subject of a planning enforcement action against unauthorized development (UD) involving storage use (including deposit of containers). Enforcement Notice was issued on 8.7.2022 requiring discontinuance of the UD. Recent site inspection on 28.10.2022 revealed that planters are placed on areas filled with gravel within the Site and there are two structures for storage of agricultural-related items within the farm. The Site and the farm would be under close monitoring and prosecution action would be taken as appropriate.

## 6. **Previous Application**

There is no previous application at the Site.

## 7. **Similar Application**

There is no similar application for filling of land for agricultural use within the same “GB” zone.

## 8. **The Site and Its Surrounding Areas** (Plans A-1 to A-4)

8.1 The Site is:

- (a) composed of two parcels of land filled with gravel without valid planning permission (**Plan A-2**);
- (b) part of a larger farm with two converted containers for storage purpose located in between the two parcels of land; and
- (c) accessible by a local track branching off from So Kwun Wat Tsuen Road (**Plan A-3**).

8.2 The surrounding areas have the following characteristics:

- (a) predominantly rural fringe in character with mainly agricultural land and residential structures intermixed with open storage/ storage yards, parking of vehicles, woodland and vacant land;
- (b) to its immediate north and east are woodlands and storage yards/car parking respectively;
- (c) to its immediate south and further southeast are vacant land covered by valid planning permission (No. A/TM-SKW/113) for proposed temporary place of recreation, sports or culture (hobby farm) for a period of three years and associated excavation of land and some active farmlands respectively (**Plan A-2**); and
- (d) the open storage/ storage yards and parking of vehicles in the vicinity are suspected UD subject to planning enforcement action.

## **9. Planning Intention**

- 9.1 The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.
- 9.2 As filling of pond/land and excavation of land may cause adverse impacts on the natural environment, permission from the Board is required for such activities.

## **10. Comments from Relevant Government Departments**

All government departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments are provided in **Appendices III and IV** respectively.

## **11. Public Comments Received During Statutory Publication Period**

On 14.10.2022, the application was published for public inspection. During the statutory public inspection period, two public comments were received from an individual (**Appendix V-1**) and Kadoorie Farm & Botanic Garden Corporation (**Appendix V-2**). The individual objects to the application as gravel is usually used for ornamental gardens and landscaping but not for farming because nutrients or water are not present in gravel. Kadoorie Farm & Botanic Garden Corporation expresses concern on whether the application is a ‘development first and apply for planning permission later’ case.

## **12. Planning Considerations and Assessments**

- 12.1 The application is to regularise the filling of land with gravel of about 0.05m to 0.1m in depth for permitted agricultural use at the Site zoned “GB” on the OZP (**Plan A-1**). The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. Whilst agricultural use is always permitted within the “GB” zone, planning permission for land filling operation is required to ensure that it would not cause adverse impacts on the natural environment.
- 12.2 According to the applicant, the filling of land under application is necessary to serve as a rainwater retention layer to facilitate water infiltration for easing flooding during rainy days. As quality of soil on the original ground is not favourable for direct cultivation, fixed planters are placed on top of the filled area for planting of vegetables and fruits. The gravel layer could also assist in fixing the planters to enhance safety during farming and strong wind situation. The Director of Agriculture, Fisheries and Conservation (DAFC) has no adverse comment on the application from nature conservation and agricultural perspective, and advises that agricultural activities are active and agricultural infrastructure such as road access

and water source are available in the vicinity. The Site can be used for agricultural activities such as open-field cultivation, greenhouses and plant nurseries, etc.

- 12.3 According to TPB PG-No.10, any proposed development should be compatible with the surrounding areas and should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape. In this regard, Chief Town Planner/Urban Design and Landscape of Planning Department advises that the Site is located in an area of rural fringe landscape character predominated by village houses and hillside woodland. The applied filling of land (involving about 233.3m<sup>2</sup>) for permitted agricultural use is considered not incompatible with the surrounding areas. Given there is limited space within the Site after placing the fixed cultivation planters, the applicant's proposed measure of placing small planter pots for planting of herbs, crops or vegetables between the two parcels of the Site (but within the larger farm) is considered as an "alternative types of planting ways" of landscape treatment to mitigate the landscape impact. In view of the above, the applied filling of land for permitted agricultural use is considered not contravening TPB PG-No. 10.
- 12.4 There is no adverse comment from concerned government departments, including DAFC, Director of Environmental Protection, Commissioner for Transport and Chief Engineer/Mainland North of Drainage Services Department. The applied filling of land will unlikely create significant adverse agricultural, environmental, traffic and drainage impacts to the surrounding areas. In particular, the applicant states that the filling of land with gravel can also help address the flooding problem and serve as a natural drainage system. In this regard, CE/MN of DSD has no comment on the application from public drainage viewpoint subject to the applicant's proposed area, depth and type of filling would be strictly complied with. In this connection, relevant approval condition is suggested in paragraph 13.2 below.
- 12.5 There is no previous application at the Site and no similar application within the "GB" zone.
- 12.6 There are two public comments objecting to the application mainly on grounds summarised in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.5 above are relevant.

### **13. Planning Department's Views**

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11 above, the Planning Department has no objection to the application.
- 13.2 Should the Committee decide to approve the application, no time clause on commencement is proposed as the 'filling of land' operation under the application has already been completed. The following condition of approval and advisory clauses are also suggested for Members' reference:

Approval Condition

no part of the Site shall be filled other than gravel to a depth exceeding 0.1m, as proposed by the applicant.

Advisory Clauses

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

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

the filling of land is not in line with the planning intention of the "Green Belt" zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention.

**14. Decision Sought**

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant planning permission.
- 14.2 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.
- 14.3 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.

**15. Attachments**

<b>Appendix I</b>	Application Form received on 5.10.2022
<b>Appendix Ia</b>	SI received on 7.10.2022 and 10.10.2022
<b>Appendix Ib</b>	FI received on 7.11.2022
<b>Appendix Ic</b>	FI received on 2.12.2022
<b>Appendix II</b>	Extracts of Town Planning Board Guidelines for Application for Development within Green Belt Zone (TPB PG-No. 10)
<b>Appendix III</b>	Government Departments' General Comments
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Appendices V-1 and V-2</b>	Public Comments
<b>Drawing A-1</b>	Layout Plan of the Land Filling Works
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos