

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-KTN/680**

<b><u>Applicant</u></b>	: Tung Tak School 通德學校
<b><u>Site</u></b>	: Government Land in D.D. 109, Shing Mun San Tsuen, Kam Tin, Yuen Long, New Territories
<b><u>Site Area</u></b>	: About 1,700m <sup>2</sup>
<b><u>Land Status</u></b>	: Government Land
<b><u>Plan</u></b>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<b><u>Zoning</u></b>	: “Village Type Development” (“V”) [maximum building height of 3 storeys (8.23m)]
<b><u>Application</u></b>	: Proposed Temporary School (Student Outdoor Activities Area) for a Period of 5 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary school (student outdoor activities area) for a period of 5 years. According to the Notes of the OZP, ‘School’ is a Column 2 use in the “V” zone which requires planning permission from the Town Planning Board (the Board). The Site is fenced and mostly vacant with some parking of vehicles, and is not subject to any previous application.
- 1.2 According to the applicant, the Site will be used for student outdoor activities area, physical education classes and other events of the existing primary school adjoining the Site. No structure is proposed at the Site. Occasionally, the Site will also be used for picking up and dropping off students for school bus and loading / unloading of school material for light goods vehicle (not exceeding 5.5 tonnes). No vehicles will be parked at the Site for a long period of time. The operation hour is 24 hours daily. The Site is accessible via Kam Kong Road to Kam Tin Road. The location plan submitted by the applicant is at **Drawing A-1**.

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

- (a) Application form with plans received on 26.9.2019 (**Appendix I**)
- (b) Further Information (FI) received on 7.11.2019 in (**Appendix Ia**) response to departmental comments  
(*exempted from publication*)

## **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 in **Appendix I**. They can be summarized as follows:

- (a) As per the school's expansion plan, classrooms and an assembly hall are being constructed within the school's existing exercise yard, resulting in a lack of space for student activities. The Education Bureau supports the school to use the Site for the proposed use.
- (b) The school operator is willing to let the public use the outdoor activities area, thus giving back to the community.

## **3. Compliance with the "Owner's Consent/Notification" Requirements**

As the site involves Government land only, the "owner's consent/notification" requirement as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) is not applicable to the application.

## **4. Background**

The Site is not the subject of any enforcement action.

## **5. Previous Application**

There is no previous application covering the Site.

## **6. Similar Applications**

6.1 There are 4 similar applications (No. A/YL-PH/139, 407, 550 and 583) for various school uses within the same "V" zone on the OZP. Details of the applications are summarized in **Appendix II** and the locations of the application sites are shown on **Plan A-1**.

6.2 Applications No. A/YL-KTN/139 and 407 were both for the extension of the existing Tung Tak School to the immediate north of the Site, which were approved with conditions on 21.12.2001 and 21.6.2013 respectively, mainly for the reasons that the proposed development was not incompatible with the

surrounding areas, which were predominantly village type developments; it was unlikely to cause any significant environmental, traffic and drainage impacts; the proposed development was supported by the Secretary for Education (SED); and relevant departments had no adverse comment. The proposed development approved under application No. A/YL-KTN/139 had not been implemented and the planning permission lapsed on 22.12.2004. Application No. A/YL-KTN/407 involved a new annex block (1-storey with floor area of 524m<sup>2</sup>) at the original basketball courts of the existing Tung Tak School. The proposed extension is currently under construction.

- 6.3 Application No. A/YL-KTN/550 and 583 at the same premises within the Kam Tin Centre building were for school (nursery / kindergarten) uses, which were approved with conditions by the Committee in 2017 and 2018, mainly for the reasons that the proposed development was not incompatible with the surrounding land uses; relevant departments had no adverse comments; and technical concerns could be addressed by appropriate approval conditions. However, they were both revoked due to non-compliance with the approval conditions.

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

### 7.1 The Site is:

- (a) located within the Kam Tin Shing Mun San Tsuen;
- (b) fenced, mostly vacant with some areas used for parking of vehicles; and
- (c) accessible via Kam Kong Road connecting to Kam Tin Road to its south (**Plan A-2**).

### 7.2 The surroundings are generally residential in character mixed with residential structures / dwellings, vacant / unused land and a school:

- (a) to its immediate north is the Tung Tak School;
- (b) to its east and west are village houses of Kam Tin Shing Mun San Tsuen and Tai Hong Wai;
- (c) to its further north are parking of vehicles and fallow agricultural land; and
- (d) to its south is a Tsz Tong, sitting-out area, public restroom, police post and market. To the further south is Kam Tin Road.

## **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 the ground floor of a New Territories Exempted House (NTEH). 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 is located on unleased Government Land (GL). No permission is given for occupation of GL (about 1,700m<sup>2</sup> subject to verification) included in the Site. The act of occupation of GL without Government's prior approval is not allowed. With the implementation of the tightened arrangements for handling regularization applications, LandsD will no longer accept application for regularization of new or extension of unlawful occupation of GL or erection of new structures which is found commenced on or after 28.3.2017.
- (b) The Site is accessible to Kam Tin Road via GL. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way.
- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structures shall not exceed the relevant airfield height limit within SKAHRA.
- (d) Under the prevailing policy, direct grant / Short Term Tenancy (STT) over GL that is capable of separate alienation would only be considered if the applicant could obtain a policy support from the relevant bureau / department for the proposed development even if a planning permission is given. However, there is no guarantee that such application(s) will be approved.
- (e) The Site is located adjoining STT No. 2765 for Primary School use. An application for modification of this STT has been received by his office and the Site is proposed to be included into the tenancy area. The Education Bureau has expressed no objection to the application for modification of STT No. 2765.
- (f) No Small House (SH) application has been approved at the Site. There are a total of 14 SH applications under processing within the Site. However, the processing of SH applications involving

GL are being withheld in light of the judgement of the Judicial Review (JR) case on SH policy in 4/2019.

### **Education**

#### 9.1.2 Comments of the SED:

He has no objection to Tung Tak School's use of the Site as a temporary school (student outdoor activities area) from the education perspective.

### **Traffic**

#### 9.1.3 Comments of the Commissioner for Transport (C for T):

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, 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.
- (c) The Site is connected to the public road network via a section of a local access which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) Kam Kong Road is not maintained by his office.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to the nearby public roads or exclusive road drains.

### **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" (COP) issued by the Environmental Protection Department (EPD).

### **Nature Conservation**

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

According to the aerial photo, the Site is paved. As such, he has no adverse comments on the application from nature conservation perspective.

### **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 proposed development from public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal for the development and implementation and maintenance of the drainage proposal to the satisfaction of the Director of Drainage Services or of the Board should be included.

### **Fire Safety**

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

He has no specific comment on the application provided that there is no structure being erected / to be erected.

### **Environmental Hygiene**

9.1.9 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surroundings.
- (b) For any waste generated from the activity / operation, the applicant should arrange disposal properly at their own expense.
- (c) Proper license / permit issued by FEHD is required if there is any catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.

### **District Officer's Comments**

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

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

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

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

## **10. Public Comment Received During Statutory Publication Period**

On 4.10.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment from an individual was received (**Appendix III**). The individual comments that there are no details on the status of the applicant; granting the Site to the applicant should be on the condition that the sports facilities are open to the community at weekends and when the school is closed; and as the Tung Tak School already has two basketball courts, the interest of the community should be an integral factor with regard to maximizing the potential of public land.

## **11. Planning Considerations and Assessments**

11.1 The application is for a proposed temporary school (student outdoor activities area) for a period of 5 years 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 NTEH. 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. Although there are a total of 14 SH applications under processing within the Site, DLO/YL of LandsD has advised that the processing of SH applications involving GL are being withheld in light of the judgement of the JR case on SH policy in 4/2019. As such, it is considered that temporary approval of the application for a period of 5 years would not frustrate the long-term planning intention of the "V" zone, and would not adversely affect the SH applications within the Site.

11.2 The proposed use is considered not incompatible with the surrounding land uses, which are generally residential in character mixed with residential structures /

dwellings, Tsz Tong, sitting-out area and market.

- 11.3 The proposed temporary student outdoor activities area for the adjoining Tung Tak School without any proposed structure would unlikely cause significant environmental, traffic and drainage impacts. Relevant Government departments consulted, including DLCS, DEP, C for T, D of FS and CE/MN of DSD have no adverse comment on the application. The technical requirement of C for T and CE/MN of DSD could be addressed by approval conditions (a) to (d) in paragraph 12.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority. The applicant will also be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP to alleviate any potential impact.
- 11.4 There are four similar applications for school use within the same “V” zone, which were all approved by the Committee between 2001 and 2018. Two of them involved the extension of Tung Tak School adjoining the Site. Approval of the application is in line with the Committee’s previous decisions.
- 11.5 One public comment providing views on the application was received during the statutory publication period as stated in paragraph 10 above. In this regard, the departmental comments as well as planning considerations and assessments as stated above are relevant.

## **12. Planning Department’s View**

- 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 has no objection to the proposed temporary school (student outdoor activities area) for a period of 5 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 5 years until 15.11.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval Conditions

- (a) no vehicle is allowed to queue back to or reverse onto / from public road at any time during the planning approval period;
- (b) 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 15.5.2020;
- (c) in relation to (b) 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 15.8.2020;



- (d) in relation to (c) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) if any of the above planning condition (a) or (d) 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; and
- (f) if any of the above planning condition (b) or (c) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

#### Advisory Clauses

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

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

the proposed development is not in line with the planning intention of the "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 to justify 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**

<b>Appendix I</b>	Application form with plans received on 26.9.2019
<b>Appendix Ia</b>	FI received on 7.11.2019 in response to departmental comments
<b>Appendix II</b>	Similar Applications

<b>Appendix III</b>	Public comment received during the statutory public inspection period
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1</b>	Location Plan
<b>Plan A-1</b>	Location Plan with Similar Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2019**