

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/799

<u>Applicant</u>	: Mr. TANG Tsz-ki
<u>Site</u>	: Lot 367 RP (Part) in D.D. 109, Kam Sheung Road, Kam Tin South, Yuen Long
<u>Site Area</u>	: About 284m 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>Zoning</u>	: “Village Type Development” (“V”) [maximum building height of 3 storeys (8.23m)]
<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 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 for the “V” zone on the OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission (**Plan A-4**).
- 1.2 The Site is subject to two previous applications No. A/YL-KTS/502 and 648 submitted by the same applicant for the same applied use as the current application. They were approved with conditions by the Rural and New Town Planning Committee (the Committee) on 10.9.2010 and 17.10.2014 respectively. The last approved application No. A/YL-KTS/648 was revoked on 17.10.2015 due to non-compliance with approval conditions in relation to the submission of existing drainage facilities record and implementation of tree preservation proposal.

- 1.3 According to the applicant, a one-storey structure with a total floor area of about 47m² and a building height of 3.5m is erected for real estate agency office use. A total of four private car parking spaces for staff and visitors are provided within the Site. The operation hours are between 9:00a.m. and 6:00p.m. daily including public holidays. The Site is accessible via a local access road connecting to Kam Sheung Road. The site layout, landscape and drainage plans submitted by the applicant are at **Drawings A-1 and A-3**.
- 1.4 Compared with the last approved application No. A/YL-KTS/648, the current application has the same site area/boundary and site layout (**Drawing A-1**).
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 28.8.2018 (Appendix I)
 - (b) Further Information (FI) received on 20.9.2018 in response to departmental comment (*accepted and exempted from publication and recounting requirements*) (Appendix Ia)
 - (c) FI received on 4.10.2018 providing clarifications (*accepted and exempted from publication and recounting requirements*) (Appendix Ib)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 9 of the application form and FIs in **Appendices I to Ib**. They can be summarized as follows:

- (a) The applied use is to provide real estate services for the local community. It is in line with the planning intention of “V” zone.
- (b) The Site is subject to two previous applications (No. A/YL-KTS/502 and 648) for real estate agency which were approved by the Committee for a period of three years. The applicant would like to continue to use the Site for the same use.
- (c) The applied use is compatible with the surrounding land uses and would not generate adverse traffic, drainage, sewage, environmental and fire safety impacts to the vicinity.
- (d) The applicant will submit photo record of drainage facilities and follow up with the approval conditions if the application is approved.

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 the entrance of the Site and sending notice to the Kam Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is the subject of a previously approved planning application for the same applied use but the planning permission has been revoked. The current use on the Site is an unauthorised development under the Town Planning Ordinance. Enforcement action would be taken.

5. Previous Applications

5.1 The Site is subject to two previous applications (No. A/YL-KTS/502 and 648) submitted by the same applicant for the same applied use 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 The applications No. A/YL-KTS/502 and 648 for temporary shop and services (real estate agency) for a period of 3 years were approved with conditions by the Committee on 10.9.2010 and 17.10.2014 respectively mainly for the reasons that the proposed development was of a relatively small scale and approval of the application on a temporary basis for a period of 3 years would not jeopardize the planning intention of the “V” zone; not incompatible with the surrounding land uses; and relevant departments had no adverse comment. All approval conditions of application No. A/YL-KTS/502 had been complied with. However, application No. A/YL-KTS/648 was revoked on 17.10.2015 due to non-compliance with planning conditions in relation to the submission of existing drainage facilities record and implementation of tree preservation proposal.

5.3 Compared with the last approved application No. A/YL-KTS/648, the current application has the same site area/boundary, applied use and site layout.

6. Similar Applications

6.1 There are 5 similar applications No. A/YL-KTS/582, 676, 758, 782 and 795 for various temporary shop and services uses within the same and adjoining “V” zone on the OZP. Details of the applications are summarized in **Appendix III** and the locations of the application sites are shown on **Plan A-1**.

- 6.2 Applications No. A/YL-KTS/582, 676, 758 and 795 for application/renewal of temporary shop and services (real estate agency) and application No. A/YL-KTS/782 for temporary shop and services (martial art goods retail shop) for a period of 3 years were approved with conditions by the Committee on 19.10.2012, 18.9.2015, 22.12.2017, 21.9.2018 and 18.5.2018 respectively for similar reasons that the approval of the application on a temporary basis would not jeopardize the planning intention of the “V” zone; the development could provide 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.

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

7.1 The Site is:

- (a) paved and currently used for the applied use without valid planning permission; and
- (b) accessible via a local access road connecting to Kam Sheung Road.

7.2 The surrounding areas are predominantly rural in character with a mixture of residential structures/dwellings, open storage yards and parking of vehicles. Some of the uses are suspected unauthorized development subject to enforcement action by the Planning Authority (**Plan A-2**):

- (a) to its immediate east, south and west are residential developments namely, Hermitage Garden and Royal Benz. Other residential developments/dwellings and parking of vehicles are located to the further west and south. To its further east are open storage yards; and
- (b) to its north across Kam Sheung Road are mainly residential developments, parking of vehicles and amenity area.

8. Planning Intention

The planning intention of the “V” 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 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 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. 367 RP (Part) in D.D. 109 within the Site is covered by a Short Term Waiver (STW) No. 3684 to permit structures erected thereon for the purpose of “Shop and Services (Real Estate Agency Office)”.
- (c) The Site is accessible from 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 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 of premium or fee, as may be imposed by the LandsD.

- (f) According to his record, there is no Small House application approved or under processing within the Site.

Traffic

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

- (a) He has no comment on the application from traffic engineering point of view.
- (b) Approval condition on 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 in the planning permission.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department (TD). 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/NT West, Highways Department (CHE/NTW, HyD):

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

Environment

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

The applicant is advised to follow the relevant 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.

Landscape

- 9.1.5 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) Site visit was conducted on 19.9.2018. Two existing trees were in good conditions. In general, further adverse landscape impact is not anticipated.
 - (c) Should the application be approved, the condition for maintenance of existing trees to satisfactory condition during the approval period should be included in the planning permission.
 - (d) The applicant is reminded of conducting weed control, observing and following information promulgated by the GLTM Section under DEVB.

Drainage

- 9.1.7 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 submitted FI (**Appendix Ib**), the applicant would submit photo record of the drainage facilities as implemented under the previous application No. A/YL-KTS/502.
 - (c) Should the application be approved, approval conditions on the maintenance of the drainage facilities implemented under application No. A/YL-KTS/502 and submission of the records of the existing drainage facilities on site to his satisfaction should be included in the planning approval.

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 (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

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

- (a) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (b) 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 works or UBW on the Site under the BO.
- (c) Before any new building works (including container/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with 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 4.5 m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulations 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 not received any local comment on the application.

9.2 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).

10. Public Comment Received During Statutory Publication Period

On 4.9.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 26.9.2018, one public comments was received from a member of the public (**Appendix IV**) objecting to the application on the grounds that the previous application was revoked due to non-compliance with approval conditions but the operation continues; and there is no indication that the applicant is prepared to meet all the conditions in the current application.

11. Planning Considerations and Assessments

11.1 The Site for applied temporary shop and services (real estate agency) falls within "V" zone which is intended 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 applied use of real estate agency is not entirely in line with the planning intention of the "V" zone. Nevertheless, according to the applicant, the proposed development is to serve the local community. Besides, DLO/YL, LandsD advises that there is no small house application approved or under processing within the Site. As such, it is considered that approval of the application on a temporary basis would not jeopardize the long-term planning intention of the "V" zone.

- 11.2 The development is considered not incompatible with the surrounding land uses which are rural in character predominated by residential developments/dwellings, parking of vehicles and open storage yards. In view of its small scale and in close proximity to Kam Sheung Road, it is unlikely that the applied use will generate significant environmental nuisance. Relevant departments consulted including DEP have no adverse comment on the application. To minimize the possible nuisance generated by the development, approval conditions restricting operation hours and types of vehicles are recommended in paragraph 12.2 (a) and (b) below. Non-compliance with the approval condition will result in revocation of the planning permission and unauthorised 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. In addition, 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 (h) below.
- 11.3 There are also five similar applications for temporary shop and services uses within the same and adjoining “V” zone on the OZP approved with conditions by the Committee as stated in paragraph 6 above. The Site is the subject of two previous applications No. A/YL-KTS/502 and 648 submitted by the same applicant for the same use as the current application which were approved with conditions by the Committee on 10.9.2010 and 17.10.2014 respectively. Compared with the last approved application (No. A/YL-KTS/648), the current application has the same site area/boundary and site layout. For the last approved application, the applicant has complied with the approval conditions on submission of tree preservation proposal and submission and implementation of FSIs. However, the last approval was revoked on 17.10.2015 due to non-compliance with planning conditions in relation to the submission of existing drainage facilities record and implementation of tree preservation proposal. In the current application, the applicant submitted drainage and landscape plans. In this regards CE/MN, DSD and CTP/UD&L, PlanD have no adverse comment. The applicant also stated that he would follow up with the approval conditions if the application is approved. Hence, sympathetic consideration could be given to the current application. Shorter compliance periods are recommended to monitor the progress of compliance of the conditions 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 One public comment objecting to the application was received during the statutory publication period as stated in paragraph 10 above. In this regards, 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 in paragraph 10 above, 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 19.10.2021. The following conditions of approval with shorter compliance period and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00p.m. and 9:00a.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) the existing trees 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 planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 19.1.2019;
- (g) the submission of fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 19.1.2019;
- (h) in relation to (g) above, the provision of fire service installations 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 19.4.2019;
- (i) if any of the above planning conditions (a), (b), (c), (d) or (e) 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 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.

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 re-provisioning 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 intentions, even on a temporary basis.

Advisory Clauses

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

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 attachments received on 28.8.2018

Appendix Ia FI received on 20.9.2018 in response to departmental comment

Appendix Ib	FI received on 4.10.2018 providing clarifications
Appendix II	Previous applications covering the Site
Appendix III	Similar applications within the same “V” zone on the Kam Tin South OZP
Appendix IV	Public comment received during statutory public inspection period
Appendix V	Advisory clauses
Drawing A-1	Layout Plan
Drawing A-2	Landscape Plan
Drawing A-3	Drainage Plan
Plan A-1	Location plan with similar applications
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
OCTOBER 2018**