

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/423

- Applicant** : Kelly Animals Shelter Co. Ltd. represented by Miss Cheng Po Yee Tina
- Site** : Lots 269 (Part), 275 RP (Part), 276 RP (Part) and 277 (Part) in D.D.129 and adjoining Government Land (GL), Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 2,660m² (including about 443m² of GL)
- Land Status** : (i) Block Government Lease (demised for agricultural use)
(about 83.3% of the Site)
- (ii) Government Land (about 16.7% of the Site)
- Plan** : Draft Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/10 (at the time of submission)
- Approved Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/11
(currently in force)
- Zonings** : (i) “Green Belt” (“GB”) (about 97.8% of the Site)
- (ii) Area shown as ‘Road’ (about 2.2% of the Site)
- (no change to the zonings under the current OZP)
- Application** : Temporary Animal Boarding Establishment for a Period of 3 Years and Filling and Excavation of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary animal boarding establishment for a period of 3 years and filling and excavation of land at the application site (the Site) (**Plan A-1**). The Site falls within an area largely zoned “GB” on the approved Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/11 currently in force. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use within the “GB” zone which requires planning permission from the Town Planning Board (the Board). Filling and excavation of land within the “GB” zone also require planning permission from the Board. The Site is currently largely concrete or tile-paved and being used for the applied use as animal shelter without any valid planning permission (**Plans A-4a to A-4c**).

- 1.2 The Site directly abuts and is accessible from Deep Bay Road at its north (**Drawing A-2**). According to the applicant, which is a charitable institution under section 88 of the Inland Revenue Ordinance (Cap. 112), the applied development is for voluntarily accommodating abandoned and stray dogs and cats. As shown on the layout plan at **Drawing A-1**, the proposal comprises 12 structures of 1 to 2 storeys (about 2.3m to 5.2m) high, with a total floor area of about 1,738.7m². The structures are for dog kennel, storage, cattery, office, dog ward, volunteers' resting room and toilets uses. At maximum, 240 dogs and 20 cats will be accommodated at the Site. The ingress/egress point is located at the northeast of the Site. 2 parking spaces for private cars are provided.
- 1.3 According to the applicant, the operation hours would be between 9 a.m. and 8 p.m. daily, including public holidays. All the animals would stay overnight at the Site after operation hours, during which time the animals will be kept within enclosed structures with soundproofing materials and provided with mechanical ventilation and air conditioning system. No whistle blowing, public announcement system, portable loudspeaker or audio amplification system would be used. Drainage facilities and a septic tank connected with soakaway pit are provided. There would be a maximum of 5 volunteers per weekday and 15 per weekend day and public holiday on the Site. Volunteers are asked to use public transport to travel to/from the Site. Re-homing meetings would mainly be organised off-site.
- 1.4 Moreover, the applicant would like to regularise the land filling and excavation works on the Site¹. As shown on the filled and excavated area plan at **Drawing A-3**, an area of about 1,184.34m² has been filled with concrete of about 0.1m in depth while an area of about 597.82m² has been paved with tiles of about 0.015m in thickness. Altogether about 1,782.16m² (or 67%) of the Site has been filled. Besides, an area of about 41.77m² (or 1.6%) has been excavated for about 0.25m to 1.6m in depth for septic tank and drainage/sewage channels. The filling and excavation of land were completed. No further filling and excavation of land will be undertaken.
- 1.5 The layout plan, vehicular access plan, land filling and excavation plan, and drainage plan are at **Drawings A-1 to A-4** respectively.
- 1.6 The Site is the subject of 3 previous applications (No. A/YL-LFS/63, 86 and 135) (details at paragraph 6 below).
- 1.7 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form received on 10.3.2022 (**Appendix I**)
 - (b) Supplementary Information (SI) received on 16.3.2022 (**Appendix Ia**)
 - (c) SI received on 22.3.2022 (**Appendix Ib**)
 - (d) Further Information (FI) received on 30.3.2022* (**Appendix Ic**)
 - (e) FI received on 13.4.2022* (**Appendix Id**)
 - (f) FI received on 22.4.2022* (**Appendix Ie**)

** accepted and exempted from publication requirements*

¹ Although majority of the Site had been hard-paved with asphalt for the ancillary car park of the recreational uses under the approved previous applications No. A/YL-LFS/63, 86 and 135 (See paragraph 6 for details), the concrete/tile-paving currently on-site requires planning permission from the Board.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form and the SI at **Appendices I, Ia and Id**. They can be summarised as follows:

- (a) Being a charitable institution under section 88 of the Inland Revenue Ordinance (Cap. 112), the applicant has been striving to rescue and shelter abandoned and stray animals, as well as to promote the positive value of respecting life and caring for animals to the public since 2008. The applicant would, as far as capable, accept abandoned/stray animals regardless of their age and health condition. For animals that are not subsequently adopted, the applicant would continue to take care of them until their death, including arranging their treatment and care.
- (b) The applicant has moved into the Site in early 2020 after being evicted from another site. The applicant is currently contacting the Development Bureau to apply for using vacant Government site to set up an animal shelter. It is hoped that, by obtaining temporary approval for using the Site during the interim, the abandoned/stray dogs/cats need not to be constantly forced to move.
- (c) With the shortage of volunteers and other resources at large under the epidemic, it would be very difficult for the applicant to identify a suitable site and undertake relocation. Meanwhile, the operation of the abandoned/stray animal shelter incur huge expense, especially on the treatment and care of diseased animals. It would be difficult to imagine the consequence if the applicant is prosecuted and fined for non-compliance with the Enforcement Notice.
- (d) The concrete paving, surface U-channels and septic tank on site had been in existence when the applicant first moved into the Site. Meanwhile, hard paving provides stronger foundation for setting up dog enclosures, which can avoid them from being pushed to collapse by larger and more aggressive dogs such as Rottweiler and Husky, thereby avoiding unwanted injuries. Also, hard paving is more hygienic, less favourable for germs and pest, and can be cleaned thoroughly. The concrete paving is kept to minimum. For example, the dog activity areas encircled by the dog enclosures are paved with tile without plaster of cement instead.

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 sending notice to the Ping Shan Rural Committee via registered mail and posting notice at the Site. Detailed information would be deposited at the meeting for Members’ inspection. For the GL portion, the requirements under TPB PG-No. 31A are not applicable.

4. Town Planning Board Guidelines

- 4.1 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 the application. The relevant assessment criteria are detailed at **Appendix II**.

- 4.2 According to Town Planning Board Guidelines for “Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance” (TPB PG-No. 12C), the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are detailed at **Appendix III**.

5. Background

The Site is the subject of a planning enforcement action (No. E/YL-LFS/527) against unauthorised development (UD) involving use for animal boarding establishment (**Plan A-2**). Enforcement Notice (EN) was issued on 22.2.2022 requiring the discontinuance of the UD by 22.4.2022. The latest inspection after expiry of the EN revealed that the UD had not been discontinued. If the EN is not complied with, prosecution action may be taken.

6. Previous Applications

- 6.1 The Site is involved in 3 previous applications (No. A/YL-LFS/63, 86 and 135) for proposed barbecue spot and/or refreshment kiosk² with ancillary car park. Specifically, the applications involved a hard-paved car park with a total of 40 parking spaces for coaches and private cars, which is located at more or less the same location as the Site. All of them were approved with conditions on a temporary basis from 1 to 3 years by the Rural and New Town Planning Committee (the Committee)/ Board upon review between 2001 and 2005 on considerations that the site was previously developed for military purpose in the 1980s; there was no adverse comments from the concerned government departments; and/or the technical concerns could be addressed by approval conditions. However, planning application No. A/YL-LFS/135 was subsequently revoked on 20.12.2005 due to non-compliance with approval conditions on forbidding erection of Mongolian tents and overnight accommodation. Details of the above previous application are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.
- 6.2 Compared with the last previous application (No. A/YL-LFS/135), the current application is submitted by a different applicant for a different use at a smaller site.

7. Similar Application

There is no similar application for animal boarding establishment within the same “GB” zone on the OZP.

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

- 8.1 The Site is:

- (a) within the Wetland Buffer Area;

² With various facilities such as picnic area, agricultural sheds, pavilion and storerooms.

- (b) largely hard-paved with concrete and tiles, and largely covered with plastic film structures and other temporary structures;
- (c) being used for the applied use as animal shelter without valid planning permission; and
- (d) directly abutting and accessible from Deep Bay Road at its north.

8.2 The surrounding areas have the following characteristics:

- (a) to the north across Deep Bay Road are pig farms and a site under construction, the latter of which is suspected UD; and grassland and shrubland. To the further north is the coastline of Deep Bay;
- (b) to the east and southeast is a site deposited with construction materials and miscellaneous items which is a suspected UD. To the further southeast is a woodland knoll where the Tong Ha Liu Pavilion is located; and
- (c) to the southwest are cultivated agricultural land, warehouse which is a suspected UD, vacant land, and woodland intermixed with graves.

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 land/pond or excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

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 V and VI** respectively.

11. Public Comments Received During Statutory Publication Period

- 11.1 On 25.3.2022, the application was published for public inspection. During the statutory public inspection period, 1,158 public comments were received. Amongst them, 991 comments from individuals supported the application (Samples at **Appendices VII-1 to VII-30**). On the other hand, 161 comments from the Kadoorie Farm & Botanic Garden Corporation and individuals raised objection to the application (Samples at **Appendices VII-31 to VII-60**). The remaining 6 individuals provided comments on the application (Sample at **Appendix VII-61**). The comments/views are summarised as follows:

Supporting Views (991 comments)

- (a) the Site is necessary for the applicant to continue providing safe shelter for abandoned/stray animals. As a non-profit charitable organisation, the applicant can hardly afford the high land rent at other suitable sites and the cost of further relocation;
- (b) the important contributions of the applicant as a voluntary stray animal shelter which adopt the “no-kill” principle should be recognised and supported. The subject animal shelter would also help ease the nuisances brought by stray animals. Approval of the application is beneficial to animal welfare and the whole society;
- (c) the subject animal shelter currently accommodates more than 200 dogs and cats, some of which are diseased or in their old age. These animals would lose their home and have to go astray again if the application is rejected;
- (d) the subject animal shelter is well-maintained and had all along handled its hygiene condition properly to ensure the healthy living environment of the animals accommodated therein. The applied use would have little adverse impact on the surroundings given its remote location away from residential settlements;
- (e) the Site would still be used for undesirable uses even if the subject application is rejected;

Objecting Views (161 comments)

- (f) the proposal falls within the highly sensitive Deep Bay area and is not in line with the planning intention of the “GB” zone. The Board should also look into whether the planning enforcement action has been settled;
- (g) the animal shelter is subject to rodent infestation and poor hygiene. It generates nuisance to the surroundings, and is not suitable for accommodating animals;
- (h) the dog barking noise and odour generated from the animal shelter, as well as the crowd at the Site during holidays cause nuisance to the surroundings;
- (i) the facilities of the animal shelter is primitive and dilapidated. It also lacks fire service installations, and is prone to fire safety problem;
- (j) the animals accommodated at the animal shelter are mismanaged and subject to negligence; and
- (k) the applied development perpetuates the problem of commercial animal breeding by enabling irresponsible pet owners to abandon their animals at will.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary animal boarding establishment for a period of 3 years with filling and excavation of land at the Site. The Site is mainly zoned “GB”

which is primarily intended 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. Moreover, filling and excavation of land within the “GB” zone require planning permission from the Board as it may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. Although the applied development is not in line with the planning intention of the “GB” zone, according to the applicant which is a charitable institution under section 88 of the Inland Revenue Ordinance (Cap. 112), the applied development is for voluntarily accommodating abandoned/stray dogs and cats. Also, the Site had been hard-paved with asphalt for the ancillary car park of a temporary recreational use which was covered by previous planning permissions (No. A/YL-LFS/63, 86 and 135) granted between 2001 and 2005 (**Plan A-3b**). The existing concrete and tile-paving as well as the land excavation under application have been completed and no further filling and excavation of land will be undertaken. Having regard to the fact that the Site was formed and developed, DAFC has no comment on the application from nature conservation point of view, while CE/MN of DSD has no objection in principle to the application from drainage point of view. In view of the above, sympathetic consideration may be given to the application. Should the application be approved, an approval condition requiring the reinstatement of the “GB” portion of the Site to an amenity area upon expiry of the planning permission is recommended in paragraph 13.2 below.

- 12.2 The Site is surrounded by woodland, cultivated agricultural land, pig farms, sites under construction or deposited with construction materials and warehouse. While the applied development is not entirely compatible with the surrounding areas, DAFC has no comment on the application from nature conservation point of view. Also, DEP has no objection to the application from environmental point of view as there is no sensitive use nearby.
- 12.3 As stated in TPB PG-No. 10, an application for new development within “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The development and its vehicular access road should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape. In this regard, as further significant landscape impact on existing landscape resources within the Site is not anticipated, CTP/UD&L of PlanD has no comment on the application from landscape planning point of view. As such, the applied development is generally not in conflict with TPB PG-No. 10.
- 12.4 Other concerned government departments including C for T, H(GEO) of CEDD and D of FS have no objection to or no comment on the applied development. The applied development would unlikely generate significant adverse traffic, slope safety and fire safety impacts on the surrounding areas. To address the technical requirements of the concerned government departments, relevant approval conditions have been recommended in paragraph 13.2 below. Any non-compliance with these approval conditions would result in revocation of the planning permission and unauthorised development on-site would be subject to enforcement action by the Planning Authority.
- 12.5 There is no similar planning application for animal boarding establishment use within the same “GB” zone. However, the Site forms part of 3 previous applications for recreational uses with ancillary car park, which were approved on temporary basis by the Committee or the Board on review between 2001 and 2005 mainly on

grounds that the site was previously developed for military purpose in the 1980s, and that there was generally no adverse comments from the concerned government departments. Although the subject application is for a different use, it is similar to these previous applications in that hard-paving is involved at the same portion of the Site (**Plan A-3b**), and that concerned government departments including DAFC have no adverse comment on the application. As such, approval of the subject application is considered not in conflict with the previous decisions of the Committee or the Board.

- 12.6 There are 1,158 public comments received during the public inspection period, with 991 supporting and 161 objecting to the application, as well as the remaining 6 providing comments. Regarding the public comments objecting to the application on grounds of rodent infestation and environmental hygiene in general, DFEH advised that anti-rodent measures and technical advice were conveyed to the person in charge of the Site. Should the planning application be approved, the applicant will be advised to properly handle any waste generated from the Site. Regarding other public comments, the planning considerations and assessments in paragraph 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 comments mentioned in paragraph 11, the Planning Department has no objection to the application.
- 13.2 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 until **6.5.2025**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (b) the submission of a vehicular access arrangement proposal within **6 months** from the date of planning approval to the satisfaction of the Director of Highways and the Commissioner for Transport or of the Town Planning Board by **6.11.2022**;
- (c) in relation to (b) above, the implementation of the vehicular access arrangement proposal within **9 months** from the date of planning approval to the satisfaction of the Director of Highways and the Commissioner for Transport or of the Town Planning Board by **6.2.2023**;
- (d) the submission of a revised 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 **6.11.2022**;
- (e) in relation to (d) above, the implementation of the revised 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 **6.2.2023**;

- (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 the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **6.11.2022**;
- (h) in relation to condition (g) 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 **6.2.2023**;
- (i) if any of the above planning conditions (a) 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 conditions (b), (c), (d), (e), (g) or (h) is not complied with by the above 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 portion of the Site zoned “GB” 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 VI**.

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

the applied development 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 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, and the period of which permission should be valid on a temporary basis.
- 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

Appendix I	Application Form received on 10.3.2022
Appendix Ia	Supplementary Information received on 16.3.2022
Appendix Ib	Supplementary Information received on 22.3.2022
Appendix Ic	Further Information received on 30.3.2022
Appendix Id	Further Information received on 13.4.2022
Appendix Ie	Further Information received on 22.4.2022
Appendix II	Extracts of Town Planning Board Guidelines for Application for Development within Green Belt Zone (TPB PG-No. 10)
Appendix III	Extracts of Town Planning Board Guidelines for Application for Development within Deep Bay Area (TPB PG-No. 12C)
Appendix IV	Previous Applications
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendices VII-1 to VII-61	Samples of Public Comments Received During Statutory Publication Period
Drawing A-1	Layout Plan
Drawing A-2	Vehicular Access Plan
Drawing A-3	Land Filling and Excavation Plan
Drawing A-4	Drainage Plan
Plan A-1	Location Plan with Previous Applications
Plan A-2	Site Plan
Plans A-3a and A-3b	Aerial Photos taken in 2021 and 2001
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
MAY 2022**