

RNTPC Paper No. A/YL-KTN/914
for Consideration by
the Rural and New Town Planning
Committee on 23.6.2023

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/914

- Applicant** : Mr. Tsoi Tak Lee represented by Goldrich Planners and Surveyors Limited
- Site** : Lot 1049 S.B ss.1 (Part) in D.D. 109 and Adjoining Government Land, Yuen Long, New Territories
- Site Area** : About 340 m²
- Land Status** : (i) Block Government Lease (demised for agricultural use) (about 53% of the Site)
(ii) Government Land (about 47% of the Site)
- Plan** : Draft Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/10
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Animal Boarding Establishment with Ancillary Facilities for a Period of 5 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary animal boarding establishment with ancillary facilities for a period of 5 years and filling of land. The Site is zoned “AGR” on the Kam Tin North OZP and ‘Animal Boarding Establishment’ is a Column 2 use in the “AGR” zone which requires planning permission from the Town Planning Board (the Board). Filling of land within “AGR” zone also requires planning permission from the Board. The Site is fenced, paved and occupied by vacant structures (**Plans A-2 to A-4**).
- 1.2 According to the applicant, the proposed development involves one structure (2 storeys and 8m high) with total floor area of about 226m² for animal boarding establishment, ancillary office and storage uses. The applicant also applies to regularise filling of land for the entire Site for about 0.1m in depth (from +12.8 mPD to +12.9 mPD) for site formation of structures, activity area for dogs and car parking spaces. The operation hours of the proposed development are between 9:00 a.m. and 7:00 p.m. daily, including Sundays and public holidays. Not more than 5 dogs will be kept within the Site and all dogs will be kept inside the enclosed animal boarding structures equipped with

sound proofing materials, air conditioning and mechanical ventilation after operation hours. No public announcement system and whistle blowing will be used at the Site. Two parking spaces for private car will be provided within the Site. The Site is accessible from Kong Tai Road via a local access (**Plan A-2**). The site layout and paved area plan submitted by the applicant is at **Drawings A-1 and A-2**.

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

(a) Application form with supplementary information (**Appendix I**) received on 26.4.2023

(b) Further information (FI) received on 31.5.2023* (**Appendix Ia**)

** exempted from publication and recounting requirements*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form, supplementary information and FI in **Appendices I to Ia**. They can be summarised as follows:

- (a) The applied use is temporary in nature and will not jeopardise the long-term planning intention of the “AGR” zone.
- (b) The development is compatible with the surrounding environment and similar applications are found within the same “AGR” zone in the vicinity.
- (c) The filling of land of about 0.1m in depth is for site formation of structures, activity area for dogs and car parking spaces. The applicant undertakes to remove the paving when the development is discontinued.
- (d) The development will not induce significant adverse traffic and drainage impacts on the surrounding area.

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 section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notification letter to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection. Regarding the portion of the Site falling within government land, the “Owner’s Consent / Notification” Requirements are not applicable.

4. Background

Part of the Site is currently subject to planning enforcement action (No.: E/YL-KTN/611) against an unauthorised development (UD) involving workshop use (**Plan A-2**). Enforcement Notice was issued on 16.5.2022 to the concerned parties requiring discontinuation of the UD. Since the UD has not been discontinued upon the expiry of the notice, prosecution action is being taken.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

- 6.1 There are 46 similar applications for temporary animal boarding establishment (28 of which with filling of land) within the same “AGR” zone in the vicinity of the Site in the past 5 years. All the applications, except application No. A/YL-KTN/759, were approved with conditions by the Committee between 2018 and 2023 mainly on the considerations that the temporary approval would not frustrate the long-term planning intention; the development was not incompatible with the surrounding land uses; relevant government departments consulted in general had no adverse comments on the applications or their technical concerns could be addressed by approval conditions. The planning permissions for 17 of them were revoked owing to non-compliance with the approval conditions.
- 6.2 Application No. A/YL-KTN/759 was rejected by the Committee in May 2021 for the reason that the site was fragmented in that the boundary had enclosed existing structures which were used for the applied use without planning permission but excluded from the application site, and approving the application would result in piecemeal development and was undesirable from land-use planning and planning control points of view. Nevertheless, the site for the same use was later approved by the Committee in September 2021 when all the existing structures previously left out under application No. A/YL-KTN/759 were included in the application site under application No. A/YL-KTN/781.
- 6.3 Details of these applications are summarized in **Appendix II** and the locations are shown on **Plan A-1**.
- 6.4 Other than similar applications as stated in paragraphs 6.1 and 6.2 above, application No. A/YL-KTN/916 for the same use as the current application will be considered at the same meeting.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4)

- 7.1 The Site is:

- (a) paved and occupied by vacant structures; and
- (b) accessible from Kong Tai Road via a local access.

7.2 The surrounding areas have the following characteristics:

- (a) to its north and northeast are storage, parking of vehicles and open storage of vehicles and construction materials;
- (b) to its east across Kam Tin River are an animal board establishment (with valid permission under application No. A/YL-KTN/861), residential dwellings/structures (the nearest about 30m), open storage of vehicles and grassland;
- (c) to its west are fallow/active agricultural land, residential dwellings/structures, parking of vehicles and vacant land; and
- (d) the Site falls within the Tai Kong Po Site of Archaeological Interest (SAI) (**Plan A-2**).

8. Planning Intention

- 8.1 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.
- 8.2 According to the Explanatory Statement of the OZP, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, planning permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

All 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 III and IV** respectively.

10. Public Comment Received During Statutory Publication Period

The application was published for public inspection. During the statutory public inspection period, one public comment was received from an individual. The commenter objects to the application mainly on the grounds that the Site has been paved without planning permission.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary animal boarding establishment with ancillary facilities for a period of 5 years at the Site zoned “AGR” (**Plan A-1**) and filling of land at the entire Site by about 0.1m in depth for site formation of structure, activity area for dogs and car parking spaces. The planning intention of the “AGR” zone is to retain and safeguard good 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. Whilst the development is not in line with the planning intention of the “AGR” zone, the Director of Agriculture, Fisheries and Conservation advises that agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are also available. The Site can be rehabilitated for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc., though whether there will be agricultural activities on a specific site will hinge on a lot of factors. It is considered that approval of the application on a temporary basis for 5 years would not frustrate the long-term planning intention of the “AGR” zone. Filling of land within “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, the Chief Engineer/Mainland North, Drainage Services Department (CE/MN of DSD) and the Director of Environmental Protection Department (DEP) have no adverse comment from the drainage and environmental perspectives. An approval condition requiring the reinstatement of the Site to an amenity area is recommended should the Committee decide to approve the application.
- 11.2 The proposed development is considered not incompatible with the surrounding areas which are rural in character intermixed by animal boarding establishment, residential dwellings / structures, fallow/active agricultural land, parking of vehicles, grassland and vacant land. The Chief Town Planner/Urban Design and Landscape, Planning Department has no objection to the application from the landscape planning perspective and considers that the proposed use is not incompatible with the surrounding landscape character. Although there are residential dwellings / structures in the vicinity (the nearest about 30m to its east) (**Plan A-2**), according to the applicant, all dogs will be kept inside the enclosed structure equipped with soundproofing materials, air conditioning and mechanical ventilation after operation hours, and no public announcement system will be used at the Site. DEP has no adverse comment on the application.
- 11.3 Other relevant departments consulted including the Commissioner for Transport, CE/MN of DSD and the Director of Fire Services have no adverse comment on the application. To minimize the possible environmental nuisances generated by the proposed development and address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. The applicant will also be advised to follow the latest ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by EPD, and the relevant Practice Note for Professional Person PN 5/93 on “Drainage Plans subject to Comment by the Environmental Protection Department” including percolation test if septic tank and soakaway system will be used at the Site.

- 11.4 There are 45 similar applications approved for temporary animal boarding establishment within the same “AGR” zone in the vicinity of the Site in the past five years and the circumstances of the only rejected application (No. A/YL-KTN/759) which involved fragmented site as stated in paragraph 6.2 above are different from the current application. Approving the current application is in line with the Committee’s previous decisions.
- 11.5 Regarding the public comment related to filling of land as detailed in paragraph 10 above, government departments’ comments and planning assessments 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 mentioned in paragraph 10, the Planning Department has no objection to the application.
- 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 5 years until 23.6.2028. The following approval conditions and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the site during the planning approval period;
- (b) all dogs shall be kept inside the enclosed animal boarding establishment structure from 7:00 p.m. to 9:00 a.m., as proposed by the applicant, during the planning approval period;
- (c) no public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used on the site, as proposed by the applicant, during the planning approval period;
- (d) the submission of a 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 23.12.2023;
- (e) in relation to (d) above, the implementation of the drainage proposal 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 23.3.2024;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;

- (g) the submission of a 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 23.12.2023;
- (h) in relation to (g) 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 23.3.2024;
- (i) if any of the above planning condition (a), (b), (c) or (f) 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;
- (j) if any of the above planning condition (d), (e), (g) or (h) 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
- (k) 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 in **Appendix IV**.

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

the development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

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 with supplementary information received on 26.4.2023
Appendix Ia	FI received on 31.5.2023
Appendix II	Similar applications
Appendix III	Government departments' general comments
Appendix IV	Recommended advisory clauses
Appendix V	Public comment
Drawing A-1	Site layout plan
Drawing A-2	Paved area plan
Plan A-1	Location plan with similar applications
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
JUNE 2023**