

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/788

<u>Applicant</u>	: Mr. TING Chi Shing
<u>Site</u>	: Lots 221 S.F-G RP (Part) and 221 S.H (Part) in D.D. 106, Pat Heung Road, Kam Tin, Yuen Long
<u>Site Area</u>	: about 314 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Draft Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/14
<u>Zonings</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services (real estate agency) for a period of 3 years at the application site (the Site). The Site is currently used for the applied use without valid planning permission.
- 1.2 The Site is involved in three previous Applications No. A/YL-KTS/534, 621 and 714 for the same applied use. All applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) on 5.8.2011, 13.12.2013 and 12.8.2016 respectively for a period of 3 years. However, all of them were revoked due to non-compliance of approval conditions.
- 1.2 According to the information submitted by the applicant, a single-storey structure with a total floor area of about 30 m² and a building height of 2.5m is erected within the Site for office use. Three private car parking spaces are provided on site. The operation hours are 11:00 a.m. to 7:00 p.m. daily (including public holidays). The Site is accessible via a local track branching off Pat Heung Road. The site layout plan, landscape, drainage and fire services installations proposal submitted by the applicant are at **Drawings A-1 to A-4** respectively.
- 1.3 Compared with the last approved planning application No. A/YL-KTS/714, the current application is submitted by the same applicant and is the same in terms of

the applied use, site boundary and area, number of structure, building height, total floor area and number of car parking spaces.

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

- (a) Application form with planning statement and plans (**Appendix I**) received on 24.5.2018
- (b) FI received on 28.6.2018 in response to the comments of Commissioner for Transport (C for T) (**Appendix Ia**)
(accepted and exempted from publication and recounting requirements)
- (b) FI received on 5.7.2018 in response to the comments of C for T (**Appendix Ib**)
(accepted and exempted from publication and recounting requirements)
- (c) FI received on 10.7.2018 providing further justifications (**Appendix Ic**)
(accepted and exempted from publication and recounting requirements)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in paragraph 9 of the Application Form and FIs in **Appendices I and Ic**. They can be summarized as follows:

- (a) The previous application No. A/YL-KTS/714 was revoked due to non-compliance of approval conditions as more time was required to liaise with concerned department and completion of the works. The applicant has made submissions in relation to drainage, fire services installations, run-in/out and landscape and tree preservation proposal in the current application. The applicant will comply with all the relevant requirements if the planning permission is granted.
- (b) Appropriate traffic measures will be undertaken to ensure Pat Heung Road will not be affected. The existing landscape and drainage facilities within the Site will be properly maintained.
- (c) The applied real estate agency is to serve the local community.

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

The applicant is not a “current land owner” but has complied with the requirement 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 having obtained consent from the two lot owners. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site was granted with planning permission on 12.8.2016 for the same applied use but the planning approval was revoked on 12.11.2016. Should the application for the same use is not granted, and the current shop and services use on site continues (i.e. the use continues but without a valid planning permission), such use would constitute as an unauthorized development under the Town Planning Ordinance and appropriate enforcement action will be instigated.

5. Previous Applications

- 5.1 The Site is subject to three previous applications No. A/YL-KTS/534 submitted by a different applicant (and a different occupier), A/YL-KTS/621 and 714 submitted by the same applicant as the current application. Details of the previous applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.
- 5.2 Applications No. A/YL-KTS/534, 621 and 714 for temporary shop and services (real estate agency), each for a period of 3 years, were approved with conditions by the Committee on 5.8.2011, 13.12.2013 and 12.8.2016 respectively for similar reasons that although the developments were not in line with the planning intention of the "AGR" zone and the Director of Agriculture, Fisheries and Conservation (DAFC) did not support the applications, approval of the application on a temporary basis would not jeopardize the long term planning intention; the developments were not incompatible with the surrounding land uses; in view of the small scale of the developments and the close proximity of the Site to Pat Heung Road, environmental nuisance generated by the developments to the nearby residential structures/dwellings would unlikely be significant; other relevant departments had no objection to the applications; and the concerns of the relevant departments could be addressed by imposing appropriate approval conditions.
- 5.3 However, the planning permission of Application No. A/YL-KTS/534 was revoked on 5.5.2013 due to non-compliance with the approval condition on the provision of a run-in at Pat Heung Road. The other approval conditions in relation to drainage, landscape and fire safety aspects had been complied with. For Application No. A/YL-KTS/621, the applicant had not made any submission for compliance with the approval conditions related to drainage, run-in/out proposal and fire safety aspects and the planning permission was revoked on 13.3.2014. For the last planning application No. A/YL-KTS/714, the applicant had complied with the approval condition in relation to the implementation of the accepted FSIs proposal. However, the applicant failed to comply the approval conditions on the submission of existing drainage facilities and submission/implementation of run-in proposal to/from Pat Heung Road and the planning permission was revoked on 12.11.2016.
- 5.3 Compared with the last planning application No. A/YL-KTS/714, the current application submitted by the same applicant is the same in terms of the applied

use, site boundary and area, number of structure, building height, total floor area and number of car parking spaces.

6. Similar Applications

- 6.1 There are two similar applications (No. A/YL-KTS/623 and 724) for the same applied use within the same “AGR” zone which was approved with conditions by the Committee. Details of the applications are summarized in **Appendix III** and their location is shown on **Plan A-1**.
- 6.2 Applications No. A/YL-KTS/623 and 724 on one site were approved with conditions by the Committee on 3.1.2014 and 23.12.2016 respectively for a period of 3 years for the reasons that approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone; the development could serve some of the needs of the neighbouring residential developments; the development was not incompatible with the surrounding land uses; in view of the small scale of the development, environmental nuisance generated by the development would unlikely be significant; and relevant departments had no adverse comment on the application.

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

- 7.1 The Site is:
- (a) accessible via a local track branching off Pat Heung Road across a nullah to its northwest (**Plan A-2**); and
 - (b) paved and fenced off and used for the applied use without valid planning permission.
- 7.2 The surrounding areas are predominantly occupied by residential structures/dwellings, vacant/unused land, cultivated agricultural land, a pond and an open storage yard:
- (a) to its immediate east and southeast are mainly residential dwellings/structures, cultivated agricultural land and vacant/unused land;
 - (b) to its immediate southwest is a pond and residential dwellings/structures. To its further south is an open storage yard of construction materials without valid planning permission; and
 - (c) to its immediate north is a nullah and to its further north across Pat Hueng Road is land zoned “Village Type Development” with residential dwellings/structures, vacant/unused land and some Small Houses under construction.

8. Planning Intention

- 8.1 The planning intention of the “AGR” zone 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.

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 Old Schedule Agricultural Lots 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) Lot No. 221 S.H in D.D. 106 within the Site is covered by a Short Term Waiver (STW) No. 3908 to permit structures erected thereon for the purpose of “temporary shop and services (real estate agency)”.
- (c) The Site is accessible to Pat Heung 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 if there is any irregularities on site. The owner(s) of the lot without STW will need to apply to his office to permit the structures to be erected or regularize any irregularities 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.

Traffic

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

- (a) He has no comment on the application from the traffic engineering perspective.
- (b) The Site is connected to the public road network via a section of a

local access road which is not managed by TD. The land status of the local access road should be checked with LandsD. Moreover, consents from relevant lands and maintenance authorities on using the road for accessing the Site should be sought.

- (c) Should the application be approved, approval conditions of no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period and submission of a run-in proposal to/from Pat Heung Road and provision of a run-in at Pat Heung Road to his satisfaction and Director of Highways should be included in the planning permission.

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

- (a) If the proposed run-in is agreed by TD, the applicant should construct a run in at the access point at Pat Heung Road in accordance with the latest version of Highways Standard Drawing No. H1113 and H1114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing adjacent pavement.
- (b) His department does not and will not maintain any access connecting the Site and Pat Heung Road.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Landscape

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

- (a) She has no objection to the application from the landscape planning perspective.
- (b) The Site was involved in 3 previous planning applications for the same use to which she had no objection to the last application (A/YL-KTS/714) from the landscape planning perspective. The surrounding area is predominantly rural, comprising agricultural land, scattered trees, fish pond, village houses and temporary structures. The applied use is considered not incompatible with the surrounding landscape character and village setting.
- (c) According to the site inspection on 12.6.2018, existing trees and landscape implemented in the previous application are in good condition. Significant adverse impact on landscape due to the applied use is not expected.
- (d) Should the application be approved, approval condition requiring

maintenance of existing trees and landscape planting in satisfactory condition during the planning approval period should be included.

Environment

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

- (a) There was no environmental complaint received in the past three years.
- (b) The applicant is advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP.
- (c) The applicant is reminded that it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures to prevent polluting the pond adjacent to the Site. If septic tank and soakaway system will be used, its design and construction shall follow the requirement of EPD’s Practice Note for Professional Person (ProPECC) PN5/93 “Drainage Plans subject to Comment by the Environmental Protection Department”.

Agriculture

9.1.6 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) It is noted the Site falls within the “Agriculture” zone with active agricultural activities in the vicinity. As the Site has high potential for agricultural rehabilitation, he does not support the application from agricultural point of view.
- (b) Should the application be approved, the applicant should be reminded to take appropriate measures to avoid causing any pollution or interference to the nearby fish pond.

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 development.
- (b) For the proposed vehicular access using the existing crossing at the nullah, the applicant shall ensure the existing crossing is of structural adequacy to serve the purpose and the nullah would not be adversely affected by the crossing. The existing crossing was not constructed by DSD and the applicant shall be responsible for maintenance of this crossing at the nullah. The nullah should be reinstated by the applicant when the run-in is removed.

- (c) Should the application be approved, the approval conditions requiring the submission of a revised drainage proposal addressing comments (b) above 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

9.1.8 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) The fire services installations proposal submitted by the applicant is considered acceptable to his department. The applicant is advised that the installation/maintenance/modification/repair work of fire service installation (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 the D of FS.
- (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

9.1.9 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.

District Officer's Comments

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

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

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) Director of Electrical and Mechanical Services (DEMS);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (d) Commissioner of Police (C of P).

10. Public Comments Received During the Statutory Publication Period

On 1.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 22.6.2018, two public comments were received from the general public (**Appendices IV-1** and **IV-2**). One commenter raised objection to the application mainly on the grounds that the development has a history of revocation in all of its previous applications. Another commenter provide comment that real estate agency should be overseen by the Board.

11. Planning Considerations and Assessments

11.1 The application is for temporary shop and services (real estate agency) at a Site zoned "AGR". The planning intention of the "AGR" zone 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. Although the application is not in line with the planning intention of the "AGR" zone and DAFC does not support the application as the Site has high potential for agricultural rehabilitation. It is considered that approval of the application on a temporary basis of 3 years would not jeopardize the long-term planning intention of the "AGR" zone.

- 11.2 According to the applicant, the applied real estate agency is to serve the local community. The applied development is considered not incompatible with the surrounding land uses which are predominated by residential structures/dwellings, vacant/unused land, a pond and an open storage yard. In view of its small scale and its location near Pat Heung Road, it is unlikely that the development would generate significant environmental nuisance to the nearby residential developments. Relevant departments consulted including C for T, CE/MN of DSD, CTP/UD&L of PlanD and DEP (except DAFC) have no adverse comment on the application. To minimize the possible nuisance generated by the development, approval conditions restricting the operation hours and types of vehicles 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 C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (j) below.
- 11.3 The Site is subject to 3 previous approved applications for real estate agency. The last two planning approvals at the Site for the same applied use submitted by the same applicant of the current application (Applications No. A/YL-KTS/621 and 714) were revoked on 13.3.2014 and 12.11.2016 respectively. For Application No. A/YL-KTS/621, no submission had been made for compliance with approval conditions. For the last application No. A/YL-KTS/714, approval condition for the implementation of the accepted FSIs proposal has been complied with but the applicant failed to comply with the approval conditions on the submission of record of the existing drainage facilities and submission/implementation of run-in proposal to/from Pat Heung Road. For the current application, the applicant submitted landscape, drainage, FSIs and run-in proposals and stated that effort would be made to meet all relevant requirements. CTP/UD&L of PlanD considered that existing trees and landscape implemented in the previous application are in good condition and D of FS considered the submitted FSIs proposal acceptable. C for T and CE/MN, DSD also have no in-principle objection to the application. Hence, sympathetic consideration could be given to the current application. Shorter compliance periods are recommended to monitor the progress of compliance should the Committee decide to approve the current application. Moreover, the applicant would be advised that should he fail to comply with the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 11.4 Two public comments (one objects and one provides comment) were received during the statutory public inspection period as stated in paragraph 10 above. In this regard, the planning considerations and assessments as mentioned 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 comments mentioned in paragraph 10, the Planning Department considers

that the temporary shop and services (real estate agency) 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 20.7.2021. 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 11:00 a.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) existing trees and landscape planting on the Site shall be maintained in satisfactory condition at all times during the approval period;
- (e) the submission of a revised 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 20.10.2018;
- (f) in relation to (e) above, the implementation of the 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 20.1.2019;
- (g) in relation to (f) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) the submission of a run-in proposal to/from Pat Heung Road within **3** months from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board by 20.10.2018;
- (i) in relation to (h) above, the provision of run-in at Pat Heung Road within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board by 20.1.2019;
- (j) 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 20.1.2019;
- (k) if any of the above planning condition (a), (b), (c), (d) or (g) 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;

- (l) if any of the above planning conditions (e), (f), (h), (i) or (j) 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
- (m) 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 "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. 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 with plans and attachments received on 24.5.2018
- Appendix Ia** Further Information (FI) received on 28.6.2018 in response to the comments of C for T
- Appendix Ib** FI received on 5.7.2018 in response to the comments of C for T
- Appendix Ic** FI received on 10.7.2018 in response to departmental comments

Appendix II	Previous applications covering the application site
Appendix III	Similar applications in the same “AGR” zone on the OZP
Appendices IV-1 – IV-2	Public comments received during statutory publication period
Appendix V	Advisory Clause
Drawing A-1	Site Plan
Drawing A-2	Site Plan with landscape proposal
Drawing A-3	Drainage Proposal
Drawing A-4	Fire Services Installations Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JULY 2018**