

RNTPC Paper No. A/YL-KTN/707
For Consideration by
the Rural and New Town
Planning Committee
on 29.5.2020

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/707

- Applicant** : Mr. WONG Hon Kuen
- Premises** : Lot 787 R.P (Part) in D.D.107, Fung Kat Heung, Kam Tin, Yuen Long
- Premises Area** : 65 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
- Zoning** : “Industrial (Group D)” (“I(D)”) [a maximum plot ratio of 1.6, a maximum site coverage of 80% and a maximum building height of 13m]
- Application** : Proposed Temporary Shop and Services (Retail Store) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (retail store) for a period of 3 years at the application premises (the Premises). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use under the “I(D)” zone, which requires planning permission from the Town Planning Board (the Board). The Premises is subject to a previous application No. A/YL-KTN/573 for the same use. It was approved with conditions by the Rural and New Town Planning Committee (the Committee) in 2017. However, the planning permission was revoked in 2020 due to non-compliance with approval condition. The Premises occupies part of an existing vacant structure. **(Plans A-2 and A-4a to 4b).**

- 1.2 The proposed development involves a one-storey structure with building height of about 5 m and total floor area of about 65m² for retail store use. The proposed retail store will be operated from 10:00 am to 6:00 pm daily, including public holidays. No car parking space will be provided in the Premises. The Premises is accessible from Fung Kat Heung Road via local tracks and footpaths. The layout with fire service installations (FSIs) plan and access plan submitted by the applicant is at **Drawings A-1 to A-2**.
- 1.3 Compared with the previous approved application No. A/YL- KTN/573, the current application is submitted by the same applicant for the same use and the same premises area, with an increase in building height from 4m to 5m (+1m/+25%).
- 1.4 In support of the application, the applicant has submitted the following document:
 - (a) Application Form with plans received on 3.4.2020 (**Appendix I**)
 - (b) Supplementary information received on 9.4.2020 (**Appendix Ia**)
 - (c) Further Information (FI) received on 14.5.2020 in response to departmental comments
[exempted from publication requirement] (**Appendix Ib**)
 - (d) FI received on 20.5.2020 in response to departmental comments
[exempted from publication requirement] (**Appendix Ic**)

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form and FI in **Appendices I to Ic**. They can be summarized as follows:

- (a) There are lots of developments in the surrounding areas of the Premises in recent years, including industrial developments in the “I(D)” zone and the residential estate (Park Yoho) near Sha Po Tsuen. The proposed temporary shop and services selling snacks, soft drinks and daily goods could serve the nearby workers and residents.
- (b) The applicant has complied with the approval condition on submission of FSIs proposal of the previous planning permission. However, the planning permission was revoked due to non-compliance with the approval condition on the provision of FSIs. The provision of FSIs was withheld since the Short Term Waiver application was not yet approved by the Lands Department.

- (c) The Premises occupies part of an existing structure. The remaining part of the structure is not the applicant's property and is currently vacant. There is no change to the structure since the previous application in 2017, and the proposed retail store has not been operated since the last approval.

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

The applicant is one of the “current land owners” and 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 obtaining consent from the other current land owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Premises is currently not subject to any active enforcement case.

5. **Previous Application**

The Premises is subject to one previous application (No. A/YL- KTN/573) submitted by the same applicant for the same applied use as the current application. The application was approved with conditions by the Committee on 22.9.2017 mainly for the reasons that temporary approval would not jeopardize the long-term planning intention of the “I(D)” zone; the development was not incompatible with the surrounding land uses; and relevant departments had no adverse comment on the application. The applicant complied with the approval condition on submission of FSIs proposal. However, the planning permission was revoked in February 2020 due to non-compliance with approval condition on implementation of FSIs proposal. Details of the previous application are summarized in **Appendix II** and its location is shown on **Plan A-1**.

6. **Similar Applications**

There are four similar applications for various temporary shop and services uses within the same “I(D)” zone or straddling the same “I(D)” and the adjoining “Agriculture” (“AGR”) zone which were all approved with conditions by the Committee between 2018 and 2019 mainly for the reasons that temporary approval would not frustrate the long-term planning intention of the “I(D)” zone; the development was not incompatible with the surrounding land uses; and the relevant departments had no adverse comment on the application. However, one of the planning permissions was revoked due to non-compliance with approval conditions. Details of the applications are summarized in **Appendix III** and the locations of the sites are shown on **Plan A-1**.

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

7.1 The Premises:

- (a) occupies part of an existing vacant structure; and
- (b) is accessible from Fung Kat Heung Road via local tracks and footpaths.

7.2 The surrounding areas are rural in character predominated by residential dwellings/structures, parking of vehicles, agricultural land, open storage/ storage yards, monastery and vacant/unused land:

- (a) to its north, east and west are residential dwellings/structures, parking of vehicles, open storage/ storage yards and a monastery; and
- (b) to its south are unused land, residential dwellings/structures and fallow/cultivated agricultural land. An open storage yard is at its further southwest.

8. Planning Intention

The planning intention of the “I(D)” zone is primarily for industrial uses that cannot be accommodated in conventional flatted factories due to extensive land and/or high ceiling requirements. It is also intended for the redevelopment of existing informal industrial uses, which are operated in workshop premises in rural area, to properly designed permanent industrial buildings.

9. Comments from Relevant Government Departments

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

Land Administration

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

- (a) The Premises 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) His site inspections revealed that a single-storey structure is found erected on Lot Nos. 787 RP and 793 in D.D. 107. The structure within the Premises seems to form an integral part of the larger structure. As the structure on Lot Nos. 787 RP and 793 are in breach of the relevant lease conditions, warning letters to the registered owners of the lots were registered in the Land Registry as the breaches had not been purged by the stipulated deadline.
- (c) Should planning approval be given to the application, the lot owner will need to apply to his office to permit the structures to be erected or regularize 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. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application 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.

Traffic

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

- (a) He has no comment on the application considering there is neither parking provision nor vehicular access to the lot and the induced traffic impact is minimal.
- (b) The Premises is connected to the public road network via a section of a local access road which is not managed by his department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) Fung Kat Heung Road is not maintained by his department.
- (b) His department is not/shall not be responsible for the maintenance of any access connecting the Premises and Castle Peak Road – Tam Mi/ San Tam Road.
- (c) Adequate drainage measures should be provided at the premises access to prevent surface water flowing from the Premises to nearby public roads or exclusive road drains.

Environment

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

There was no environmental complaint concerning the Premises received in the past three years. The applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the DEP.

Drainage

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

- (a) He has no in-principle objection to the proposed development from the public drainage point of view given that it only occupies an area of 65m².
- (b) The applicant should be advised that the proposed development would neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.

Building Matters

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

- (a) As there is no record of approval by the Building Authority for the existing structures at the Premises, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the 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 construed as an acceptance of any existing building works or

UBW on the Premises under the BO.

- (d) Before any new buildings works (including containers/ open sheds as temporary buildings, demolition and land filling) are to be carried out on the Premises, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) The Premises shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (f) The Premises does not abut on a specified street of not less than 4.5m wide and its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Fire Safety

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

- (a) He has no in-principle objection to the application subject to FSIs being provided to his satisfaction.
- (b) The FSIs proposal attached to the application is considered acceptable to his department. The applicant is advised that the installation/ maintenance/ modification/ repair work of FSI shall be undertaken by a Registered Fire Service Installation Contractor (RFSIC). The RFSIC shall after completion of the installation/ maintenance/ modification/ repair work issue to the person on whose instruction the work was undertaken a certificate (FS 251) and forward a copy of the certificate to him.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

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

He has not received any locals' comment on the application and has no comment from departmental point of view.

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

- (a) Director of Electrical and Mechanical Services;
- (b) Chief Engineer/Construction, Water Supplies Department;
- (c) Project Manager (West), Civil Engineering and Development Department; and
- (d) Commissioner of Police.

10. Public Comment Received During Statutory Publication Period

On 14.4.2020, the application was published for public inspection. During the three-week statutory publication period, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary shop and services (retail store) for a period of 3 years at a Premises in the "I(D)" zone. The planning intention of the "I(D)" zone is primarily for industrial uses that cannot be accommodated in conventional flatted factories due to extensive land and/or high ceiling requirements. It is also intended for the redevelopment of existing informal industrial uses, which are operated in workshop premises in rural area, to properly designed permanent industrial buildings. Although the proposed shop and services use is not entirely in line with the planning intention of "I(D)" zone, it is considered that temporary approval of the application would not frustrate the long-term planning intention of the "I(D)" zone.
- 11.2 The proposed use is considered not incompatible with the surrounding areas which are mixed with residential dwellings/structures, agricultural land, open storage/ storage yards, parking of vehicles and vacant/unused land. According to the applicant, the proposed retail store intends to serve the residents and workers in the locality.
- 11.3 In view of the small scale and nature of the proposed use, it is unlikely to cause significant adverse traffic, drainage and environmental impact on the surrounding area. Relevant departments consulted including DEP, C for T, CE/MN of DSD and D of FS have no objection to or adverse comment on the application. The applicant will also be advised to adopt the relevant mitigation

measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Open Storage and Other Temporary Uses”. The technical requirement of D of FS could be addressed by approval condition in paragraph 12.2 (a).

- 11.4 The Premises is subject to a previous application for the same use and submitted by the same applicant. It was approved with conditions by the Committee in 2017, and revoked due to non-compliance with the approval condition on the provision of FSIs in February 2020. In the current application, the applicant submitted a FSIs proposal which is accepted by D of FS. When compared with the previous approved application, the current application is the same in terms of use and premises area, only the building height of the structure is higher from 4m to 5m. Sympathetic consideration could be given to the current application. The applicant will be advised that should he fail to comply with the approval condition again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 11.5 There are four similar applications for various temporary shop and services uses within the same “I(D)” zone or straddling the same “I(D)” zone and the adjoining “AGR” zone which were all approved with conditions by the Committee between 2018 and 2019 (paragraph 6 and **Plan A-1** refer).
- 11.6 No public comment was received during the statutory publication period.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11, the Planning Department has no objection to the proposed temporary shop and services (retail store) 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 29.5.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the implementation of the accepted 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 29.11.2020; and

- (b) if the above planning condition (a) 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 **Appendix IV**.

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

the proposed development is not in line with the planning intention of the "I(D)" zone which is primarily for industrial uses that cannot be accommodated in conventional flatted factories due to extensive land and/or high ceiling requirements and for the redevelopment of existing informal industrial uses, which are operated in workshop premises in rural area, to properly designed permanent industrial buildings. 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 plans received on 3.4.2020
Appendix Ia	Supplementary information received on 9.4.2020
Appendix Ib	FI received on 14.5.2020
Appendix Ic	FI received on 20.5.2020
Appendix II	Previous application covering the Premises

Appendix III	Similar applications within the same “I(D)” zone or straddling the same “I(D)” zone and the adjoining “AGR” zone on the Kam Tin North OZP
Appendix IV	Advisory Clauses
Drawing A-1	Layout with Fire Service Installations Plan
Drawing A-2	Vehicular Access Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
MAY 2020**