

RNTPC Paper No. A/YL-SK/252
For Consideration by
the Rural and New Town
Planning Committee
on 3.5.2019

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/252

- Applicant** : Chun Sing Property Limited represented by Metro Planning and Development Company Limited
- Site** : Lot 319 S.B RP (Part) in D.D. 112, Lin Fa Tei, Yuen Long
- Site Area** : About 310 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Shek Kong Outline Zoning Plan No. S/YL-SK/9
- Zoning** : “Village Type Development” (“V”)
- Application** : 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 of the OZP for “V” zone, real estate agency, regarded as a ‘Shop and Services’ use, requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission (**Plans A-2 to A-4**).
- 1.2 According to the applicant, the development involves 1 two-storey structure with a building height not exceeding 6.5m and a total floor area of about 110m² for real estate agency use. The operation hours will be between 9 a.m. and 8 p.m. daily including public holidays. Three parking spaces for private cars will be provided within the Site. The Site is accessible from Kam Sheung Road. The site layout, vehicular access, landscape and drainage plans submitted by the applicant are shown in **Drawings A-1 to A-4**. A drainage proposal was submitted for Drainage Services Department’s consideration (**Appendix I**).

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with supplementary information (**Appendix I**) received on 7.3.2019
 - (b) Further Information (FI) received on 26.3.2019 in (**Appendix Ia**) response to departmental comments
 - (c) FI received on 2.4.2019 and 9.4.2019 in response to (**Appendix Ib**) departmental comments

2. Justifications from the Applicant

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

- (a) The applied temporary real estate agency serves the daily need of the residents and is compatible with the surrounding environment.
- (b) The applied development is temporary in nature and would not jeopardize the building of New Territories Exempted House (NTEH) in the long run.
- (c) The Board has approved a good number of similar real estate agencies at “V” zone over rural Yuen Long and Tuen Mun. Similar preferential treatment should be granted to this application.
- (d) The result of preliminary technical proposals demonstrated that the actual impact generated by the applied development would be insignificant. No adverse traffic, environmental, landscape and drainage impacts are foreseen.

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. 31A) by posting site notice and sending notice to Pat Heung Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not a subject of planning enforcement action. The recent site inspection conducted by Planning Department revealed that the Site was occupied with a 2-storey temporary structure named “俊昇地產”. Despite the estate agency

was not in operation during the site inspection, the shop and services (estate agency) use may be subject to planning enforcement action. Should there be sufficient evidence to prove the development constitutes an Unauthorized Development, enforcement action will be instigated.

5. Previous Application

- 5.1 The Site was involved in one previous application No. A/YL-SK/33 for the in-situ improvement works to an existing vehicle repair workshop (paving of the site). Details of this application and its location are shown in **Plan A-1** and **Appendix II**.
- 5.2 Application No. A/YL-SK/33 for in-situ improvement works to an existing vehicle repair workshop (paving of the site) submitted by different applicant was approved with condition by the Board on 6.12.1996 on the consideration that the improvement work can bring about environmental improvement both to the site and to the surrounding area; and the approval of the application only covers paving of the site, which is no contradiction with the Government policy to phase out the undesirable uses in the rural area. The approval condition has been complied with.

6. Similar Applications

There is no similar application for 'Shop and Services' use within the same "V" zone. However, there are 12 similar applications for 'Shop and Services' use (including real estate agency use amongst others) within the other "V" zones on the Shek Kong OZP. They were all approved with conditions by the Committee for a period of 1 or 3 years between 2009 and 2018.

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

- 7.1 The Site is:
- (a) paved and fenced, currently occupied for the applied use without valid planning permission; and
 - (b) abutting Kam Sheung Road to its north and accessible from Kam Sheung Road.
- 7.2 The surrounding areas are predominantly rural in character mixed with residential dwellings/structures and other miscellaneous uses:
- (a) to its immediate east and south are open storage/storage yards. To its further east, south and west are residential dwellings/structures, car park, real estate agency and vacant/unused lands; and

- (b) to its north across Kam Sheung Road are a residential development namely, Lotus Hill, residential dwellings/structures, open storage/storage yards, plant nursery, pet training center, vehicle repairing workshop and vacant/unused lands.

8. Planning Intention

The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on ground floor of a 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 comprises an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) Within the Site, Lot No. 319 S.B RP in D.D 112 is currently covered by Short Term Waiver (STW) No. 2075 to permit structure(s) erected thereon for the purpose of “Car Repairing”.
- (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 the 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 planning application, the STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the applied 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 LandsD.
- (f) 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 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 road which is not managed by his department. The land status of the local access road should be checked with the Lands Department. 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/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) His department does not and will not maintain the 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

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

The applicant is 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” (the COP) to minimise any potential environmental nuisances.

Drainage

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

- (a) He has no objection in-principle to the development from the public drainage point of view and no adverse comment on the submitted drainage proposal.
 - i. The applicant should implement the drainage facilities on Site in accordance with the agreed drainage proposal.
 - ii. The applicant is required to rectify the drainage system if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of drainage or nuisance caused by a failure of the drainage system.
 - iii. The development would neither obstruct overland flow nor adversely affected any existing natural streams, village drains, ditches and the adjacent areas.
 - iv. The applicant should consult DLO/YL and seek consent from relevant lot owners for any works to be carried out outside his lot boundary before commencement of the drainage works.
- (b) Should the application be approved, the conditions requiring the implementation and maintenance of the agreed drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.

Building Matters

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

- (a) 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 should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of BD, they are UBW under the BO and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by 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 (B(P)R) 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 B(P)R at the building plan submission stage.

Nature Conservation

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

- (a) He has no comment on the application from nature conservation perspective.
- (b) Should the application be approved, the applicant is reminded to avoid causing pollution to the drainage channel abutting the Site.

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) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

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

- (a) His office has no comment on the application
- (b) His office conducted a local consultation from 15.3.2019 to 5.4.2019 consulting the Village Representatives (VR) of Lin Fa Tei and he received two representations objecting to the application as the applied use is an unauthorized development without valid planning permission, the development generates adverse traffic impact and disrupt the feng shui.

9.2 The following departments have no objection to or no comment on the application:

- (a) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (e) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 15.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 5.4.2019, two public comments were received (**Appendices III-1 to III-2**). They are the same to the two representations relayed from DO(YL), HAD objecting to the application as the applied use is an unauthorized development without valid planning permission, the development generates adverse traffic impact and disrupt the feng shui.

11. Planning Considerations and Assessments

11.1 The application is for temporary shop and services (real estate agency) 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. 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 NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. Although the applied development is not entirely in line with the planning intention of the “V” zone, similar ‘Shop and Services’ use on the ground floor of a NTEH is always permitted within the “V” zone, and other commercial uses may be permitted upon application to the Board. The applied development could provide real estate agency service to serve some of the needs of the residents. According to DLO/YL of LandsD, there is no Small House application approved or under processing at the Site. Approval of the application on a temporary basis for a period of 3 years would not jeopardize the planning intention of the “V” zone.

11.2 The development is considered not incompatible with the surrounding land uses which are predominantly rural in character mixed with residential dwellings/structures, car park, vacant/unused lands, open storage yards, vehicle repairing workshop, plant nursery and pet training center.

11.3 Relevant departments consulted, including DEP, DAFC, C for T, CE/MN of DSD, CTP/UD&L of PlanD and D of FS have no objection to or adverse comment on the application. In view of its small scale, business nature and frontage onto Kam Sheung Road, significant adverse environmental, traffic, landscape and drainage impacts on the surrounding area are not envisaged. To minimize the possible environmental nuisance generate by the development, approval conditions restricting operation hours and the 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 the Site will be subject to enforcement

action by the Planning Authority. Besides, the applicant will also be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (i) below.

- 11.4 The Site is subject to one previous application No. A/YL-SK/33 for the in-situ improvement works to an existing vehicle repair workshop (paving of the site) submitted by different applicant, which was approved with condition by the Board on 6.12.1996. There is no similar application for ‘Shop and Services’ use within the same “V” zone. However there are 12 similar applications for ‘Shop and Services’ use within the other “V” zones on the OZP approved with conditions by the Committee for a period of 1 or 3 years between 2009 and 2018 as mentioned in paragraph 6 above.
- 11.5 There are two public comments received during the public inspection period and are the same to the two representations relayed from DO(YL), HAD. They are objecting to the application mainly on the ground of adverse traffic impact as set out in paragraph 10 above. In this regard, C for T has no objection to/adverse comment on the application. The planning considerations and assessments above are also relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local representations’ comments relayed from DO(YL), HAD and the public comments mentioned in paragraphs 9 and 10 above, the Planning Department has no objection to the temporary shop and services (real estate agency) 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 3.5.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no 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 implementation of the agreed 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 3.11.2019;
- (e) in relation to (d) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 3.11.2019;
- (g) in relation to (f) above, the implementation of fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 3.2.2020;
- (h) if any of the above planning conditions (a), (b), (c) 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; and
- (i) if any of the above planning conditions (d), (f) or (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

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 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 justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

13. Decision Sought

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

- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

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| Appendix I | Application Form with supplementary information received on 7.3.2019 |
| Appendix Ia | FI received on 26.3.2019 in response to departmental comment |
| Appendix Ib | FI received on 2.4.2019 and 9.4.2019 in response to departmental comment |
| Appendix II | Previous Application covering the Site |
| Appendices III-1 to III-2 | Public comments received during statutory publication period |
| Appendix IV | Advisory Clauses |
| Drawing A-1 | Site Layout Plan |
| Drawing A-2 | Vehicular Access Plan |
| Drawing A-3 | Landscape Plan |
| Drawing A-4 | Drainage Plan |
| Plan A-1 | Location Plan with Previous Application |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plan A-4 | Site Photos |

**PLANNING DEPARTMENT
MAY 2019**