

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-PK/245

- Applicant:** Mr. Yau Man Tat represented by New Design Consultancy
- Premises:** G/F, 9A Po Tung Road, Lot 1773 (Part) in D.D.221, Sai Kung, New Territories
- Floor Area:** 56.58 m²
- Land Status:** Private Lot for Residential Purposes
- Plan:** Approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11
- Zoning:** Area shown as 'Road'
- Application:** Temporary Eating Place (Restaurant) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the ground floor of an existing 3-storey village house (the Premises) for temporary eating place (restaurant) for a period of 3 years. The Premises fall within an area shown as 'Road' on the approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11. According to the Notes of the OZP, the proposed temporary use requires planning permission from the Town Planning Board (the Board).
- 1.2 The Premises is the subject of two previous applications No. A/SK-PK/193 and 238 both for the same temporary use and approved with conditions by the Rural and New Town Planning Committee (the Committee) on 24.2.2012 and 12.5.2017 respectively. The last approval was revoked on 12.2.2018 as the applicant failed to comply with the implementation part of the approval condition to provide fire service installations and water supplies for fire-fighting by the specified date. The Premises are being used as eating place (restaurant) without valid planning permission.
- 1.3 In support of the application, the applicant has submitted the following documents:

- (a) Application Form dated 10.4.2018 and replacement page on 11.4.2018 (**Appendix I**)
- (b) Further information (FI) dated 25.5.2018 providing clarification on compliance of approval condition of the previous planning approval (**Appendix Ia**)

1.4 The location plan and layout plan submitted by the applicant are shown in **Drawings A-1 to A-2**.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 9 of the application form at **Appendix I** and clarification on compliance of approval condition of the previous planning approval in the FI at **Appendix Ia**. They can be summarised as follows:

- (a) the proposed use provides convenience to local residents and can attract more tourists by providing an additional eating place;
- (b) the operation hours are from 1:00 p.m. to 1:00 a.m; and
- (c) despite not complying with condition (c) of the previous planning approval (A/SK-PK/238) before the compliance expiry and the planning permission being subsequently revoked, the applicant has since implemented the fire service installations and water supplies for fire-fighting.

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 obtaining consent from the land owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. Previous Applications (Plans A-1 and A-2)

The Premises are the subject of 2 previous applications No. A/SK-PK/193 and 238 for the same temporary use. They were approved with conditions by the Committee on 24.2.2012 and 12.5.2017 respectively, mainly on the grounds that the planning intention of the area shown as ‘Road’ would not be frustrated; the proposed use was considered not incompatible with the existing commercial uses on the ground level of the nearby village houses; and no adverse impacts on the surrounding areas were anticipated. The last planning permission was revoked on 12.2.2018 as the applicant failed to comply with the implementation part of the approval condition to provide fire service installations and water supplies for fire-fighting by the specified date.

5. Similar Applications

- 5.1 There are 19 similar applications (No. A/SK-PK/122, 129, 130, 151, 170, 172, 173, 174, 194, 200, 202, 203, 206, 226, 228, 229, 230, 236 and 237) for eating place on temporary basis for a period of 3 years in area shown as 'Road' on the OZP.
- 5.2 Among the applications, 18 applications (No. A/SK-PK/122, 129, 130, 151, 170, 172, 173, 174, 194, 200, 202, 203, 206, 226, 228, 229, 230 and 236) for temporary eating place on the ground floor of an existing building and/or outside seating accommodation were approved by the Committee mainly on the grounds that the planning intention of area shown as 'Road' would not be frustrated; compatible with the existing commercial uses on the ground level of the nearby houses; and no adverse impacts on the surrounding areas were anticipated.
- 5.3 Application No. A/SK-PK/237 for temporary shop and services and eating place within a proposed 2-storey building for a period of 3 years was rejected by the Committee on the grounds that the temporary nature of the application could not be established; adverse landscape impact on the surrounding areas was anticipated; and the proposed filling of the existing berm would have adverse impact on public safety.
- 5.4 Details of the applications are summarized at **Appendix II** and their locations are shown on **Plans A-1** and **A-2**.

6. The Premises and The Surrounding Areas (Plans A-1 to A-4)

- 6.1 The Premises are:
- (a) located on the ground floor of a 3-storey village house and is currently operating as a restaurant;
 - (b) the upper two floors are for residential use; and
 - (c) accessible via footpath abutting Po Tung Road.
- 6.2 The surrounding areas have the following characteristics:
- (a) the existing developments in the vicinity of the Premises are predominantly 2 to 3-storey village houses. For the houses fronting Po Tung Road, the ground floor are mostly occupied by shops and restaurants, while the upper floors are for domestic uses; and
 - (b) two open metered car parks are located about 50m northwest and 20m southeast of the Premises accessible via Hiram's Highway.

7. Planning Intention

The Premises fall within an area shown as ‘Road’ on the approved Pak Kong and Sha Kok Mei OZP No. S/SK-PK/11, and form part of land area reserved for future widening and junction improvement of Hiram’s Highway.

8. Comments from Relevant Government Departments

8.1 The following government departments have been consulted and their views are summarised as follows:

Land Administration

8.1.1 Comments of the District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD):

- (a) the Premises fall within Lot 1773 in D.D. 221 (“the Lot”). The Lot has a site area of about 700 square feet and is held under New Grant No. 5335 dated 16.5.1972 subject to a waiver letter dated 29.1.1985 and a toleration letter dated 4.4.1986. Under the said New Grant, the Lot shall not be used for any purpose other than for private residential purposes. Nevertheless, the said waiver was granted to permit the use of the ground floor of the building erected on the Lot for non-industrial purposes for a term of two years commencing from 1.10.1982 and thereafter quarterly; and
- (b) she has no objection to the application from lease point of view.

Traffic

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

in general, she has reservations on the application. The proposed temporary eating place (restaurant) falls within an area shown as ‘Road’ on the OZP. If permitted, it will affect planning of future road improvement. Notwithstanding, in view of the application being on a temporary basis, she considers that the application can be tolerated unless it is rejected on other grounds.

Environment

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

- (a) no comment on the application; and
- (b) the applicant is advised to follow the latest ‘Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses’ issued by the Environmental Protection Department.

Drainage

8.1.4 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

no in-principle objection to the application from a drainage maintenance viewpoint provided that necessary stormwater drainage facilities would be provided in association with the proposed temporary eating place not causing adverse drainage impact to the areas in the vicinity.

Licence

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

- (a) no objection to the application;
- (b) No food business shall be conducted on the proposed temporary eating place (restaurant) unless a valid licence has been obtained From the Food and Environmental Hygiene Department (FEHD); and
- (c) proper licence/permit issued by FEHD is required if there is any food business/catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. The operation of any eating place should be under a food licence issued by FEHD. If the operator intends to operate a restaurant business in the territory, a restaurant licence should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132).

Fire Safety

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

- (a) no specific comment on the application;
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission from licensing authority; and
- (c) approval conditions and advisory clauses related to fire safety are still required.

Building Matters

8.1.7 Comments of the Chief Building Surveyor/New Territories East 2 and Rail, Buildings Department (CBS/NTE2 & Rail, BD):

- (a) no comment on the application;

- (b) there is no record of approval by the Building Authority (BA) in respect of the existing buildings at the application site and his department is not in a position to offer comments on the suitability of the premises for the proposed use under the application;
- (c) as the existing building is NTEH under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121 or the previous Cap. 322), DLO/SK should be in a better position to comment on the application;
- (d) the applicant's attention is drawn to the following points:
 - (i) for Unauthorized Building Works (UBW), if any, erected on leased land, enforcement action may be taken by BA to effect their removal in accordance with his department'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, if any, on the application site under the Buildings Ordinance; and
 - (ii) the applicant should be reminded that the existing premises on the application site intended to be used for temporary eating place (restaurant) are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

District Officer's Comments

8.1.8 Comments of District Officer/Sai Kung, Home Affairs Department (DO/SK, HAD):

- (a) no comment on the application; and
- (b) local views should be fully considered.

8.2 The following government departments have no comment on/ no objection to the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department; (CHE/NTE, HyD)
- (b) Chief Engineer (Works), Home Affairs Department;
- (c) Chief Engineer/Construction, Water Supplies Department; and
- (d) Director of Agriculture, Fisheries and Conservation.

9. Public Comments Received During Statutory Publication Period

On 17.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 8.5.2018, one comment was received from an individual of the public (**Appendix III**). The

commenter objects to the application mainly on the grounds of possible nuisance to the surrounding residential areas.

10. Planning Considerations and Assessments

- 10.1 The application is for temporary eating place (restaurant) for a period of 3 years. The Premises fall within an area shown as 'Road' on the OZP which is intended to reserve area for the future widening and junction improvement of Hiram's Highway. Although the proposed use is not in line with the planning intention of the area shown as 'Road', given the temporary nature of the temporary eating place, the long-term planning intention of the area shown as 'Road' would not be frustrated. In this connection, C for T considers the temporary eating place could be tolerated and CHE/NTE of HyD has no objection to the application.
- 10.2 The proposed eating place is located at the fringe of Sai Kung Town. It is considered not incompatible with the surrounding uses which are village houses with retail shops and restaurants on the ground floors, providing retail and catering services for the neighbourhood. In view of the small scale development and it is accommodated within an existing building, it would unlikely cause nuisance, adverse traffic, drainage and environmental impacts on the surrounding areas. Relevant government departments consulted including C for T, CE/MS of DSD and DEP have no adverse comment on/objection to the application.
- 10.3 The Premises are the subject of two previously approved applications No. A/SK-PK/193 and 238 for the same temporary use submitted by the same applicant. Since the approval of the last application, there is no change in planning circumstances. The last planning approval was revoked as the applicant failed to comply with the implementation part of the approval condition to provide fire service installations and water supplies for fire-fighting by the specified date. For the current application, D of FS has no objection to the application and advised that approval conditions and advisory clauses related to fire safety are still required. To closely monitor the progress of compliance, shorter compliance periods are recommended should the Committee decide to approve the current application.
- 10.4 Regarding the public comment objecting to the application, the assessment in paragraphs 10.2 above is relevant.

11. Planning Department's Views

- 11.1 Based on the assessments made in paragraph 10 and having taken into account the public comment in paragraph 9, the Planning Department considers that the temporary eating place (restaurant) could be tolerated for a period of 3 years.
- 11.2 Should the Committee decide to approve the application, it is suggested that the planning permission shall be valid on a temporary basis for a period of 3

years until 1.6.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 1:00 a.m. to 1:00 p.m., as proposed by the applicant, is allowed on the Premises during the planning approval period;
- (b) the submission of proposals for fire service installations and water supplies for fire-fighting within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the TPB by 1.9.2018;
- (c) in relation to (b) above, the provision of fire service installations and water supplies for fire-fighting within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the TPB by 1.12.2018;
- (d) if the above planning condition (a) is not complied with at any time during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (e) if any of the above planning conditions (b) or (c) is not complied with by the specified date, the approval hereby given should cease to have effect and should on the same date be revoked without further notice.

Advisory Clauses

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

11.3 There is no strong reason to recommend rejection of the application.

12. Decision Sought

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 12.2 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.
- 12.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

13. Attachments

Appendix I Application form dated 10.4.2018 and replacement page

Appendix Ia	received on 11.4.2018
Appendix II	FI from the applicant dated 25.5.2018
Appendix III	Similar Applications
Appendix IV	Public Comment
Drawing A-1	Advisory Clauses
Drawing A-2	Location Plan submitted by the applicant
Plan A-1	Layout Plan submitted by the applicant
Plan A-2	Location Plan
Plan A-3	Site Plan
Plan A-4	Aerial Photo
	Site Photos

**PLANNING DEPARTMENT
JUNE 2018**