

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/782

<u>Applicant</u>	: TANG KWOK TUNG represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 291 (Part) in D.D. 109, Kam Tin, Yuen Long
<u>Site Area</u>	: about 169.2 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Drafted Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/14
<u>Zonings</u>	: “Village Type Development” (“V”) [maximum building height of 3 storey (8.23m)]
<u>Application</u>	: Temporary Shop and Services (Martial Art Goods Retail Store) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services (martial art goods retail store) for a period of 3 years at the application site (the Site). The Site is currently fenced, partly vacant and partly used as storage (**Plans A-2 and A-4**).
- 1.2 The Site is involved in five previous applications for various temporary parking of vehicles, open storage and vehicle repairing workshop uses. Two of the applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) on 11.3.2011 and 6.12.2011 for a period of 3 years.
- 1.2 According to the information submitted by the applicant, the proposed development involves a 1-storey structure with a total floor area of about 86.48 m² and a building height not exceeding 3.1m for retail shop of martial art goods. The operation hours are 9:00 a.m. to 7:00 p.m. Mondays to Saturdays, there will be no operation on Sundays and public holidays. The Site is accessible via a local track from Kam Tin Road or Kam Sheung Road. The site layout plan submitted by the applicant is at **Drawing A-1**.

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

Application form with planning statement and plans received (Appendix I)
on 29.3.2018

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the appendix of the Application Form in **Appendix I**. They can be summarized as follows:

- (a) The proposed development is compatible with the surrounding developments. Approved applications for similar uses are found in the vicinity.
- (b) No filling of land/excavation of land will be carried out within the Site to minimize any adverse impact on the surrounding area.
- (c) No car parking spaces will be provided on site to minimize any adverse traffic impact on the surrounding areas.

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. 31) 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.

4. Background

The Site is not the subject of any active enforcement cases and there is currently no enforcement action against it. The Site for shop and services use without a valid planning permission constitutes an unauthorized development (UD) under the Town Planning Ordinance (TPO). Should there be sufficient evidence to prove the use on the Site is an UD under the TPO, appropriate enforcement action will be taken.

5. Previous Applications

- 5.1 The Site is subject to five previous applications No. A/YL-KTS/490, 508, 545, 551 and 606 submitted by different applicants as the current application. Details of the previous applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 Applications No. A/YL-KTS/490 (for temporary open storage of private cars for sale and display), A/YL-KTS/545 (for temporary storage of vehicles (private cars and light goods vehicles) and vehicle parts with vehicle repairing workshop), and A/YL-KTS/606 (for temporary vehicle repair workshop (paint spraying only)) for

a period of 3 years were rejected by the Committee on 11.6.2010, 2.9.2011 and 6.9.2013 respectively on the grounds that the development was not in line with the planning intention of the "V" zone; no strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis; did not comply with the Town Planning Board Guidelines for 'Application for Open Storage and Port Back-up Uses' (TPB PG-No.13E) in that there was no exceptional circumstance that warranted sympathetic consideration; there was no similar planning approval granted for the site; there were adverse departmental comments and local objections against the application; the applicant failed to demonstrate in the submission that the development would not generate adverse environmental, landscape and/or drainage impacts on the surrounding areas; the approval of the application would set an undesirable precedent for similar applications within the "V" zone; and the cumulative effect of approving such applications would result in a general degradation of the environment of the area.

- 5.3 Applications No. A/YL-KTS/508 and A/YL-KTS/551 for temporary open public carpark (including private car, light goods vehicle and medium good vehicle) and temporary open private vehicle park (private cars and light goods vehicles) were approved with conditions by the Committee or the Board upon review for a period of 3 years on 11.3.2011 and 6.12.2011 respectively. The applications were approved on similar reasons that the applications were not incompatible to the surrounding areas; comments from public and concerned departments could be addressed by imposing appropriate approval conditions and applications within the same "V" zone for similar use have been approved by the Committee. However, both applications were revoked on 16.8.2011 and 6.6.2012 respectively due to non-compliance with approval conditions.

6. Similar Applications

There are 5 similar applications (No. A/YL-KTS/502, 582, 648, 676 and 758) all for shop and services (real estate agency) use on three sites within the same and adjoining "V" zone which were approved with conditions by the Committee for a period of 3 years on 10.9.2010, 19.10.2012, 17.10.2014, 18.9.2015 and 22.12.2017 respectively. These applications were approved on similar reasons that the proposed temporary uses would not jeopardize the planning intention of "V" zone, they were not incompatible with the surrounding land uses; relevant Government departments had no adverse comments; and technical requirements could be addressed by appropriate approval conditions. However, application No. A/YL-KTS/648 was revoked on 17.10.2015 due to non-compliance with approval conditions. Details of the applications are summarized in **Appendix III** whilst their locations are shown on **Plan A-1a**.

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

7.1 The Site is:

- (a) accessible via a local track from Kam Sheung Road or Kam Tin Road;
- (b) paved and fenced off, partly vacant and partly used as storage.

7.2 The surrounding areas are predominantly rural in character with a mix of residential structures/dwellings, storage yards, real estate agency and parking of vehicles:

- (a) to its immediate east, south, further west and further south across Kam Sheung Road are residential dwellings/structures, including Greenview Garden, Kam Fung Garden and Noble Park;
- (b) to its immediate west is a shop and services (real estate agency) with a valid planning approval (application No. A/YL-KTS/676); and
- (c) to its immediate north and northwest are storage yards and parking of vehicles without valid planning permission.

8. Planning Intention

The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this 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 House. 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 summarized 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) A portion of Lot No. 291 in D.D. 109 outside the Site is covered by a Short Term Waiver (STW) No. 3746 to permit structures erected thereon for the purpose of “Shop and Services (Real Estate Agency)”.
- (c) The Site is accessible to Kam Sheung Road via Government Land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.

- (d) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (e) Should planning approval be given to the application, the STW holder(s) will need to apply to his office for modification of the STW conditions to regularize any irregularities (if any) on site. 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 premium or fee, as may be imposed by the LandsD.
- (f) No Small House application is approved or under processing at the Site.

Traffic

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

Considering there is neither parking provision nor vehicular access to the lot and the induced traffic is minimal, he has no comment on the application.

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

It is noted that there is no vehicular access to the Site. He has no comment on the application from the highways maintenance point of view.

Landscape

9.1.4 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 perspective.
- (b) The Site involves 6 previous applications for temporary workshops and storage of vehicles use to which they had reservations from landscape planning perspective. Compared aerial photo of 2017 to photo of 2013 (under previous application), there is no significant change in the rural village character comprised of village houses, car parks and tree groups. The proposed use is not incompatible with the surrounding landscape context.
- (c) With reference to his site inspection taken on 25.4.2018, the Site

is already paved with a temporary structure. Significant landscape resource cannot be found on site. Further adverse impact on existing landscape character and landscape resources due to the proposed use is not anticipated.

- (d) Should the application be approved, in view that available space for quality landscape within the Site is inadequate, a landscape condition is not practical and therefore not recommended.

Environment

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

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” to minimize any potential environmental nuisance.

Drainage

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

- (a) He has no objection in principle to the proposed development.
- (b) Should the application be approved, the approval conditions requiring the submission of a drainage proposal and implementation and maintenance of the drainage proposal to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning permission.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations 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 of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) If the existing structures are erected on leased land without approval of the BD (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any use under application.
- (b) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained. Otherwise, they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's 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 Site under the BO.
- (d) The Site 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 respectively.
- (e) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

Electricity

9.1.9 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from the electricity supply safety aspect.
- (b) In the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with the planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the

Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

District Officer’s Comments

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

His office has not received any locals’ comment on the application.

9.2 The following Government departments have no comments on the application:

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

10. Public Comment Received During the Statutory Publication Period

On 13.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 4.5.2018, one public comment was received from a member of public (**Appendix IV**). The commenter raised objection to the application mainly on the grounds that the Site has been involved in a previous rejected application; it is uncertain if the intended use will be a store; and the current condition and operation of the Site should be taken into account when considering the application.

11. Planning Considerations and Assessments

11.1 The application is for temporary shop and services (martial art goods retail store) use at the Site zoned “V”. The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. 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 House. Other commercial, community and recreational uses may be permitted on application to the Board. The proposed use is not entirely in line with the planning intention of the “V” zone. Nevertheless, DLO/YL of LandsD advised that there is no Small House application approved or under processing within the Site. Approval of the application on a temporary basis for a period of 3 years would not jeopardize the long-term planning intention of the “V” zone.

- 11.2 The proposed development is considered not incompatible with the surrounding land uses which are rural in character predominated by with a mix of residential structures/dwellings, storage yards, real estate agency and parking of vehicles. There are also five similar applications (No. A/YL-KTS/502, 582, 648, 676 and 758) for shop and services (real estate agency) use within the same and adjoining “V” zone that were approved by the Committee. Approval of the application is in line with the Committee’s previous decisions on similar applications.
- 11.3 In view of its small scale and its location near Kam Sheung Road, it is unlikely that the proposed development would generate significant environmental nuisance to the nearby residential dwellings/structures. Relevant departments consulted including C for T, CE/MN of DSD, CTP/UD&L of PlanD and DEP have no adverse comment on the application. To minimize the possible nuisance generated by the proposed development, approval conditions restricting the operation hours are recommended in paragraph 12.2 (a) and (b) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Open Storage and Other Temporary Uses” in order to alleviate any potential environmental impact. The technical requirements of CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (g) below.
- 11.4 One public comment objecting to the application was received during the statutory public inspection period as stated in paragraph 10 above. The planning considerations and 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 considers that the temporary shop and services (martial art goods retail store) 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 18.5.2021. The following conditions of approval 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) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the submission of 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 18.11.2018;
- (d) in relation to (c) above, the implementation of 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 18.2.2019;

- (e) in relation to (d) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (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 18.11.2018;
- (g) in relation to (f) above, the implementation of 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 18.2.2019;
- (h) if any of the above planning conditions (a), (b) or (e) 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;
- (i) if any of the above planning conditions (c), (d), (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; and
- (j) upon the expiry of the planning permission, the reinstatement of the application 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 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 "V" zone which is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this 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 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 and attachments received on 29.3.2018
Appendix II	Previous applications covering the Site
Appendix III	Similar applications in the same and adjoining "V" zone on the OZP
Appendices IV	Public comment received during statutory publication period
Appendix V	Advisory Clause
Drawing A-1	Site Layout Plan
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Location Plan with Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2018**