

RNTPC Paper No. A/YL-KTS/795
For Consideration by
the Rural and New Town
Planning Committee
on 21.9.2018

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL FOR TEMPORARY
USE/DEVELOPMENT UNDER SECTION 16 OF THE TOWN PLANNING
ORDINANCE**

APPLICATION NO. A/YL-KTS/795

- Applicant** : Mr. TANG Wai Kwan
- Site** : Lot 291 (Part) in D.D. 109, Kam Tin Road, Kam Tin, Yuen Long
- Site Area** : About 295 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/14
- Zoning** : “Village Type Development” (“V”)
[maximum building height of 3 storey (8.23m)]
- Application** : Renewal of Planning Approval for Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to use the application site (the Site) for temporary shop and services (real estate agency) for a period of 3 years. According to the notes of the OZP, “shop and services” is a column 2 use within the “V” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with planning permission with validity up to 19.10.2018.
- 1.2 The Site is the subject of four previous applications for temporary open storage for construction materials, temporary private car park and temporary shop and services (real estate agency). The last application No. A/YL-KTS/676 for the same applied use and submitted by the same applicant as the current application was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 18.9.2015 for a period of 3 years with the validity up to

19.10.2018. All approval conditions of the last application have been complied with.

- 1.3 According to the information provided by the applicant, there is no change to the applied use, floor area and number of structures approved under the last application No. A/YL-KTS/676. Three structures with a total floor area of about 128.9m² and building height ranging from 3m to 4m (1 storey) are erected on-site for shelter and office uses. The Site is accessible via a local track from Kam Sheung Road and 2 private car parking spaces are provided within the Site. The operation hours are between 9:00 a.m. and 5:00 p.m. Mondays to Saturdays and no operation on Sundays and public holidays. The layout plan as submitted by the applicant is in **Drawing A-1**.
- 1.4 When compared with the last approved application No. A/YL-KTS/676, the applied use and development parameters of the current application remain the same.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application form and plans received on 27.7.2018. **(Appendix I)**
 - (b) Further Information (FI) received on 27.8.2018 in response to the comments of the Commissioner for Transport (C for T) **(Appendix Ia)**
(accepted and exempted from publication and recounting requirements)
 - (c) Further Information (FI) received on 4.9.2018 in response to the departmental comments **(Appendix Ib)**
(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 section 8 of the application form and FI in **Appendices I to Ib**. They can be summarized as follows:

The applicant would like to continue his operation and the applied use is to serve the residents in the vicinity. No complaint has been received in these few years.

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 Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31) by posting notice near entrance of the Site and sending notice to Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guideline for “Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development” (TPB PG-No. 34B) is relevant to this application. The relevant assessment criteria are attached at **Appendix II**.

5. Background

The Site was granted with planning permission on 18.9.2015 for the same applied use for a period of 3 years till 19.10.2018. Should the application for the same use is not granted and the current shop and services use on site continues after the expiry of the current planning approval (i.e. the use continues but without a valid planning permission), such use would be considered as an unauthorized development under the Town Planning Ordinance and enforcement action would be taken against it.

6. Previous Applications

6.1 The Site is the subject of four previous planning applications (No. A/YL-KTS/512, 524, 582 and 676) all submitted by the same applicant as the current application for various uses. Details of the applications are summarized in **Appendix III** and the locations of the sites are shown on **Plan A-1**.

6.2 Application No. A/YL-KTS/512 for temporary open storage of construction material for a period of 3 years was rejected by the Committee on 26.11.2010 on the grounds that the development was not in line with the planning intention of the “V” zone; the development did not comply with the Board’s Guidelines for “Application for Open Storage and Port Back-up Uses” in that there was no exceptional circumstance that warranted sympathetic consideration as no previous planning approval granted at the site and there were adverse departmental comments and local objection against the development; the applicant failed to demonstrate that the development would not generate adverse environmental, traffic, landscape and drainage impacts; and the approval of the application would set an undesirable precedent.

- 6.3 Application No. A/YL-KTN/524 for temporary private car park (private vehicles and light goods vehicles) was approved with conditions by the Committee on 18.2.2011 for a period of 3 years for the reasons that the development would not frustrate the long-term planning intention of the “V” zone and relevant Government department consulted had no adverse comment on the application.
- 6.4 The application No. A/YL-KTS/582 and the last application No. A/YL-KTS/676 for the same use as the current application for a period of 3 years were approved with conditions by the Committee on 19.10.2012 and 18.9.2015 respectively mainly for the reasons that approval of the application on a temporary basis would not jeopardize the planning intention of the “V” zone; the development could provide real estate agency service to serve some of the needs of the local villagers and neighbouring residential developments; the development was considered not incompatible with the surrounding environment; relevant departments had no adverse comment; and the technical requirements could be addressed by appropriate approval conditions. All approval conditions under the last Application No. A/YL-KTS/676 including the submission of drainage record, and the submission and provision of fire service installations (FSIs) proposal have been complied with.
- 6.5 When compared with the last approved application No. A/YL-KTS/676, the applied use and all development parameters of the current application remain the same.

7. Similar Applications

- 7.1 There are four similar Applications No. A/YL-KTS/502, 648, 758 and 782 for various temporary shop and services uses (real estate agency, martial art goods) within the same and adjoining “V” zone across Kam Sheung Road. All similar applications were approved with conditions by the Committee for a period of 3 years on 10.9.2010, 17.10.2014, 22.12.2017 and 18.5.2018 respectively for similar reasons that approval of the application on a temporary basis would not jeopardize the planning intention of the “V” zone; the developments were considered not incompatible with the surrounding environment; relevant departments had no adverse comment; and the 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 IV** and the locations of the application sites are shown on **Plan A-1**.

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

- 8.1 The Site is:
- (a) paved, fenced and currently used for the applied use with a valid planning permission under A/YL-KTS/676; and

- (b) accessible from Kam Sheung Road via a local track.
- 8.2 The surrounding areas are rural in character, mixed with storages yards, residential structures/dwellings, shop and services and some unused/vacant lands:
- (a) to its north are storage yards and parking of vehicles without valid planning permission and residential dwellings/structures. To its immediate west are residential estate named Kam Fung Garden;
 - (b) to its east across the local track is a piece of vacant land and some storage yards (one with planning permission (A/YL-KTS/782 for shop and services (martial art goods retail store)). To its further east are residential estates named Greenview Garden and Placid Groves; and
 - (c) to its south across Kam Sheung Road are some unused/vacant land and a residential estate named as Noble Park.

9. 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.

10. Comments from Relevant Government Departments

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

Land Administration

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

- (a) The Site comprises an Old Scheduled 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) Lot No. 291 (Part) in D.D. 109 within the Site is covered by a Short Term Waiver (STW) No. 3746 to permit structures erected thereon for the purposed of “Shop and Services (Real Estate Agency)”.
- (c) The Site is located within “V” zone and the village environ of Kam Tin Shi. Under the prevailing policy, land within “V” zone or village environs is primarily reserved for development of NTEH by indigenous villagers under the NT Small House Policy.
- (d) The Site is accessible from Kam Sheung Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (e) 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.
- (f) Lot No.291 in D.D. 109 is subject to LandsD’s lease enforcement actions.
- (g) 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 where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above 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 or premium or fee, as may be imposed by the LandsD.
- (h) No Small House application is approved or under processing at the Site.

Traffic

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

- (a) He has no comment on the application from the traffic engineering perspective.
- (b) Should the application be approved, an approval condition stating 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.

- (c) The applicant is reminded that sufficient space within the Site should be provided for maneuvering of vehicles.
- (d) The Site is connected to the public road network via a section of a local access road which is not managed by TD.
- (e) The land status of the local access road to the Site from Kam Sheung Road should be checked with LandsD. Moreover, relevant management and maintenance authorities on using the road for accessing the Site should be consulted.

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

- (a) HyD does not and will not maintain any access connecting the Site and Kam Sheung Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) There was no environmental complaint received in the past three years. The applicant is also 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” to minimize any potential environmental nuisance.

Landscape

10.1.5 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 point of view.
- (b) The Site involves a previous application for the same use to which she has no objection to from landscape planning perspective.
- (c) Compared to the aerial photo of 2018 to photo of 2013 (under previous application), there is no significant change in rural village

character comprised of village houses, car parks and tree groups. The applied use is not incompatible with the surrounding landscape context. Further adverse impact on existing landscape character and landscape resources due to the applied use is not anticipated.

- (d) Should the application be approved, approval condition on the maintenance of existing trees and landscape plantings to satisfactory condition during the approval period should be included in the planning approval.

Drainage

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

- (a) He has no in-principle objection to the development.
- (b) Based on the submission in the application, the applicant would maintain the existing drainage facilities as those implemented under the previous application No. A/YL-KTS/676.
- (c) Should the application be approved, approval conditions on the maintenance of the drainage facilities implemented under application No. A/YL-KTS/676 and submission of the records of the existing drainage facilities on site to his satisfaction should be included in the planning approval.

Fire Safety

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

- (a) He has no objection in principle to the application subject to fire service installations (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 of where the proposed FSIs 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 (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) He has no in-principle objection on the applied use at the Site under the BO.
- (b) There is no record of approval by the Building Authority for the structures existing at the Site and his department is not in a position to offer comments on their suitability for the use related to the application.
- (c) If the existing structures are erected on leased land without approval of the BD, they are unauthorized under the BO and should not be designated for any approved use under application.
- (d) Before any new building works are to be carried out on the Site, prior approval and consent of the Building Authority (BA) 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.
- (e) It appears that the Site does not abut on a specified street having a width of not less than 4.5m wide, in such respect, the development intensity shall be determined under the Building (Planning) Regulations 19(3) at building plan submission stage. The Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation 5 and emergency vehicular access shall be provided under the Building (Planning) Regulation 41D.
- (f) For UBW erected on leased land, enforcement action may be taken by the BA 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.
- (g) The structures may be considered as temporary buildings and are subject to control under the Building (Planning) Regulations Pt. VII.

District Officer's Comments

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

He has not received any comment from locals and he has no particular comments on the application.

10.2 The following Government departments have no comment 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).

11. Public Comment Received During Statutory Publication Period

On 3.8.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 24.8.2018, no public comment was received.

12. Planning Considerations and Assessments

12.1 The application is a renewal application for temporary shop and services (real estate agency) for a period of 3 years in “V” zone. 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. 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 application 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 process at the Site. According to the applicant, the applied use is to serve the residents in the vicinity. Approval of the application on a temporary basis for a period of 3 years would not jeopardize the long-term planning intentions of the “V” zone.

12.2 The development is considered not incompatible with the surrounding areas which are rural in character predominated by a mix of residential structures/dwellings, storage yards and parking of vehicles. The Site is involved in two previous planning applications No. A/YL-KTS/582 and 676 for the same applied use submitted by the same applicant approved with conditions by the Committee on 19.10.2012 and 18.9.2015 respectively. Also, four similar applications (No. A/YL-KTS/502, 648, 758 and 782) for the same or similar

shop and services uses were also approved with conditions by the Committee from 2010 to 2018 within the same and the adjoining “V” zone (paragraph 7 and **Plan A-1** refer). Approval of the application is in line with the Committee’s previous decisions.

- 12.3 This application is in line with the TPB PG-NO. 34B in that there has been no material change in planning circumstances since the last planning approval was granted under Application No. A/YL-KTS/676 on 18.9.2015 and all the approval conditions of the last application, including the submission of drainage record, and the submission and provision of FSIs proposal have been complied with. No environmental complaint has been received in the past 3 years. There is also no adverse comment from relevant departments and no local objection. In this regard, sympathetic consideration could be given to the current renewal application.
- 12.4 Departments consulted including C for T, CE/MN of DSD, D of FS and CTP/UD&L of PlanD have no adverse comments on the application. To minimize the possible nuisance generated by the development, approval conditions restricting the operations hours are recommended in paragraph 13.2 (a) to (b) below. 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. 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. 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 13.2 (c) to (h) below.
- 12.5 No public comment was received during the statutory publication period.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 above, the Planning Department considers that the temporary shop and services (real estate agency) could be tolerated for a period of 3 years.
- 13.2 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, and be renewed from 20.10.2018 until 19.10.2021. The following approval conditions and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 5:00 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) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the existing trees and landscape plantings on the Site shall be maintained at all times during the planning approval period;
- (e) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of the records of the existing drainage facilities on Site within **3** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 20.1.2019;
- (g) the submission of fire service installations proposal within **6** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 20.4.2019;
- (h) in relation to (g) above, the provision of fire service installations within **9** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 20.7.2019;
- (i) if any of the above planning conditions (a), (b), (c), (d) 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;
- (j) if any of the above planning conditions (f), (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 application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

[The above approval conditions are the same as those under planning permission for previous application No. A/YL-KTS/676.]

Advisory Clauses

The recommended advisory clauses are at **Appendix V**.

- 13.3 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.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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.
- 14.3 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.

15. Attachments

- Appendix I** Application form with supplementary planning statement and plans received on 27.7.2018
- Appendix Ia** FI received on 25.8.2018 in response to the comments of the C for T
- Appendix Ib** FI received on 4.9.2018 in response to departmental comments
- Appendix II** Relevant Extracts of Town Planning Board Guidelines for Renewal of Planning Approval and Extension of Time for Compliance with Planning Condition for Temporary Use or Development (TPB PG-No. 34B)
- Appendix III** Previous applications covering the Site
- Appendix IV** Similar applications within the same and adjoining "V" zones on the Kam Tin South OZP
- Appendix V** Advisory Clause

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| Drawing A-1 | Layout Plan |
| Plan A-1 | Location Plan with Previous and Similar Applications |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plans A-4 | Site Photos |

**PLANNING DEPARTMENT
SEPTEMBER 2018**