

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

**APPLICATION NO. A/ST/963**

<b><u>Applicant</u></b>	:	HO Chi Kiu Kenny represented by BerLin Consultancy Services Ltd
<b><u>Premises</u></b>	:	Ground Floor, 12A Ninth Street, Tai Wai Village, Tai Wai, Sha Tin, New Territories
<b><u>Floor Area</u></b>	:	21.91m <sup>2</sup> (about)
<b><u>Lease</u></b>	:	(a) Lot No. 646 in D.D. 180 (b) Old Scheduled Building Lot with registered area of 0.01 acre (c) no restriction on the user of the lot
<b><u>Plan</u></b>	:	Approved Sha Tin Outline Zoning Plan (OZP) No. S/ST/34
<b><u>Zoning</u></b>	:	“Village Type Development” (“V”)  [maximum building height of 3 storeys (8.23m), or the height of the existing building, whichever is the greater]
<b><u>Application</u></b>	:	Proposed Eating Place (Restaurant)

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for proposed ‘Eating Place (Restaurant)’ use (**Plans A-1 and A-2**). According to the Notes of the OZP, ‘Eating Place’ use on the ground floor of a building other than a New Territories Exempted House (NTEH) within “V” zone requires planning permission from the Town Planning Board (the Board). The Premises has been newly refurbished for the applied use.
- 1.2 According to the applicant, the proposed restaurant, with a floor area of about 21.91m<sup>2</sup>, includes food counter, seating accommodation and lavatories. The Premises is located on part of the ground floor of an existing four-storey building at 12A Ninth Street, Tai Wai Village abutting Chik Fu Street. Plan showing the proposed layout of the Premises submitted by the applicant is shown in **Drawing A-1**.
- 1.3 According to District Lands Officer/Shan Tin, Lands Department (DLO/ST, LandsD), there is no record of ‘Certificate of Exemption’/ ‘No Objection to Occupy’ letter relating to the existing building. The Chief Building Surveyor/New Territories (2) & Rail, Buildings Department (CBS/NTE(2)&Rail,

BD) also advised that there is no record of approval by the Building Authority in respect of the existing building at the subject site<sup>1</sup>.

1.4 In support of the application, the applicant submitted the application form with attachment on 19.9.2018 (**Appendix I**).

## **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**, which state that the applicant wishes to provide catering services to the local community.

## **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 obtaining consent of the current land owner. Detailed information would be deposited at the meeting for Members’ inspection.

## **4. Previous Application**

There is no previous application at the Premises.

## **5. Similar Application**

There is no similar application within the same “V” zone on the OZP.

## **6. The Premises and its Surrounding Areas (Plans A-1 to A-3)**

6.1 The Premises is:

- (a) located on the ground floor of a four-storey building (**Plan A-3a**); and
- (b) newly refurbished for the proposed ‘Eating Place’ (**Plan A-3b**).

6.2 The subject building:

- (a) has a building height of four storeys (**Plan A-3a**); and
- (b) is newly refurbished and ready for proposed commercial uses including ‘Eating Place’ and ‘Shop and Services’ uses on the upper floors as revealed in the recent site visit (**Plans A-3b and A-3c**).

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<sup>1</sup> According to the Notes of the OZP for the “V” zone, ‘House (not elsewhere specified)’ is a column 2 use requiring planning permission from the Board.

- 6.3 The subject site is:
- (a) located at the south-western fringe of the existing village cluster of Tai Wai Village;
  - (b) rectangular and elongated in shape and adjoining village houses to its north and east and Chik Fu Street Rest Garden to its south; and
  - (c) accessible from Chik Fu Street to its west.
- 6.4 The surrounding areas have the following characteristics:
- (a) the surrounding area is predominately occupied by 2 to 3-storey village houses, some of which with shop and services or eating place uses on the ground floor; and
  - (b) medium-rise residential developments are located to the west of the subject site across Chik Fu Street, which are also characterized by shop and services or eating place uses on the ground floor.

## **7. 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. 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<sup>2</sup>. Other commercial, community and recreational uses may be permitted on application to the Board. Development and/or redevelopment within “V” zone is subject to a maximum building height of 3 storeys (8.23 m) or the height of the existing building, whichever is the greater.

## **8. Comments from Relevant Government Departments**

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

### **Land Administration**

#### 8.1.1 Comments of the DLO/ST, LandsD:

- (a) the Premises is situated on Lot No. 646 in D.D. 180 which is an Old Scheduled Building Lot with registered area of 0.01 acre. There is no restriction on the user of the lot under the lease; and
- (b) however, the lease stipulates that the lessee shall not erect or construct any building or structure on the premises without first

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<sup>2</sup> Permitted uses include ‘Eating Place’, ‘Library’, ‘School’ and ‘Shop and Services’

having obtained the approval from the Government. Recent site inspection revealed that a 3-storey building with enclosed rooftop structure was found on the lot. Neither Certificate of Exemption nor 'No Objection to Occupy' letter relating to the existing building could be found in his record. In the circumstances, he reserves the right to take enforcement action against any breach of lease condition relating to the existing building on the lot.

### **Building Matters**

#### 8.1.2 Comments of the CBS/NTE(2)&Rail of BD:

- (a) there is no record of approval by the Building Authority in respect of the existing building at the subject site. The subject building is a non-NTEH. Thus BD is not in a position to offer comments on the suitability of the Premises for the proposed use under the application at this stage unless the legitimacy of the existing building is justified by the applicant and ascertained by the relevant authority; and
- (b) the applicant's attention should be drawn to the following:
  - (i) for unauthorized building works (UBW), if any, erected on leased land, enforcement action may be taken by the BA to affect their removal in accordance with this 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 subject site under the Buildings Ordinance (BO); and
  - (ii) the applicant should be reminded that the Premises intended to be used for "Eating Place" is required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

### **Fire Safety**

#### 8.1.3 Comments of the Director of Fire Services (D of FS):

- (a) he has no in in-principle objection to the application subject to:
  - (i) fire service installations and water supplies for firefighting being provided to the satisfaction of the Fire Services Department. The arrangement of emergency vehicular access shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 which is administered by the BD; and
  - (ii) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans or formal application from licensing authority.

**Licensing Matters**

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

- (a) proper licence/permit issued by FEHD is required if there is any food business/catering service/activities regulated by DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Under the Food Business Regulation (Cap. 132X), a food business licence is required for the operation of the relevant type of food business listed in the Regulation; and
- (b) if the proposal involves any commercial/trading activities, no environmental nuisance should be generated from the site/to the surroundings. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expense.

**Environment**

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

- (a) no objection to the application from environmental point of view;
- (b) based on DEP's records, no complaints records on the subject site has been found. Moreover, as restaurant owners/operators shall abide by the relevant environmental legislations, no insurmountable environmental impacts from the application are anticipated; and
- (c) the applicant is reminded to implement the necessary measures to control the emission of oily fumes and cooking odours in accordance with EPD's guidelines "Control of Oily Fume and Cooking Odour from Restaurants and Food Business", and also obtain the necessary licence for its wastewater discharge under the Water Pollution Control Ordinance.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Chief Engineer/Construction, Water Supplies Department;
- (c) Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD);
- (d) Commissioner for Transport (C for T);
- (e) Commissioner of Police (C of P); and
- (f) District Officer/Shu Tin, Home Affairs Department.

## 9. Public Comments Received During Statutory Publication Period

On 28.9.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three comments were received from a member of Sha Tin District Council, the chairperson of the Sha Tin Rural Committee and the executive committee of Tai Wai Village Office objecting to the application (**Appendix II**). Their views are summarized as follows:

- (a) the Premises is located next to village houses. The proposed eating place would attract pest and result in environmental hygiene issues;
- (b) there is insufficient parking space in Tai Wai and traffic congestion is common in the local road networks. The proposed eating place would aggravate the traffic congestion problem and lead to illegal parking; and
- (c) the proposed eating place is anticipated to generate oily fumes and create odour impact to the pedestrian and residents nearby. The discharge of waste would also lead to blocked drains.

## 10. Planning Considerations and Assessments

- 10.1 The application is for a proposed 'Eating Place (Restaurant)' use on part of the ground floor of an existing four-storey building, which falls entirely within an area zoned "V" on the approved Sha Tin OZP No. S/ST/34. The planning intention of the "V" zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Selected commercial and community uses serving the needs of the villagers and in support of the village development including eating place are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. Although the proposed eating place on part of the ground floor of the building may serve the needs of the villagers, the subject building does not conform to the prescribed dimensions of NTEH as confirmed by the DLO/ST, LandsD, and the four-storey building contravenes the provisions of the OZP and is not in line with the planning intention of the "V" zone.
- 10.2 According to PlanD's recent site inspection on 12.11.2018, the Premises together with the upper three floors are for commercial uses including 'Eating Place' and 'Shop and Services' (**Plans A-3a to A-3c**), which also form part of the business at G/F operated by the same applicant as revealed in the business directory as shown on **Plan A-3a**. According to the Notes of the OZP, 'Eating Place' and 'Shop and Services' uses other than on the ground floor of a NTEH require planning permission from the Board. The applicant only applies for the proposed eating place on G/F of the subject building under the current application.
- 10.3 According to DLO/ST, LandsD, the lessee shall not erect or construct any building or structure at the subject site without first having obtained the approval from the Government. However, neither 'Certificate of Exemption' nor 'No Objection to Occupy Letter' relating to the existing building could be found in his record. CBS/NTE(2)&Rail, BD also advised that there is no record of approval by the Building Authority in respect of the existing building at the subject site. Since the building is not a NTEH, planning permission is required for such development within "V" zone. Besides, the subject building of four

storeys (**Plan A-3a**) contravenes the building height restriction of three storeys under the “V” zone. Nevertheless, according to the PlanD’s record, no planning permission has been granted by the Board.

- 10.4 The current application is a ‘build first, apply later’ case. The approval of the subject application will set an undesirable precedent for similar applications and nullify the statutory planning system.
- 10.5 In relation to the traffic, environment, drainage, sewerage and fire safety impacts generated by the proposed eating place at the Premises, concerned departments including C for T, C of P, DEP, CE/MS, DSD and D of FS have no objection to or no adverse comment on the application.
- 10.6 Three public comments were received objecting to the application on the grounds of adverse environmental hygiene, traffic, odour and drainage impacts. In this regard, the planning assessment and comments of Government departments above are relevant.

## **11. Planning Department’s Views**

- 11.1 Based on the assessment made in paragraph 10 above and having taken into account the public comments mentioned in paragraph 9 above, the Planning Department does not support the application for the following reasons:
  - (a) the proposed eating place is located on part of the ground floor of an existing four-storey building within the “V” zone. The fourfour-storey building contravenes the provisions of the OZP and is not in line with the planning intention of the “V” zone; and
  - (b) the approval of the application will set an undesirable precedent for similar ‘build first, apply later’ applications within the same “V” zone. The cumulative effect of approving such application would nullify the statutory planning control mechanism.
- 11.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 16.11.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval Condition

The provision of fire service installations and water supplies for firefighting before the operation of the proposed use to the satisfaction of the Director of Fire Services or of the Board.

### Advisory Clauses

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

**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 date when the validity of the permission should expire.
- 12.3 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.

**13. Attachments**

Appendix I	Application form received on 19.9.2018
Appendix II	Public comments
Appendix III	Recommended advisory clauses
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a and A-3c	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2018**