

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/308

<u>Applicant</u>	: Paraking Limited represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 1289 RP (Part) in D.D. 114, Shek Kong, Yuen Long, New Territories
<u>Site Area</u>	: About 148 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
<u>Zoning</u>	: “Village Type Development” (“V”) (57%) <i>[Restricted to a maximum building height of 3 storeys (8.23m)]</i> “Agriculture” (“AGR”) (43%)
<u>Application</u>	: Proposed Temporary Shop and Services (Car Audio Shop) and Ancillary Office 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 shop and services (car audio shop) and ancillary office for a period of 3 years. The Site falls within an area zoned “V” and “AGR” on the approved Shek Kong OZP (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use within “V” zone, whilst it is neither a Column 1 nor Column 2 use within “AGR” zone. Nevertheless, temporary use or development of any land or building not exceeding a period of 3 years may be allowed with permission from the Town Planning Board (the Board). The Site is currently vacant, fenced and hard-paved (**Plans A-3 and A-4**).
- 1.2 The Site is subject to three previous applications. The last application (No. A/YL-SK/234) submitted by the same applicant for the same proposed use for a period of 3 years (**Plan A-1**) was approved by the Rural and New Town Planning Committee (the Committee) on 6.4.2018. The planning approval was revoked on 6.9.2021 due to non-compliance with approval conditions.

- 1.3 According to the applicant, there will be a two-storey structure with a height of about 6m and a total non-domestic floor area of about 138m² for car audio shop and ancillary office uses. The operation hours will be 9:00a.m. to 7:00p.m. daily (including public holidays). A private car parking space will be provided on-site. The Site is directly accessible from Kam Sheung Road. The location plan and layout plan submitted by the applicant are at **Drawings A-1 and A-2**.
- 1.4 Compared with the last approved application (No. A/YL-SK/234), the current application is the same in terms of the use, layout, number of structure and number of car parking space. There is slight increase in the site area, floor area and height of structure.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with Attachments received on **(Appendix I)** 4.5.2021
 - (b) Further information (FI) received on 21.6.2021 **(Appendix Ia)** *(exempted from publication)*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendices I and Ia**, and are briefly summarised as follows:

- (a) the proposed car audio shop is intended to serve the needs of the nearby residents in Shek Kong. The application is on a temporary basis so that it will not jeopardise the long-term planning intention of the “V” and “AGR” zones. Moreover, it will not set an undesirable precedent as several previous applications, including the latest application (No. A/YL-SK/234) submitted by the same applicant for the same use, have been approved by the Board before;
- (b) for the latest application (No. A/YL-SK/234), the applicant has complied with the approval conditions on the submission of drainage, tree preservation and landscape, and fire services installations (FSIs) proposals, as well as the implementation of drainage proposal. For the implementation of tree preservation and landscape, and FSIs proposals, the relevant implementation works were delayed due to the coronavirus outbreak and pending Lands Department’s approval for short-term waiver (STW), and the planning permission was subsequently revoked on 6.9.2020. The applicant will make effort to comply with the approval conditions after planning approval of the current application is obtained from the Board;
- (c) the estimated maximum number of visitors would be about 8 per day, and there would be four members of staff working on-site. One private car parking spaces will be provided, and no goods vehicles would be allowed to enter/exit the Site. Visitors will need to make appointment in advance so as to prevent excessive number of visitors on-site. As the traffic generation will be minimal, no adverse traffic impact is envisaged due to the proposed use; and

- (d) the proposed development will not create significant adverse environmental, landscape and drainage impact. Adequate mitigation measures on drainage, fire services and landscape aspects will be provided upon approval of the application. The applicant would also strictly follow the 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' to minimise the environmental impacts of the proposed development.

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 (the Ordinance) (TPB PG-No. 31A) by posting site notice at the Site and sending notice to the Pat Heung Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to any active planning enforcement action.

5. Previous Applications

- 5.1 The Site is the subject of a previous application (No. A/YL-SK/164) for temporary shop and services (real estate agency) and ancillary office use, and two previous applications (Nos. A/YL-SK/204 and 234) for temporary shop and services (car audio shop) and ancillary office use. They were approved with conditions by the Committee for a period of three years between 2011 and 2018. Details of the applications are summarised in **Appendix II** and the locations are shown on **Plans A-1** and **A-2**.
- 5.2 The former two applications (Nos. A/YL-SK/164 and 204) had a slightly larger site area than the current application, whilst the latter application (No. A/YL-SK/234) was submitted by the same applicant. The three applications were approved on 18.11.2011, 12.12.2014 and 6.4.2018 respectively mainly on similar considerations that the development was of a relatively small scale and was not incompatible with the surrounding environment; there was no Small House application at the Site; the approval of the development on a temporary basis would not frustrate the long-term planning intentions of the “AGR” and “V” zones; approval of the application was in line with the Committee’s previous decisions; Government departments consulted generally had no adverse comment on the application; and the technical concerns/requirements of the relevant Government departments could be addressed by the approval conditions. However, the planning approval for the latest application (No. A/YL-SK/234) was revoked on 6.9.2020 due to non-compliance with approval conditions in relation to the implementation of tree preservation and landscape, and FSIs proposals.

6. Similar Applications

- 6.1 While there is no similar application for temporary shop and services within the same “AGR” zone, there are eight similar applications (Nos. A/YL-SK/152, 160, 167, 185, 214, 253, 254 and 298) for various temporary shop and services uses within the same “V” zone on the OZP, which were approved by the Committee between 2009 and 2021. Details of the applications are summarised in **Appendix III** and the locations are shown on **Plan A-1**.
- 6.2 The above eight applications for various temporary shop and services uses (including real estate agencies, domestic goods retail shop, and motor-vehicle showroom) were approved with conditions by the Committee for a period ranging from 1 to 5 year(s) on the similar considerations as set out in paragraph 5.2 above. However, the planning approval of two applications (Nos. A/YL-SK/152 and 167) was revoked on 8.3.2010 and 28.1.2013 respectively due to non-compliance with approval conditions in relation to the provision of boundary fence / FSIs or the submission of a record of the existing drainage facilities.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3, and site photos on Plan A-4)

- 7.1 The Site is:
- (a) currently vacant, fenced and hard-paved; and
 - (b) accessible directly from Kam Sheung Road.
- 7.2 The surrounding areas are predominantly rural in character with mainly domestic dwellings/structures, shop and services uses, car repair/trading/workshop and vacant/unused land (**Plan A-2**):
- (a) to its north is Kam Sheung Road, and to its further north is the village cluster of To Uk Tsuen, a car repair site and vacant land in “V” zone;
 - (b) to its east and southeast is a vehicle workshop, a motor trading company, a car service site, a domestic structure/dwelling, and vacant/unused land within “AGR” zone; and
 - (c) to its west and southwest is a cluster of domestic structures/dwellings, a motor-vehicle showroom (approved under Application No. A/YL-SK/298), a piece of fallow farmland, and vacant/unused land within “V” zone.

8. Planning Intention

- 8.1 The planning intention of the “AGR” zone is 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 The planning intention of the “V” zone is primarily to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the “V” 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 Houses. Other commercial, community and recreational uses may be permitted on application to the Board.

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/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) the Site comprises an Old Schedule Agricultural Lot 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) should planning approval be given to the application, the lot owner(s) will need to apply to his office to permit the structure(s) to be erected or regularise any irregularities on-site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Such application(s) will be considered by LandsD acting in the capacity as 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 rent or fee, as may be imposed by LandsD; and
- (c) there is no Small House application approved or currently under processing at the Site.

Traffic

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

- (a) having regard to the FI (**Appendix Ia**), he has no comment on the application from traffic engineering perspective; and

- (b) should the application be approved, approval condition that no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.

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

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Kam Sheung Road; and
- (b) adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) he has no objection to the application;
- (b) provided that the applicant would properly design and manage the proposed car audio shop and minimize any noise from the use of any form of audio amplification system, it would unlikely cause adverse environmental impact to the nearby sensitive receivers;
- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by his department to minimise any potential environmental nuisances; and
- (d) there is no environmental complaint in relation to the Site received in the past three years.

Landscape

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

- (a) he has no objection to the application from the landscape planning point of view;
- (b) referring to the aerial photo in 2019, the Site is situated in an area of rural landscape character comprising scattered tree groups, small houses, farmlands and car parks. The proposed development is not incompatible with the landscape character of the surrounding area;

- (c) with reference to the site photos in May 2021, the Site is fenced-off, vacant and hard-paved. An existing tree in fair condition (**Drawing A-2**) was found at the northeastern side of the Site near the entrance with low tree guard for protecting the existing tree from maneuvering vehicle. According to the proposed layout plan, the existing tree within the Site will be preserved and is not in conflict with the proposed structure. Significant adverse landscape impact caused by the development is not anticipated; and
- (d) it should be reminded that approval of the application under the Ordinance does not imply approval of tree preservation/ removal scheme under the Lease. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.

Agriculture and Nature Conservation

- 9.1.6 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):
- (a) as the Site possesses potential for agricultural rehabilitation, the application is not supported from the agricultural point of view;
 - (b) the Site falls within the “AGR and “V” zones and is currently a cemented enclosed area. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water sources are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc.; and
 - (c) he has no comment on the application from nature conservation perspective.

Drainage

- 9.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
- (a) he has no objection in-principle to the proposed development; and
 - (b) should the application be approved, conditions should be stipulated in the approval letter requiring the applicant the submission of a drainage proposal and the implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board.

Building Matters

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

- (a) before any new building works (including containers / open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorised building works (UBW) under the Buildings Ordinance (BO). An Authorised Person should be appointed as the coordinator for the proposed building works in accordance with BO;
- (b) for UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be constructed as an acceptance of any existing building works or UBW on the Site under BO; and
- (c) his detailed comments are at **Appendix V**.

Fire Safety

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

- (a) he has no objection in-principle to the proposal subject to 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 layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location where the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the BO, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

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

he has not received any comments from locals upon close of consultation and he has no particular comment on the application.

9.2 The following Government departments have no objection to/adverse comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD);

- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 14.5.2021, the application was published for public inspection. During the three-week statutory publication period, two public comments from two individuals (**Appendix IV**) were received. They object to the application mainly on the grounds that the provision of shop and services within a village residential cluster would lead to environmental pollution, fire safety hazard and adversely affect the safety and quality of living of the villagers.

11. Planning Considerations and Assessment

- 11.1 The application is for proposed temporary shop and services (car audio shop) use at the Site for a period of 3 years (**Plan A-1**). The planning intention of the “AGR” zone is primarily to retain and safeguard good quality 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, while the planning intention of the “V” zone is primarily to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small House development by indigenous villagers. The proposed use is not entirely in line with the planning intentions of the “AGR” and “V” zones. DAFC does not support the application from the agricultural perspective. However, it is noted that the Site has been hard-paved and is not in active farming. The Site is small in scale and is the subject of two previous planning approvals for the same use. DLO/YL of LandsD also advises that there is no Small House application approved or currently under processing at the Site. On the basis of the above, it is considered that approval of the application on a temporary basis would not frustrate the long-term planning intentions of the “AGR” and “V” zones.
- 11.2 According to the applicant, the proposed car audio shop is intended to serve the needs of the nearby residents in Shek Kong. The proposed use comprising a two-storey structure with a height of about 6m and a total non-domestic floor area of about 138m² is considered not incompatible with the surrounding areas which are predominantly rural in character with mainly domestic dwellings/structures, shop and services and car repair/trading/workshop uses (**Plan A-2**). Relevant Government departments consulted, including C for T, DEP, CE/MN of DSD, CTP/UD&L of PlanD and D of FS have no adverse comment on / no objection to the application from traffic, environmental, drainage, landscape and fire safety aspects. It is anticipated that the proposed use would not generate significant adverse traffic, environmental, drainage, landscape and fire safety impacts on the surrounding areas. To minimize the possible environmental nuisance generated by the proposed use, approval conditions restricting the operation hours and types of vehicles within the Site are recommended in paragraph 12.2 (a) to (b) below. Moreover, the technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by appropriate approval conditions in paragraph 12.2 (c) to (h) below. Besides, the applicant will be advised to observe the latest “Code of

Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to alleviate any potential environmental impact.

- 11.3 There are eight similar applications for various temporary shop and services uses within the same “V” zone, which were approved by the Committee between 2009 and 2021. The Committee’s considerations on these applications as stated in paragraph 6 are generally applicable to the current application and approval of this application is in line with the previous decisions of the Committee.
- 11.4 The Site is the subject of three previous applications for temporary shop and services uses for a period of 3 years, which were approved by the Committee between 2011 and 2018 as stated in paragraph 5. The planning approval of the latest application (No. A/YL-SK/234) by the same applicant for the same use was revoked due to non-compliance with approval conditions in relation to implementation of various proposals. The applicant stated that he will make effort to comply with the approval conditions after planning approval of the current application is obtained from the Board. Having regard to the above and taking into account that there is no significant change in planning circumstances, it is considered that sympathetic consideration could be given to the current application. Should the application be approved by the Committee, shorter compliance periods are recommended with a view to closely monitoring the progress on compliance with approval conditions. Furthermore, the applicant should be advised that if there is further non-compliance with any of the approval conditions again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 11.5 Regarding the two objecting public comments received during the statutory publication period, the departmental comments and planning considerations and assessment above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments in paragraph 10, the Planning Department considers that the proposed temporary shop and services (car audio shop) and ancillary office 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 until 25.6.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 7:00p.m. and 9:00a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;

- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the submission of a drainage proposal within **3 months** from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 25.9.2021;
- (e) in relation to (d) above, the implementation of the 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 25.12.2021;
- (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 installation proposal within **3 months** from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 25.9.2021;
- (h) in relation to (g) above, the implementation of the fire service installation 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 25.12.2021;
- (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 “AGR” portion 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 at **Appendix V**.

- 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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. It is also not in line with the planning intention of the “V” zone which is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. Land within the “V” zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the

submission for a departure from the planning intentions, 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 received on 4.5.2021
Appendix Ia	Further information (FI) received on 21.6.2021
Appendix II	Previous Applications
Appendix III	Similar Applications
Appendix IV	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Location 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

**PLANNING DEPARTMENT
JUNE 2021**