

TOWN PLANNING BOARD

TPB Paper No. 10870

**For Consideration by
the Town Planning Board on 21.10.2022**

**REVIEW OF APPLICATION NO. A/NE-LT/716
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Temporary Warehouse for a Period of 3 Years and Filling of Land
in “Agriculture” and “Village Type Development” zones**

Lots 128 (Part) and 132 (Part) in D.D. 19, Lam Tsuen, Tai Po, N.T.

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1. Background

- 1.1 On 17.1.2022, the applicant, Mr. HUNG Heung Keng represented by Mr. HUI Kwan Yee, sought planning permission for a temporary warehouse for a period of 3 years and filling of land at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area largely zoned “Agriculture” (“AGR”) (about 99.5%) with a very minor portion zoned “Village Type Development” (“V”) (about 0.5%) on the approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11 (**Plan R-1**).
- 1.2 On 24.6.2022, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the development is not in line with the planning intention of the “Agriculture” zone which 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. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the applicant fails to demonstrate in the submission that the development would not result in adverse landscape impacts on the area.
- 1.3 The site area is about 158.6m². The applied use comprising six single-storey container structures and an open shed with total gross floor area (GFA) of 119.28m² and height of not more than 3m, is for storage of construction materials and small-scale construction parts/tools. The Site is accessible via a local track connecting to Lam Kam Road. The operating hours are between 8am and 8pm from Mondays to Saturdays, and closed on Sundays and public holidays.
- 1.4 The Site forms part of a planning enforcement case (No. E/NE-LT/78) against unauthorized development (UD) involving parking of vehicles and storage uses (including deposit of containers) (**Plan R-2**). Enforcement Notice (EN) was issued on 22.10.2021 requiring discontinuation of the UD. Site inspections after expiry of the EN (i.e. 22.12.2021) revealed that parking of vehicles at the concerned lots has been discontinued while the storage use (including deposit of containers) has not been discontinued. Therefore, further enforcement and prosecution action may be undertaken.

1.5 For Members' reference, the following documents are attached:

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|-----|-----------------------------------------------------------|-----------|
| (a) | RNTPC Paper No. A/NE-LT/716 | (Annex A) |
| (b) | Extract of minutes of the RNTPC meeting held on 24.6.2022 | (Annex B) |
| (c) | Secretary of the Board's letter dated 15.7.2022 | (Annex C) |

2. **Application for Review**

On 28.7.2022, the applicant applied under section 17(1) of the Ordinance for review of the RNTPC's decision to reject the application (**Annex D**). The applicant has not submitted any written representation in support of the review application.

3. **The Section 16 Application**

The Site and its Surrounding Areas (Plans R-1 to R-4)

- 3.1 The situation of the Site and the surrounding areas at the time of consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**.
- 3.2 The Site is:
- (a) currently used for the applied use without valid planning permission;
 - (b) situated at the northwestern fringe of Tong Min Tsuen;
 - (c) accessible via a local track connecting Lam Kam Road; and
 - (d) located within the upper indirect WGG.
- 3.3 The surrounding areas are predominantly rural in character comprising farmlands, tree clusters, village houses, car park and temporary structures. To its immediate east is the village proper of San Uk Tsai and Tong Min Tsuen. An adjoining area to the north, west and south of the Site was previously used as a public vehicle park operated by the same applicant without planning permission and is currently vacant (under Application No. A/NE-LT/715 rejected by the RNTPC on 24.6.2022). To the further northeast and northwest, vehicle parks are found without planning permission.

Planning Intention

- 3.4 There has been no change in planning intention of the "AGR" zone as mentioned in paragraph 8 of **Annex A**, which 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.
- 3.5 According to the Explanatory Statement of the OZP, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

Previous Application

3.6 There is no previous planning application at the Site.

Similar Application

3.7 There is no similar application for the same use within the same “AGR” and “V” zones.

4. Comments from Relevant Government Departments

4.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 of **Annex A**.

4.2 All relevant government departments have no further comments on the review application and maintain their previous views on the s.16 application. In relation to the reasons for rejection of the s.16 application, the views of Director of Agriculture, Fisheries and Conservation (DAFC) and the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) are recapitulated as follows:

Agriculture

4.2.1 Comments of the Director of Agriculture, Fisheries & Conservation (DAFC):

- (a) the Site is currently occupied by some structures. There are active agricultural activities in the vicinity and agricultural infrastructure such as road access and water source is available; and
- (b) the Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural development point of view.

Landscape

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

- (a) some reservations on the application from landscape planning perspective;
- (b) the Site is hard paved and occupied by temporary structures. No significant sensitive landscape resources is observed within the Site. Significant adverse impact on existing landscape resources within the Site arising from the applied use is not anticipated;
- (c) however, compared with the aerial photos taken between 2005 and 2021, vegetation clearance within and surrounding the Site is observed, and an access road to the west of the Site was formed. Adverse impact on existing landscape resources has taken place (**Plan R-3**);

- (d) the Site is situated in an area of settled valleys landscape character comprising farmlands, clusters of tree groups, temporary structures, car parks and village houses within an area zoned “V” to the immediate east; and
- (e) the Site is subject to enforcement action for unauthorized storage use. Given that there is no similar development in close proximity to the Site previously approved by the Board within the same “AGR” zone, there is concern that approval of the application may further alter the landscape character of the “AGR” zone and degrade the landscape quality in the surrounding environment.

5. Public Comments Received During Statutory Publication Periods (Annex E)

- 5.1 On 5.8.2022, the review application was published for public inspection. During the first three weeks of the statutory public inspection periods, six public comments were received from individuals, objecting to the application mainly on the grounds that the applied use generates adverse impacts (i.e. traffic, environmental, fire safety and hygiene, etc.) which affect the living quality of the villagers, and that the Site is subject to a planning enforcement case against unauthorized development.
- 5.2 Six public comments raising objection to/ raising concerns over the application were received at the s.16 application stage, which are set out in paragraph 10 of **Annex A**.

6. Planning Considerations and Assessments

- 6.1 The subject s.16 application was rejected by the RNTPC on 24.6.2022 mainly on the grounds of being not in line with the planning intention of the “AGR” zone, and would result in adverse landscape impact. The applicant has not submitted any written representation in support of the review application. Since the consideration of the s.16 application by the RNTPC, there has been no material change in planning circumstances. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid as recapitulated below.
- 6.2 The Site falls mainly within the “AGR” zone (about 99.5%) with a very minor portion within the “V” zone (about 0.5%) on the OZP. The applied use is not in line with the planning intention of “AGR” zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. DAFC does not support the application from agricultural development point of view as the Site possesses potential for agricultural rehabilitation. There is no strong justification in the submission for a departure from the planning intention of “AGR” zone, even on a temporary basis. 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 of Drainage Services Department and Director of Environmental Protection have no adverse comment from the drainage and environmental perspectives.
- 6.3 The Site is situated at the northwestern fringe of Tong Min Tsuen. It forms part of the subject of a planning enforcement case against unauthorized car parking and storage uses. Previous aerial photos reveal that vegetation within the Site and its immediate

surroundings has been cleared since 2005 (**Plan R-3**). CTP/UD&L of PlanD states that given that there is no similar application for temporary warehouse within the same “AGR” zone in the vicinity of the Site, she has some reservations on the application from landscape planning perspective as approval of the application may encourage other similar developments, which may further alter the landscape character of the “AGR” zone and degrade the landscape quality in the surrounding environment.

- 6.4 The Site is located within the upper indirect WGG. Noting that the applicant has undertaken to implement various preventive measures against water pollution to the upper indirect WGG, the Chief Engineer/Construction of Water Supplies Department has no objection to the application and recommends that the applicant should be advised to observe and strictly follow the “Conditions for Working within WGG” as appropriate. Other relevant government departments consulted have no objection to/adverse comment on the application from technical aspects.
- 6.5 Regarding the public comments objecting to the review application as detailed in paragraph 5.1 above, government departments’ comments and the planning assessments above are relevant.

7. Planning Department’s Views

- 7.1 Based on the assessments made in paragraph 6 and having taken into account the public comments mentioned in paragraph 5 above, and given that there has been no material change in the planning circumstances since the consideration of the subject application by the RNTPC, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the development is not in line with the planning intention of the “Agriculture” zone which 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. There is no strong planning justification in the submission for a departure from the planning intentions, even on a temporary basis; and
 - (b) the applicant fails to demonstrate in the submission that the development would not result in adverse landscape impacts on the area.
- 7.2 Alternatively, should the Committee decide to approve the review application, it is suggested that the permission shall be valid until **21.10.2025**, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 8:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;

- (c) the provision of boundary fencing on 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 21.4.2023;
- (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 21.4.2023;
- (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 21.7.2023;
- (f) 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 21.4.2023;
- (g) in relation to (f) 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 21.7.2023;
- (h) if any of the above planning conditions (a) or (b) 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; and
- (i) if any of the above planning conditions (c), (d), (e), (f) or (g) 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.

Advisory Clauses

The recommended advisory clauses are attached at **Annex F**.

8. Decision Sought

- 8.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 8.3 Alternatively, should the Board decide to approve the review 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.

9. Attachments

Plan R-1	Location plan
Plan R-2	Site plan
Plan R-3	Aerial photos
Plan R-4	Site photos
Annex A	RNTPC Paper No. A/NE-LT/716
Annex B	Extract of minutes of the RNTPC meeting held on 24.6.2022
Annex C	Secretary of the Board's letter dated 15.7.2022
Annex D	Letter from the applicant's representative dated 28.7.2022
Annex E	Public comments on the review application
Annex F	Recommended advisory clauses

**PLANNING DEPARTMENT
OCTOBER 2022**