

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/NE-TK/656

<u>Applicant</u>	Mr. WONG Wai Choi represented by Leadtops Raymond Limited
<u>Site</u>	Government land adjoining Lot 818 in D.D. 28, Tai Mei Tuk, Tai Po, New Territories
<u>Site Area</u>	About 29.85m ²
<u>Land Status</u>	Government land
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Village Type Development” (“V”)
<u>Application</u>	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 The applicant seeks renewal of planning approval for temporary eating place (outside seating accommodation of a restaurant (OSA)) for a period of three years at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, while ‘Eating Place’ use 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 temporary OSA has an area of about 29.85m² and there is a canopy covering the Site. The operating hours of the OSA are from 12:00 noon to 10:00 p.m. daily. The Site is paved and accessible via Ting Kok Road. The block plan and floor plan of the applied use are shown on **Drawings A-1** and **A-2** respectively.
- 1.3 The Site is the subject of two previous applications (No. A/NE-TK/413 and A/NE-TK/568) submitted by the same applicant for the same use. The last application No. A/NE-TK/568 was approved with conditions by the Rural and New Town Planning Committee (the Committee) for a period of three years on 18.12.2015 up to 18.12.2018. All the approval conditions have been complied with.

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

- (a) an application form and attachment (Appendix I)
- (b) further information (FI) received on 15.11.2018 in response to departmental comments (accepted and exempted from publication and recounting requirements) (Appendix Ia)

2. **Justification from the Applicant**

The justification put forth by the applicant in support of the application as given in Part 8 of the application form at **Appendix I** is that he wants to continue running the business of restaurant in the premises.

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

As the Site involves Government land only, the “owner’s consent/notification” 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) is not applicable to the application.

4. **Town Planning Board Guidelines**

- 4.1 The Town Planning Board Guidelines for ‘Application for Eating Place within “Village Type Development” zone in Rural Areas under section 16 of the Town Planning Ordinance’ (TPB PG-No. 15A) is relevant to the application. The relevant planning criteria are summarized in **Appendix II**.
- 4.2 The Town Planning Board Guidelines No. 34B (TPB-PG No. 34B) on ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ is relevant to this application. The relevant assessment criteria are summarized in **Appendix III**.

5. **Previous Applications**

- 5.1 The Site is the subject of two previous applications (No. A/NE-TK/413 and A/NE-TK/568) submitted by the same applicant for the same use, which were approved by the Committee with conditions for a period of 3 years on 9.11.2012 and 18.12.2015 respectively mainly on considerations that the applied temporary uses complied with the planning criteria of TPB PG-No. 15A in that they would not frustrate the long-term planning intention of “V” zone nor adversely affect the land availability for village type development; they were relatively small in scale and were not anticipated to cause significant adverse impacts on the surrounding area. For the last previous application No. A/NE-TK/568 which is valid until 18.12.2018, all the approval conditions including those related to fire safety requirements have been

complied with.

- 5.2 Compared with the previous approved applications No. A/NE-TK/413 and A/NE-TK/568, no change has been made to the development parameters and the operating hours. Details of the previous applications are summarised in **Appendix IV** and their location are shown on **Plan A-2**.

6. Similar Applications

- 6.1 There are 25 similar applications for restaurant/temporary eating place in the same “V” zone (**Plan A-1**), of which 21 applications (No. A/NE-TK/93, 118, 157, 158, 159, 170, 218, 236, 237, 315, 412, 437, 438, 447, 505, 532, 566, 569, 574, 575 and 584) involving 12 sites are located in the vicinity of the Site (**Plan A-2**). All applications were approved by the Committee or the Board on review between 1998 and 2018 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.
- 6.2 Details of the applications are summarised at **Appendix V** and their locations are shown on **Plans A-1** and **A-2**.

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

- 7.1 The Site is:
- (a) located outside the ground floor of the village house at 74 Tai Mei Tuk Village; and
 - (b) abutting a village road to its immediate south off Ting Kok Road.
- 7.2 The surrounding areas have the following characteristics:
- (a) the majority of the ground floor of the village houses as well as the open area in front of the houses in the area are used for restaurants;
 - (b) the village proper of Wong Chuk Tsuen is located to the north of the Site; and
 - (c) a village road, a cycle track and a number of bicycle hiring stalls are located to the south of the Site. To the further south on the opposite side of Ting Kok Road, there are bus terminus and public car park of Tai Mei Tuk, which is a popular tourist attraction spot with water sports and recreation facilities.

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.

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/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the renewal application;
- (b) the Site is situated on a piece of unallocated Government land adjoining Lot No. 818 in D.D. 28;
- (c) no NTEH/Small House application has been received for the Site;
- (d) recent investigation revealed that the Site has been occupied by an electricity meter box, an air-conditioner unit, chairs and tables, a porch (portion) and a canopy (portion) without prior approval from LandsD;
- (e) if planning approval and OSA licence from FEHD are obtained, the applicant is required to apply to LandsD for a Short Term Tenancy (STT) in respect of the Site as an OSA. However, there is no guarantee at this stage that STT would be approved. If the STT is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of rental and fee as considered appropriate. Otherwise, the applicant is required to vacate the Site immediately unless it is covered by valid approval. Or, appropriate land control action will be taken in due course; and
- (f) he has no comment on the applicant's clarification that the planter and retractable canopy (portion) outside the Site will be removed.

Traffic

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

- no in-principle objection to the renewal application from traffic engineering point of view.

9.1.3 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

- no comment on the renewal application on condition that no public road would be damaged by the applied use.

Food and Environmental Hygiene

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

- (a) no comment on the renewal application; and
- (b) the applicant should be reminded that whenever the restaurant licensee wishes to include an OSA into his licensed premises, he is required to submit an application to Food and Environmental Hygiene Department (FEHD) for approval. If the application of OSA is acceptable for further processing, FEHD will refer it to relevant departments including Buildings Department, Planning Department, Home Affairs Department and Lands Department for clearance.

Environment

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

- (a) no comment on the renewal application from environmental planning perspective;
- (b) the applicant should follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites”; and
- (c) there was no complaint received related to the Site in the past three years.

Drainage

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

- (a) no objection to the renewal application from public drainage viewpoint;
- (b) as the approval conditions on drainage aspects under the previous applications have already been complied with, an approval condition on “maintenance of existing drainage facilities on the application site at all times during the planning approval period” is recommended for the renewal application; and
- (c) there are existing DSD maintained public sewers available for

connection in the vicinity of the Site. The applicant should be reminded to follow the established procedures and requirements for connecting sewers from the Site to the public sewerage system. A connection proposal should be submitted to DSD via DLO/TP for approval beforehand. Moreover, the sewerage connection will be subject to DSD's technical audit, for which an audit fee will be charged.

Building Matters

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

- (a) no comment on the renewal application; and
- (b) the applicant should note the advisory comments related to the Buildings Ordinance at **Appendix VI**.

Fire Safety

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

- no in-principle objection to the renewal application subject to fire service installations being provided to his satisfaction.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Director of Leisure and Cultural Services;
- (c) Director of Electrical and Mechanical Services;
- (d) District Officer/Tai Po, Home Affairs Department;
- (e) Head of Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (f) Project Manager (North), Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 26.10.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, no public comment on the application was received.

11. Planning Considerations and Assessments

11.1 The Site falls within the "V" zone on the OZP. The application is for the renewal of planning permission granted under a previous application (No. A/NE-TK/568) for OSA of a restaurant, which is located outside the ground floor of a village house at 74 Tai Mei Tuk Village, for a period of three years. Whilst the OSA is not in line with the planning intention of the "V" zone which is primarily intended for development of NTEH/Small House by

indigenous villagers, as advised by the DLO/TP of LandsD, there is at present no Small House application at the Site. Hence, the applied use on a temporary basis for three years would neither frustrate the long-term planning intention of the subject “V” zone nor adversely affect the land availability for village type development within the “V” zone.

- 11.2 The proposal is the same as the previously approved scheme (Application No. A/NE-TK/568) and there has been no material change in the planning circumstances in the area since the previous temporary approval was granted. All approval conditions of the previous application including the submission and implementation of FSI proposal have been complied with. No environmental complaint has been received in the past 3 years. There is also no adverse comment from relevant departments and no local objection, and there would be no adverse planning implications arising from the renewal of the planning approval. Moreover, the 3-year approval period sought is not longer than the original validity period of the previous approval and is reasonable. As such, the OSA under application complies with TPB PG-No. 34B for renewal of planning approval.
- 11.3 The Site is located at the southern fringe of Wong Chuk Tsuen and abuts a village road to its immediate south off Ting Kok Road. A majority of the ground floors as well as the open areas in front of the village houses in the surrounding area are used for restaurants. To the further south on the opposite side of Ting Kok Road are the bus terminus and public car park of Tai Mei Tuk, which is a popular tourist attraction spot with water sports and recreation facilities. The applied use is considered not incompatible with its surrounding uses. The OSA having an area of about 29.85m² is small in scale and is not anticipated to cause significant adverse landscape, traffic, drainage, sewage disposal and fire safety impacts on the surrounding areas. According to DEP, there was no environmental complaint received related to the Site in the past three years. Concerned Government departments, including C for T, CE/MN of DSD, CE/C of WSD, DFEH, D of FS, H(GEO) of CEDD, CHE/NTE of HyD, DLCS, DEMS and DO/TP of HAD have no objection to or adverse comment on the application. In view of the above, the OSA under application is generally in line with the TPB PG-No. 15A for eating place within the “V” zone.
- 11.4 The Site is the subject of two previous applications (No. A/NE-TK/413 and A/NE-TK/568) submitted by the same applicant for the same use, which were approved with conditions by the Committee for a period of three years on 9.11.2012 and 18.12.2015 respectively. There are also 21 similar applications (No. A/NE-TK/93, 118, 157, 158, 159, 170, 218, 236, 237, 315, 412, 437, 438, 447, 505, 532, 566, 569, 574, 575 and 584) involving 12 sites for eating place use in close vicinity of the Site (**Plan A-2**). All these applications were approved by the Committee or the Board on review 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. Approval of the current application is in line with the Committee’s previous decisions.
- 11.5 There is no public comment received on the application during the statutory publication period.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 above, the Planning Department has no objection to the application.
- 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 three years, and be renewed from 19.12.2018 until 18.12.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 10:00 p.m. and 12:00 noon, as proposed by the applicant, is allowed on the application site during the planning approval period;
- (b) maintenance of existing drainage facilities on the application site at all times during the planning approval period;
- (c) the provision of fire service installations 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 19.6.2019;
- (d) if any of 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; and
- (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 on the same date be revoked without further notice.

Advisory Clauses

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

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:
- the applied use 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) 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 received on 18.10.2018
- Appendix Ia Further Information received on 15.11.2018
- Appendix II Relevant Extract of TPB Guidelines No. 15A for Application for Eating Place within “Village Type Development” zone in Rural Areas under section 16 of the Town Planning Ordinance
- Appendix III Relevant Extracts of TPB Guidelines No. 34B for Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
- Appendix IV Previous Applications
- Appendix V Similar Applications
- Appendix VI Advisory Comments of Chief Building Surveyor/New Territories West, Buildings Department
- Appendix VII Recommended Advisory Clauses

- Drawing A-1 Block Plan submitted by the applicant
- Drawing A-2 Floor Plan submitted by the applicant
- Plan A-1 Location Plan
- Plan A-2 Site Plan
- Plan A-3 Aerial Photo
- Plan A-4 Site Photo