

RNTPC Paper No. A/NE-TK/630
For Consideration by the
Rural and New Town Planning
Committee on 9.2.2018

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

APPLICATION NO. A/NE-TK/630

- Applicant** : Miss LEE Tung Yee and Mr. MAN Kin Pong
- Site** : Lots No. 214 S.A ss.1 (Part), 214 S.B ss.1 (Part) and 214 S.A RP (Part)
in D.D.28, Lung Mei, Tai Po, New Territories
- Site Area** : About 60.11m²
- Lease** : Block Government lease demised for agricultural purpose
- Plan** : Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
- Zoning** : “Village Type Development” (“V”)
- Application** : Renewal of Planning Approval for Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of Three Years

1. The Proposal

- 1.1 On 12.12.2017, the applicants sought planning permission for renewal of planning approval to use the application site (the Site), which is outside a restaurant at the ground floor of village house at 59A Lung Mei, for temporary outside seating accommodation (OSA) for a period of three years. According to the Notes of the OZP, while ‘Eating Place’ on the ground floor of a New Territories Exempted House (NTEH) within the “V” zone does not require planning permission, such use on open ground (i.e. OSA) as an extension to a ground floor eating place in an NTEH requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site is the subject of a previous application (No. A/NE-TK/534) submitted by the same applicants for temporary OSA for a period of three years, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 27.2.2015 up to 27.2.2018. The applicants have complied with all the approval conditions.
- 1.3 Compared with the previously approved Application No. A/NE-TK/534, no change has been proposed to the OSA. The business hours are 10:30 a.m. to 10:30 p.m. daily. No parking space is proposed and the Site is accessible via

Ting Kok Road. The layout of the Site submitted by the applicants in support of the renewal application is at **Drawing A-1**.

- 1.4 In support of the application, the applicants have submitted the following documents:.
- (a) application form and attachments **(Appendix I)**
 - (b) Further information received on 3.1.2018 responding to departmental comments (accepted and exempted from publication and recounting requirements) **(Appendix Ia)**
 - (c) Further information received on 9.1.2018 responding to departmental comments (accepted and exempted from publication and recounting requirements) **(Appendix Ib)**
 - (d) Further information received on 10.1.2018 responding to departmental comments (accepted and exempted from publication and recounting requirements) **(Appendix Ic)**
 - (e) Further information received on 17.1.2018 responding to departmental comments (accepted and exempted from publication and recounting requirements) **(Appendix Id)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 8 of the application form (**Appendix I**). They can be summarised as follows:

- (a) the applied use is small in scale. Similar applications in the vicinity have been approved by the Board;
- (b) the applied use could be regarded as supporting facilities for the developments in Lung Mei, including the beach project at Lung Mei, which could energize the land in the vicinity, boost the economic development and preserve the character of the village type development; and
- (c) the applied use can serve both the visitors and the local residents and the OSA would operate from 10:30 a.m. to 10:30 p.m. daily.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Board Guidelines No. 15A (TPB PG-No. 15A) for ‘Application for Eating Place within “Village Type Development” zone in Rural

Areas under section 16 of the Town Planning Ordinance' is also relevant to this application. The relevant assessment criteria are attached at **Appendix IIa**.

- 4.2 The Town Planning Board Guidelines No. 34B on '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 IIb**.

5. **Previous Application**

The Site is the subject of a previous planning application (No. A/NE-TK/534) submitted by the same applicants for the same temporary use for a period of three years approved with conditions by the Committee on 27.2.2015 (**Plan A-1**). The planning permission is valid until 27.2.2018. All approval conditions were complied with. Details of the application are summarised at **Appendix III**.

6. **Similar Applications**

- 6.1 There are 24 similar applications (No. A/NE-TK/96, 103, 118, 157, 158, 159, 170, 218, 236, 237, 315, 412, 413, 437, 438, 447, 505, 532, 566, 568, 569, 574, 575 and 584) involving 12 sites for eating place within the same "V" zone in the vicinity of the Site. Except for Application No. A/NE-TK/96, all the other 23 applications were approved by the Committee between 1998 and 2016 mainly on considerations that they complied with the planning criteria of TPB PG-No. 15A and would unlikely create any nuisance to the local residents nor cause any adverse impacts on the surrounding areas. For Application No. A/NE-TK/96, it was rejected by the Committee on 14.8.1998 mainly on the grounds of being not in line with the planning intention of "V" zone; no information to demonstrate that the proposed development would not adversely affect the pedestrian circulation and there would be adequate car parking space; and setting of undesirable precedent.
- 6.2 Details of the applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

7. **The Site and Its Surrounding Areas** (Plans A-1 and A-2 and photos on Plans A-3 and A-4)

- 7.1 The Site is:
- (a) paved and located to the immediate east of a restaurant on the ground floor of a village house at 59A Lung Mei;
 - (b) located at the southern fringe of Lung Mei; and
 - (c) abutting a village road connecting to Ting Kok Road.
- 7.2 The surrounding areas have the following characteristics:

- (a) rural in character mainly occupied by village houses;
- (b) the village proper of Lung Mei is located to the north and west of the Site; and
- (c) a number of restaurants with OSA are located about 180m to the east of the Site. To the further southeast on the opposite side of Ting Kok Road, there are a bus terminus, a public car park and various recreational facilities including Tai Mei Tuk Water Sports Centre. The planned Lung Mei Beach is about 60m to the southwest.

8. Planning Intention

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. 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.

9. Comments from Relevant Government Departments

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

Land Administration

- 9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) the Site falls within 3 private lots namely Lots No. 214 S.A ss.1 (Part), 214 S.B ss.1 (Part) and 214 S.A RP (Part) all in D.D. 28. The Site is held under Block Government lease demised for agricultural purpose and no structures shall be allowed to be erected without prior approval from LandsD;
- (b) a recent re-inspection revealed that a semi-enclosed unauthorized canopy was found encroached onto a total of 4 private lots (including the Site and the adjoining Lot No. 214 S.A RP in D.D. 28) without LandsD’s prior approval. In view of that the applicants’ proposal is for an open/outside sitting accommodation of a restaurant under the application and it was found contradictory to the as-built situation, the applicants are required to immediately remove the said unauthorized canopy on the Site without further delay. Otherwise, appropriate lease enforcement action may be considered to be taken by DLO/TP;
- (c) as no Short Term Waiver (STW) application will be considered by DLO/TP for Lots No. 214 S.A ss.1 and 214 S.B ss.1 in D.D. 28 due to the irregularity detected is in breach of the restriction

governed by the Building Licence No. 352/99 dated 18.7.2000, he has reservation on the application;

- (d) in response to the further information submitted by the applicants dated 17.1.2018 attaching photos demonstrating the clearance of canopy on the Site, DLO/TP advises that their final inspection on 17.1.2018 revealed that the concerned unauthorised canopy erected on the Site in relation to paragraphs (b) and (c) above was completely cleared. As the Site is vacant, he has no adverse comment on the renewal application; and
- (e) no Small House application has been received for Lot No. 214 S.A RP in D.D. 28. As a Small House (NTEH) had been erected on portion of Lots No. 214 S.A ss.1 and 214 S.B ss.1 in D.D. 28 as governed by the Building Licence No. 352/99 dated 18.7.2000, it is confirmed that no new Small House application is received for the Site.

Environmental

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

- (a) while the current application seeks to renew the planning approval for the previous application No. A/NE-TK/534, the Board may consider not to grant approval or renew the permission if the temporary uses are expected to cause environmental nuisances affecting residents. Should the application be approved, the applicants are advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses”; and
- (b) there is no complaint case related to the Site in the past three years.

Drainage

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

- no adverse comment on the renewal application from drainage viewpoint. The applicants’ attention is drawn to the following;
 - (a) all storm or rain water from the lot shall be conveyed into the nearest storm-water drain;
 - (b) it is noted that the existing drainage system is to discharge all the runoff from the Site. The applicant should therefore make sure that the runoff shall be intercepted and conveyed to the discharging point properly by this existing drainage system and also the

existing downstream drainage system has adequate capacity for conveying the additional runoff from the Site;

- (c) the applicants/lot owner are required to rectify/modify the drainage system if it is found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify Government against claims and demands arising out of damage or nuisance caused by failure of the system;
- (d) the applicants are reminded that the existing drainage system proposed for discharge of the runoff from the Site is not maintained by DSD. Consent from its owner/maintenance party (including possibly DO/TP) should be sought for the proposed drainage connection works if any; and
- (e) the applicants/lot owner should take all precautionary measures to prevent any disturbance, damage and pollution from the development to any parts of the existing drainage facilities in the vicinity of the Site. In the event of any damage to the existing drainage facilities, the applicant would be held responsible for the cost of all necessary repair works, compensation and any other consequences arising therefrom.

Fire Safety

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

- (a) no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission from Licensing Authority.

Traffic

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

no in-principle objection to the application from traffic engineering point of view as long as the application involves temporary structures (outside seating accommodation) only.

Building Matters

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

the applicants' attention is drawn to the following:

- (a) if any existing structures are erected on leased land without approval of BD (not being a New Territories Exempted House), they are unauthorised under the Buildings Ordinance (BO) and should not be designated for any approved use under the subject application;
- (b) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the application site, the prior approval and consent of the BD should be obtained, otherwise they are Unauthorised Building Works (UBW). An Authorised Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (c) 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 building works or UBW on the Site under the BO;
- (d) if the proposed use under application is subject to the issue of a licence, please be reminded that any existing structures on the application site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority;
- (e) 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; and
- (f) if the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulations at the building plan submission stage.

Water Supplies

9.1.7 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) no objection to the application;
- (b) existing water mains are inside the proposed lot and will be affected. The applicants are required to either divert or protect the water mains found on site;
- (c) if diversion is required, existing water mains inside the proposed lot are needed to be diverted outside the site boundary of the

proposed development to lie in Government land. A strip of land of minimum 1.5m in width should be provided for the diversion of existing water mains. The cost of diversion of existing water mains upon request will have to be borne by the grantee/applicant; and the applicant shall submit all the relevant proposal to WSD for consideration and agreement before the works commence;

- (d) if diversion is not required, the following conditions shall apply:
- (i) existing water mains are affected and no development which requires resiting of water mains will be allowed;
 - (ii) details of site formation works shall be submitted to the Director of Water Supplies (DSW) for approval prior to commencement of works;
 - (iii) no structures shall be built or materials stored within 1.5 metres from the centre line(s) of water main(s). Free access shall be made available at all times for staff of the DWS or their contractor to carry out construction, inspection, operation, maintenance and repair works;
 - (iv) no trees or shrubs with penetrating roots may be planted in the vicinity of the water main(s). No change of existing site condition may be undertaken within the aforesaid area without the prior agreement of the Director of Water Supplies. Rigid root barriers may be required if the clear distance between the proposed tree and the pipe is 2.5m or less, and the barrier must extend below the invert level of the pipe;
 - (v) no planting or obstruction of any kind except turfing shall be permitted within the space of 1.5 metres around the cover of any valve or within a distance of 1 metre from any hydrant outlet; and
 - (vi) tree planting may be prohibited in the event that the DWS considers that there is any likelihood of damage being caused to water mains.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Commissioner of Police;
- (c) District Officer/Tai Po, Home Affairs Department;
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (e) Project Manager/North, Civil Engineering and Development Department.

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

On 19.12.2017, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 9.1.2018, no public comment was received.

11. **Planning Considerations and Assessments**

11.1 The Site falls within the “V” zone on the OZP. The application is for renewal of planning permission to use the Site for an OSA of a restaurant, which is located on ground floor of a village house at 59A Lung Mei, for a further period of three years. The proposal is the same as the previously approved scheme (Application No. A/NE-TK/534) and there has been no material change in the planning circumstances in the area since the previous temporary approval was granted. All approval conditions have been complied with. As such, the OSA under application complies with the TPB PG-34B for renewal of planning approval.

11.2 The OSA having an area of about 60.11m² is relatively small in scale. Whilst the applied use is not in line with the planning intention of the “V” zone which is primarily intended for development of NTEH/Small Houses by indigenous villagers, as advised by the DLO/TP of LandsD, there is at present no Small House application at the Site. Thus the applied use on a temporary basis for three years would not frustrate the long-term planning intention of the subject “V” zone and adversely affect the land availability for village type development within the “V” zone. DLO/TP, LandsD has no adverse comment on the application after the applicant removed the canopy on the Site.

11.3 The OSA under application is located at the fringe of Lung Mei near Ting Kok Road. It is considered not incompatible with its surrounding uses which mainly comprise village houses and recreational facilities including Tai Mei Tuk Water Sports Centre and the planned Lung Mei Beach. There are a number of similar approved OSA applications to the east of the Site (**Plan A-1**). The OSA under application, which is relatively small in scale, is not anticipated to cause significant adverse traffic and drainage impacts on the surrounding areas. According to DEP, there is no complaint case related to the Site in the past three years. Concerned Government departments, including the C for T, CE/MN, DSD and D of FS, have no objection or adverse comment on the application. In view of the above, the OSA under the renewal application is generally in line with the TPB PG-No. 15A for eating place within the “V” zone.

11.4 No public comment on the application was received.

12. **Planning Department’s Views**

12.1 Based on the assessments made in paragraph 11, the Planning Department considers that the temporary OSA could be tolerated for a further period of three 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 further period of 3 years from 28.2.2018 to 27.2.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 10:30 p.m. and 10:30 a.m., as proposed by the applicants, is allowed on the application site during the planning approval period;
- (b) the maintenance of the existing drainage facilities on the application site at all times during the planning approval period;
- (c) the provision of fire service installations and water supplies for fire-fighting 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 28.8.2018;
- (d) if the above planning conditions (a) or (b) 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;
- (e) if the above planning condition (c) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall be revoked on the same date without further notice; and
- (f) upon the 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.

Advisory Clauses

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

- 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 "Village Type Development" zone which is to designate both existing recognized villages and areas of land considered suitable for village expansion. 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 applicants.

14. **Attachments**

Appendix I	Application form with supporting documents received on 12.12.2017
Appendix Ia	Further information submitted by the applicants received on 3.1.2018
Appendix Ib	Further information submitted by the applicants received on 9.1.2018
Appendix Ic	Further information submitted by the applicants received on 10.1.2018
Appendix Id	Further information submitted by the applicants received on 17.1.2018
Appendix IIa	Relevant extract of Town Planning Board Guidelines No. 15A on Application for Eating Place within “Village Type Development” zone in Rural Areas under section 16 of the Town Planning Ordinance
Appendix IIb	Relevant extract of Town Planning Board Guidelines No. 34B on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
Appendix III	Previous planning application
Appendix IV	Similar planning applications
Appendix V	Recommended advisory clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

