

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TP/649

<u>Applicant</u>	Ms. MOK Pui Ling represented by Toco Planning Consultants Ltd.
<u>Site</u>	Government land adjoining Lot 2060 in D.D. 6, No. 105 Kam Shek New Village, Tai Po, New Territories
<u>Site Area</u>	About 34.4m ²
<u>Land Status</u>	Government land
<u>Plan</u>	Approved Tai Po Outline Zoning Plan (OZP) No. S/TP/28
<u>Zoning</u>	“Village Type Development” (“V”)
<u>Application</u>	Proposed Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for outside seating accommodation (OSA) of an existing restaurant which is located on ground floor of a village house at No. 105 Kam Shek New Village for a period of three years (**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 proposed OSA has an area of about 34.4m² to accommodate five tables and there is a canopy covering the Site. The operating hours of the OSA are from 7:00 a.m. to 9:30 p.m. daily. The Site is paved and accessible via internal circulation area of Kam Shek New Village and a footpath leading from Wilson Trail. The layout plan of the proposed OSA is shown on **Drawing A-1**. A pedestrian circulation plan is shown on **Drawing A-2**.
- 1.3 The Site is the subject of a previous application No. A/TP/619 submitted by the same applicant for the same temporary use for a period of three years, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 17.2.2017 up to 17.2.2020. However, the planning permission was revoked on 17.2.2018 due to non-compliance with approval condition regarding the provision of fire services installations (FSI) and water supplies for fire fighting.

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

- (a) Application form received on 6.4.2018 (Appendix I)
- (b) Planning Statement received on 6.4.2018 (Appendix Ia)
- (c) Further Information (FI) received on 11.5.2018 clarifying the structures and FSIs within the Site (Appendix Ib)
- (d) FI received on 7.6.2018 clarifying the site area and provision of FSIs (Appendix Ic)
- (e) FI received on 20.7.2018 clarifying the site area (Appendix Id)
- (f) FI received on 20.9.2018 providing responses to LandsD's comments with a revised site boundary (Appendix Ie)
- (g) FI received on 3.10.2018 in response to departmental comments (Appendix If)

1.5 On 1.6.2018 and 3.8.2018, the Committee agreed to the applicant's request to defer making a decision on the application for one month and two months respectively so as to allow time for preparation of FI to address the comments of relevant Government departments. The application is re-scheduled for consideration by the Committee on 16.11.2018.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the planning statement at **Appendix Ia**. They can be summarized as follows:

- (a) the OSA will support the adjoining restaurant as a popular eating place in Kam Shek New Village;
- (b) the application will ensure proper planning control on temporary use in "V" zone;
- (c) the proposed use is in line with the Town Planning Board Guidelines for eating place in "V" zone;
- (d) the seating area will not affect pedestrian circulation in the area;
- (e) the small scale development will not result in any significant traffic, environmental, drainage, sewerage and visual impacts on the locality;
- (f) the OSA will not set an undesirable precedent for similar applications; and
- (g) the implementation of FSIs has been completed and the certificate of FSI has been issued.

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

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 as follows:

- (a) the eating place use should not create environmental nuisance or cause inconvenience to the residents nearby. Such use should preferably be located at the fringe of a village area, e.g. area abutting the main road. For any eating place use that is situated amidst the existing village houses, sympathetic consideration may only be given if there are no objections from local residents;
- (b) the eating place use should not have any adverse traffic impact on its surrounding areas nor should it affect any pedestrian circulation in the area;
- (c) sympathetic consideration may be given if the eating place use would not have adverse impacts on drainage, sewage disposal facilities or fire safety aspects;
- (d) for any application on open ground as an extension to ground floor eating place in a NTEH or as a free-standing development, the eating place use should not adversely affect the land availability for village type development. Application sites with configurations/dimensions which are not suitable to be delineated separately for village type development or which are considered not suitable for village type development (e.g. within 20m of public roads constructed/ maintained by the Highways Department or 15m of other local public roads), sympathetic consideration may be given by the Board on individual merits;
- (e) for a village located adjacent to recreational uses or tourist attraction spots, favourable consideration may be given to eating place use which will provide catering facilities to serve the visitors and tourists. In such circumstances, adequate car-parking spaces should be provided to serve the eating place use as required by the Transport Department. If it is impossible to provide car-parking spaces at the application site, the applicant should demonstrate that there are adequate car-parking facilities conveniently located in the vicinity to serve the eating place use; and
- (f) all other statutory or non-statutory requirements of relevant Government departments should be met.

5. Previous Application

5.1 The Site is the subject of a previous application No. A/TP/619 submitted by the same applicant for temporary OSA use for a period of three years, which was approved with conditions by the Committee on 17.2.2017 up to 17.2.2020. However, the planning permission was revoked on 17.2.2018 due to non-compliance with approval condition regarding the provision of FSIs and water supplies for fire fighting.

5.2 Compared with the previous approved application No. A/TP/619, no change has been made to the development parameters, except that the site area has been

slightly increased from 32m² to 34.4m² and the operating hours extended from 7:00 a.m. to 6:30 p.m. to 7:00 a.m. to 9:30 p.m. Details of the previous application are summarised in **Appendix III** and its location is shown on **Plan A-1**.

6. Similar Application

There is no similar application for OSA within the same “V” zone in the vicinity of the Site.

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

7.1 The Site is:

- (a) occupied by OSA of a restaurant on the ground floor of village house at No. 105 Kam Shek New Village and under renovation;
- (b) located at the northern fringe of Kam Shek New Village; and
- (c) accessible via internal circulation area of Kam Shek New Village and a footpath leading from Wilson Trail.

7.2 The surrounding areas have a suburban character which are mainly comprised of village houses, playground and landscaped areas. A playground is located to the immediate west of the Site whilst Lam Tsuen River is located to the north.

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 re-provisioning 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) the Site falls on a piece of Government land within the Government re-site village of Kam Shek New Village adjoining Lot No. 2060 in D.D. 6;
- (b) no NTEH/Small House application has been received for the Site;
- (c) the applicant submitted an application for a short term tenancy (STT) for OSA use on 23.6.2016, LandsD will further process the application if and after a planning permission is obtained from the Board. However, there is no guarantee at this stage that the STT application would be approved. If the STT application 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; and
- (d) if and after planning approval is given by the Board, the applicant is required to apply to FEHD for an OSA licence.

Traffic

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

- (a) no in-principle objection to the application from traffic engineering point of view; and
- (b) although the village access connecting to the Site is not under Transport Department's management, the applicant is reminded that no blockage to the village access should be caused by the temporary eating place.

Environmental Hygiene

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

- (a) no objection to the application concerning including an OSA into the licensed premises; and
- (b) whenever the restaurant licensee wishes to include an OSA into his licensed premises, he/she is required to submit an application to FEHD. If the application of OSA is acceptable for further processing, FEHD will refer it to relevant departments. A Letter of Requirements on the application would be issued if no objection was raised by the departments concerned.

Environment

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

- (a) no objection to the application from environmental planning perspectives;
- (b) according to the planning statement, the OSA has been operating at the Site for more than 15 years. It is covered by a canopy and is installed with surrounding doors forming an enclosing design. The operating hours for restaurant is from 7:00 a.m. to 9:30 p.m. No cooking facility will be provided within the OSA. Sewage generated from the restaurant will be discharged to the existing public sewerage. There are existing environmental protection/ pollution control legislations to regulate the operation of the subject premises;
- (c) the applicant should be reminded that the requirement stipulated in para. 5(ii) of ProPECC PN5/93 on the connection of drainage outlets to foul sewers applies to the proposed OSA; and
- (d) there was no complaint received on the subject premises in the past three years.

Drainage

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

- (a) no comment on the application from public drainage viewpoint; and
- (b) Environmental Protection Department (EPD) should be consulted regarding the sewage treatment/disposal aspects of the OSA.

Building Matters

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

- (a) since the Site is on Government land which is not subject to the control of the Buildings Ordinance, he is not in a position to comment on the application. LandsD and FEHD would be in a better position to advise the land matters and licence application for restaurant respectively; and
- (b) if the Site is granted with STT:
 - (i) all existing building works erected on unleased government land (i.e. before the grant of a STT) do not come under the control of the Buildings Ordinance (BO), and are not unauthorised for the purpose of the BO. The granting of the STT should not be construed as an

acceptance of any existing building works or UBW on site under the BO;

- (ii) before any new building works, including alterations and additions works, are carried out on land held under STT, prior approval and consent from the Building Authority (BA) should be obtained, otherwise they are unauthorized building works (UBW). An Authorised Person (AP) should be appointed to coordinate all new building works in accordance with the BO; and
- (iii) for UBW erected on land held under STT, enforcement action may be taken by the BA to effect the removal of the UBW in accordance with the policy for control of UBW in the future;

Fire Safety

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

- (a) no in-principle objection to the application subject to FSI and water supplies for firefighting being provided to the satisfaction of the Fire Services Department. Emergency vehicular access arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by Buildings Department; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal application via Licensing Authority.

Water Supply

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

- (a) no objection to the application; and
- (b) the Site falls within the consultation zone of Tai Po Water Treatment Works, which is a potentially hazardous installation (PHI). Comments from EPD should be sought in this respect.

District Officer's Comments

9.1.9 Comments of the District Officer/Tai Po, Home Affairs Department (DO/TP, HAD):

- according to previous records, villagers of Kam Shek New Village and Residents Representatives (RRs) of Shek Kwu Lung lodged complaints to various departments against the applicant on obstruction of public pavement (alfresco dining

area was found on Government land), erection of illegal structures, suspected violation of food premises licence, noise pollution, etc. While the applicant intends to regularise the seating out area and operate in an enclosed area, it is still strongly advised that local consultation should be conducted.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Director of Electrical and Mechanical Services (DEMS); and
- (c) Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comments Received During Statutory Publication Period

On 13.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, 21 public comments were received (**Appendix III**). Amongst them, 17 public comments, mainly from local residents, object to the application mainly on the grounds of generating environmental nuisances including air, noise and water pollution due to improper treatment of wastewater, fire safety and hygienic problems, occupation of Government land and the open areas of the adjoining village houses, blockage of public access and erection of unauthorized structures. The remaining 4 public comments, including a member of the Tai Po District Council, express concerns on the suspicion that the site notice for the application was removed during the public inspection period.

11. Planning Considerations and Assessments

11.1 The applicant seeks planning permission to use the Site for OSA of an existing restaurant outside the ground floor of village house at No. 105 Kam Shek New Village for a period of three years. The proposed OSA 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. Nevertheless, the size and location of the Site would render it not feasible for village type development. As advised by DLO/TP of LandsD, there is at present no Small House/NTEH application at the Site. The proposed 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.

11.2 The Site is located at the northern fringe of Kam Shek New Village and adjacent to the Wilson Trail. To the west of the Site is a playground. The OSA is considered not incompatible with its immediate surrounding uses which mainly comprise recreational facilities, village houses, playground and landscaped areas. The OSA would not block pedestrian flow as there is an existing footpath of about 1.5m wide between the Site and the planter (**Drawing A-2**). The OSA having an area of about 34.4m² is relatively small in scale. DEP has no objection to the application from environmental planning perspective and advises that there are existing environmental

protection/ pollution control legislations to regulate the operation of the OSA, and that there was no environmental complaint received related to the subject premises in the past three years. It is anticipated that the proposed use would not cause significant adverse landscape, traffic, drainage, sewage disposal and fire safety impacts on the surrounding areas. Concerned Government departments, including C for T, CE/MN of DSD, CE/C of WSD, DFEH and D of FS, 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 .

- 11.3 The Site is the subject of a previous planning application No. A/TP/619 submitted by the same applicant for the same temporary OSA use for a period of three years, which was approved with conditions by the Committee on 17.2.2017. However, the planning permission was revoked on 17.2.2018 due to non-compliance with approval condition regarding the provision of FSIs and water supplies for fire fighting. In the current submission, the applicant advises that she has recently completed the implementation of FSIs and submitted the FSI certificate (**Appendix Ic**). Compared with the previously approved application No. A/TP/619, no significant changes have been made under the current application, except that the site area has been slightly increased from 32m² to 34.4m² and the closing hour extended from 6:30 p.m. to 9:30 p.m. (the opening hour remain unchanged at 7:00 a.m.). There has been no material change in the planning circumstances in the area since the previous temporary approval was granted. Should the Committee decide to approve the application, shorter compliance periods of the approval conditions are recommended to closely monitor the progress of compliance. Moreover, the applicant will be advised that should she fail to comply with any of the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration will not be given to any further application.
- 11.4 Regarding DO/TP of HAD’s comment that there were local complaints on the OSA and the public comments objecting to the application on the grounds of generating environmental nuisances including air, noise and water pollution due to improper treatment of wastewater and hygienic problem arising from feeding of birds, occupation of Government land and the open areas of the adjoining village houses, blockage of public access and erection of unauthorized structures, it is noted that the proposed use is subject to various licensing requirements and the comments of Government departments and planning assessments in above paragraphs are relevant.

12. **Planning Department’s Views**

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, 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 until 16.11.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 9:30 pm and 7:00 am, as proposed by the applicant, is allowed on the application site during the planning approval period;
- (b) the submission of fire service installations and water supplies for fire fighting proposal within 3 months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 16.2.2019;
- (c) in relation to condition (b) above, the implementation of fire service installations and water supplies for fire fighting proposal within 6 months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 16.5.2019;
- (d) if the above planning condition (a) 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 any of the above planning conditions (b) or (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 IV**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:
- the proposed development does not comply with 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' in that the proposed development would create environmental nuisance and cause inconvenience to the residents nearby.

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 conditions and advisory clauses 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 6.4.2018
Appendix Ia	Planning Statement
Appendix Ib	Further Information (FI) received on 11.5.2018
Appendix Ic	FI received on 7.6.2018
Appendix Id	FI received on 20.7.2018
Appendix Ie	FI received on 20.9.2018
Appendix If	FI received on 3.10.2018
Appendix II	Previous Application
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Pedestrian Circulation Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2018**