

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-HTF/1121

- Applicant** : Mr. HUI Yick-hang represented by Mr. KWOK Chi-man
- Site** : Lot 1372 in D.D.125, Ha Tsuen, Yuen Long, New Territories
- Site Area** : About 4,465 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ha Tsuen Fringe Outline Zoning Plan (OZP) No. S/YL-HTF/12
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed Temporary Animal Boarding Establishment for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary animal boarding establishment for a period of 3 years. The Site falls within an area zoned “GB” on the OZP (**Plan A-1**). According to the Notes of the OZP for the “GB” zone, ‘animal boarding establishment’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant and covered with vegetation (**Plans A-2 and A-4**).
- 1.2 The Site is involved in a previous application (No. A/YL-HT/723) for land filling for permitted agricultural use rejected by the Committee on 10.2.2012. The Site is accessible via a local track to a public road running underneath the elevated Kong Sham Western Highway (KSWH) leading to Ha Tsuen Road (**Plans A-2 and A-3**). According to the applicant, the use of public announcement system and whistle blowing will not be allowed at the Site. During the non-operation hours (i.e. 7 p.m. to 9 a.m.), the animals will only reside in enclosed structures, which will be equipped with metal plates, sound-insulating materials and 24-hour mechanical ventilation and air conditioning (MVAC) in order to reduce the noise impact to the surroundings. A soakaway system with two septic tanks and one soakaway pit is proposed at the Site. The vehicular access plan and site layout plan are at **Drawings A-1 and A-2** respectively.
- 1.3 The major development parameters of the application are summarized as follows:

Site Area	about 4,465 m ²
Total Floor Area	about 1,208.5 m ²
No. and Height of Structures	6 Structures • 1 for animal boarding (7m, 1 storey) • 1 for office (7m, 1 storey) • 1 for storage (7m, 1 storey) • 1 for toilet for animal bathing, health checking and grooming (7m, 1 storey) • 2 for animal playground (7m, 1 storey)
No. of Animals allowed on Site	Not more than 40 (mainly cats and dogs)
No. of Workers	1 worker will stay overnight
Parking Space	2 private car/light goods vehicle parking spaces 1 loading /unloading space for light goods vehicle
Operation Hours	9:00 a.m. to 7:00 p.m. every day

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application Form with attachments received on 17.6.2021 (**Appendix I**)
- (b) Further Information (FI) received on 12.7.2021 responding to Environmental Protection Department's (EPD) comments [*exempted from publication requirements*] (**Appendix Ia**)
- (c) FI received on 14.7.2021 responding to EPD's comments [*exempted from publication requirements*] (**Appendix Ib**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FIs (**Appendices I, Ia and Ib**). They can be summarized as follows:

- (a) The proposed development is temporary in nature which would not affect the long-term planning intention of the Site. It can better use the land resource in rural area.
- (b) The proposed development is compatible with the surrounding areas.
- (c) The proposed development does not involve tree-felling, land filling and land excavation works.
- (d) The proposed development will provide animal boarding service for dogs and cats. The applicant will apply for licence and comply with relevant legislations.
- (e) There will not be any workshop activities at the Site.
- (f) During the operation hours, there will not be more than 10 animals staying outdoor. Animals staying outdoor will wear muzzle to reduce the noise nuisance to the surroundings.

- (g) The proposed development would not generate adverse traffic, environmental and drainage impacts to the surrounding areas.

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

The applicant is not the “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 posting site notice and sending registered post to Ha Tsuen Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to planning enforcement action.

5. Town Planning Board Guidelines

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

- (a) there is a general presumption against development (other than redevelopment) in “GB” zone. In general, the Board will only be prepared to approve applications for development in the context of requests to rezone to an appropriate use;
- (b) an application for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
- (c) the design and layout of any proposed development should be compatible with the surrounding areas. It should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, and cause any adverse visual impact on the surrounding environment;
- (d) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (e) the vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features.

6. Previous Application

- 6.1 There is one previous application (No. A/YL-HT/723) for land filling (by about 2.2m) for permitted agricultural use at the Site which was rejected by the Committee in 2012 on the grounds of failure to demonstrate that the land filling would not have adverse drainage and landscape impacts on the surrounding areas, the filling materials on-site comprising of construction and demolition materials were not

suitable for agricultural use, no information in the submission to demonstrate that a filling height of 2.2 m was required for the proposed agricultural use, and setting an undesirable precedent. Details of the application are summarized at **Appendix III** and the location of the application site is shown on **Plan A-1**.

- 6.2 Comparing with the previous application, the current application is submitted by a different applicant for a different use.

7. Similar Application

There is no similar application at the Site.

8. The Site and Its Surrounding Areas (Plan A-2 to Plan A-4)

- 8.1 The Site is:

- (a) currently vacant and covered with vegetation and trees; and
- (b) accessible via a local track underneath KSWH leading to Ha Tsuen Road (**Plans A-2 and A-3**).

- 8.2 The surrounding areas have the following characteristics:

- (a) to its immediate east is a stream. To its east are vacant land, ponds, grassland, orchard, cultivated agricultural land, two vacant warehouses and an open storage yard which is a suspected unauthorized development (UD);
- (b) to its south and west are vacant land, graves, grassland and woodland; and
- (c) to its northeast about 60m is a residential structure and grassland.

9. Planning Intention

The “GB” zone is intended 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.

10. Comments from Relevant Government Departments

- 10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

- 10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lot. The lot is held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.

- (b) The private land of Lot 1372 in D.D. 125 is covered by a Short Term Waiver (STW) No. 5245 to permit structures for the purpose of “agricultural use”.
- (c) Should planning approval be given to the application, the STW holder will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. 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(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD.

Traffic

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

- (a) He has no adverse comment on the application from traffic engineering point of view.
- (b) Sufficient manoeuvring space shall be provided within the Site. No vehicles are allowed to queue back to public roads or reverse onto/from public roads.
- (c) The local track leading to the Site is not under Transport Department’s (TD) purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (b) HyD shall not be responsible for the maintenance of any access connecting the Site and Ha Tsuen Road.

Environment

10.1.4 Comment of the Director of Environmental Protection (DEP):

- (a) Provided that the facilities will be properly designed and maintained to minimize any potential environmental nuisance, he has no objection to the application.
- (b) The animals shall be kept inside the enclosed structures between 7:00 p.m. and 9:00 a.m. on the Site. No whistle, public announcement system, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site.

- (c) The applicant should be reminded of the detailed comments at **Appendix V**.

Landscape

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

- (a) He has reservation on the application from landscape planning perspective.
- (b) With reference to site visit conducted on 2.7.2021 and aerial photo of 2020, the Site is vacant and entirely covered by vegetation with existing trees of common species including *Archontophoenix alexandrae* (假檳榔), *Ficus hispida* (對葉榕), *Acacia confuse* (台灣相思) and *Leucaena leucocephala* (銀合歡) mostly of fair to good condition, at the northern, north-eastern and southern portions within the Site. The Site is situated in an area of settled valley landscape character predominated by woodland to the west, active farmlands to the immediate east, KSWH and scattered brownfield uses to the north and further north of the Site. The proposed development is not entirely compatible with the surrounding landscape setting in the proximity.
- (c) With reference to the submitted layout plan, it seems that the proposed vehicular circulation is in conflict with some existing trees at the northern part of the Site. As no information on the existing trees and proposed tree treatment is provided in the application, the potential landscape impact arising from the proposed development cannot be reasonably ascertained.
- (d) Moreover, given that there is no similar application previously approved within the same “GB” zone, there is concern that approval of the application may encourage other similar applications to the “GB” zone. The cumulative effect of which would result in a general degradation of the landscape quality of the surrounding natural environment.
- (e) The applicant should be reminded of the detailed comments at **Appendix V**.

Natural Conservation and Animal Boarding

10.1.6 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC);

- (a) Under Cap. 139I Public Health (Animals) (Boarding Establishment) Regulations, any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from his department. The establishment and ancillary facilities which are licensed under the aforesaid Regulations must always fulfil the criteria listed in the Regulations. Currently, the subject address does not associate with any licence granted by his department, nor has he received any application regarding this address.

- (b) On the other hand, the dogs kept by the applicant should be properly licensed in accordance with Cap. 421 Rabies Ordinance and the applicant is reminded to observe Cap. 169 Prevention of Cruelty to Animals Ordinance at all times.
- (c) The Site falls within “GB” zone. During his recent inspection, it was found that the Site comprised mainly an open vegetated field at the north and a wooded area at the south. There was a modified water channel with concrete river bed to the east of the Site. No species of conservation interest were found on the Site. No significant ecological concern is anticipated.

Drainage

10.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) He has no objection in principle to the application from a drainage point of view.
- (b) Should the Board consider that the application is acceptable from planning point of view, he would suggest conditions should be stipulated in the approval letter requiring the applicant to submit a drainage proposal, to implement and to maintain the proposed drainage facilities to the satisfaction of the Director of Drainage Services or of the Board.

Building Matters

10.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

The applicant should be reminded of the detailed comments at **Appendix V**.

Fire Safety

10.1.9 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The applicant should note his detailed comments on the submission of FSIs proposal at **Appendix V**.

Water Supply

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

He has no objection to the application. The applicant should note that the Site is outside existing fresh water supply zone.

District Officer's Comments

10.1.11 Comments of the District Officer (Yuen Long), Home Affairs Department (DO/YL, HAD):

His office has not received any comment from the locals on the application and he has no comment on the application.

10.2 The following Government departments have no comment on the application:

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Chief Engineer/Land Works, CEDD (CE/LW, CEDD); and
- (c) Commissioner of Police (C of P).

11. Public Comments Received During Statutory Publication Period

On 25.6.2021, the application was published for public inspection. During the statutory public inspection period, two public comments from Kadoorie Farm and Botanic Garden Corporation (KFBG) and an individual (**Appendices IV-1 and IV-2**) were received objecting to the application on the following grounds:

- (a) the proposed development is not in line with the planning intention of the “GB” zone;
- (b) the Board should not encourage ‘destroy first, develop later’ approach of development; and
- (c) there is a toilet for animal bathing and there would be animals and staff staying overnight. There is a watercourse next to the Site of which the water would be discharged into Deep Bay through the Tin Shui Wai Nullah. The applicant has not submitted any sewerage impact assessment to assess the sewerage impact.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary animal boarding establishment for a period of 3 years at the Site zoned “GB” on the OZP. The “GB” zone is intended 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. The proposed development is not in line with the planning intention of the “GB” zone and there is a general presumption against development within this zone. There is no strong planning justification given in the current submission for a departure from the planning intention, even on a temporary basis.
- 12.2 The Site is situated in an area of settled valley landscape character predominated by woodland, active farmlands and ponds. The proposed development is not entirely compatible with the surrounding areas.
- 12.3 CTP/UD&L of PlanD has reservation on the application from landscape perspective. With reference to the submitted layout plan, some existing trees at the northern part of the Site are in conflict with the proposed vehicular circulation. The applicant

fails to demonstrate that the proposed development would not induce adverse landscape impact to the surrounding areas.

- 12.4 According to the relevant Town Planning Board Guidelines (TPB PG-No.10), there is a general presumption against development within the “GB” zone and an application for new development within “GB” zone will only be considered in exceptional circumstances. It must be justified with very strong planning grounds. The development should not affect the existing natural landscape and cause any adverse landscape impact on the surrounding areas. Taking into account paragraphs 12.2 and 12.3 above, the proposed development does not comply with TPB-PG No. 10 in that the development is not compatible with the surrounding areas and the development would affect the existing natural landscape and the integrity of the “GB” zone.
- 12.5 Other relevant Government departments, including C for T, DAFC, DEP, CE/MN of DSD and D of FS, have no objection to or no adverse comment on the application. The applied use will unlikely create significant adverse traffic, ecological, environmental, drainage and fire safety impacts to the surrounding areas.
- 12.6 There is one previous application (No. A/YL-HT/723) applying for land filling for permitted agricultural use at the Site which was rejected by the Committee in 2012 on the grounds of failure to demonstrate that the land filling would not have adverse drainage and landscape impacts on the surrounding areas, the filling materials on-site comprising of construction and demolition materials were not suitable for agricultural use, and setting an undesirable precedent. While the considerations thereof are of not much relevance to the current application which is for proposed temporary animal boarding establishment, the Committee has not approved any application for similar use at the Site or within the subject “GB” zone. Approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment and landscape quality of the area.
- 12.7 Two public comments were received objecting to the application mainly on grounds stated in paragraph 11. The planning considerations and assessments in paragraphs 12.1 to 12.6 are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11 above, the Planning Department does not support the application for the following reasons:
 - (a) the applied use is not in line with the planning intention of the “GB” 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 such planning intention, even on a temporary basis;

- (b) the proposed development does not comply with the TPB Guidelines PG-No. 10 in that the proposed development would affect the existing natural landscape; and
- (c) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment and landscape quality of the area.

13.2 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 3 years until 13.8.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 7:00 pm and 9:00 am, except for the overnight animal boarding establishment, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all animals shall be kept inside the enclosed animal boarding establishment between 7:00 pm and 9:00 am, as proposed by the applicant, during the planning approval period;
- (c) no whistle, public announcement system, portable loudspeaker or any form of audio amplification system, as proposed by the applicant, is allowed to be used on the Site during the planning approval period;
- (d) no medium or heavy goods vehicles exceeding 5.5 tonnes, as defined under the Road Traffic Ordinance, are allowed to enter/be parked on the Site, as proposed by the applicant, at all times during the planning approval period;
- (e) provision of boundary fencing at the Site within **6 months** from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 13.2.2022;
- (f) the submission of drainage proposal within **6 months** from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 13.2.2022;
- (g) in relation to (f) above, the implementation of drainage facilities within **9 months** from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 13.5.2022;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the submission of fire service installations proposal 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 13.2.2022;
- (j) in relation to (i) above, the implementation of the fire service installations proposal 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 **13.5.2022**;

- (k) if the above planning conditions (a), (b), (c), (d) or (h) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (l) if any of the above planning conditions (e), (f), (g), (i) or (j) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (m) 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**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 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.

15. Attachments

Appendix I	Application Form with attachments received on 17.6.2021
Appendix Ia	FI received on 12.7.2021
Appendix Ib	FI received on 14.7.2021
Appendix II	Extract of TPB PG-No. 10
Appendix III	Previous Application
Appendices IV-1 and IV-2	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos