

RNTPC Paper No. A/TM-LTY Y/366
For Consideration by
the Rural and New Town
Planning Committee
on 3.5.2019

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-LTY Y/366

<u>Applicants</u>	:	Mr Tang Sui Cheong and Miss Tang Shui Fun Carman
<u>Site</u>	:	Lot 694 S.L ss.1 in D.D. 130 and adjoining Government Land, G/F, No. 28 Lam Tei Main Street, Tuen Mun, New Territories
<u>Site Area</u>	:	About 40.85 m ² (including 19.05 m ² of Government Land)
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTY Y/10
<u>Zoning</u>	:	“Village Type Development” (“V”) [Restricted to maximum building height of 3 storeys (8.23m)]
<u>Application</u>	:	Proposed Temporary Shop and Services (Retail Shop) with Ancillary Office for a Period of 5 Years

1. The Proposal

- 1.1 The applicants seek planning permission to use the application site (the Site) for proposed temporary shop and services (retail shop) with ancillary office for a period of 5 years (**Plan A-1**). The Site is currently occupied by a single-storey building and is vacant.
- 1.2 According to the Notes for the “V” zone on the OZP, ‘Shop and Services’ not on ground floor of a New Territories Exempted House (NTEH) is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicants currently seek temporary permission for a period of 5 years.
- 1.3 The Site is involved in four previous applications (No. A/TM-LTY Y/73, 75, 303 and 328). The last Application No. A/TM-LTY Y/328 for a similar use by the same applicants was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 3.3.2017. However, the planning permission was subsequently revoked on 3.9.2017 due to non-compliance with the implementation of the drainage proposal as well as the submission and implementation of fire service installations (FSIs) proposal.

Details of the previous applications are summarized at paragraph 5 below and at **Appendix II**.

- 1.4 The major development parameters of the previously approved application and current application are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/TM-LTYYY/328 (a)	Current Application No. A/TM-LTYYY/366 (b)	Difference (b)-(a)
Applied Use	Temporary Shop and Services (Retail Shop) for a Period of 5 Years	Temporary Shop and Services (Retail Shop) with Ancillary Office for a Period of 5 Years	With an ancillary office
Site Area	About 40.85 m ² (including 19.05 m ² of government land)		Same
Maximum Floor Area	40.85 m ²		Same
Maximum Building Height	1 storey (3.8m)		Same
Operation hours	8:00 a.m. to 10:00 p.m. daily	8:00 a.m. to 9:00 p.m. daily	Shorter operation hours

- 1.5 Compared with the last approved Application No. A/TM-LTYYY/328, the current application is submitted by the same applicants for a similar use on the same site with similar development parameters and layout.

- 1.6 The layout plan, site layout plan, section, stormwater drainage plan and fire service installations proposal are at **Drawings A-1 to A-5** respectively.

- 1.7 In support of the application, the applicants have submitted the following documents:

- (a) Application form with attachments and plans received on 8.3.2019 **(Appendix I)**
- (b) Letter of 26.3.2019 providing a revised fire service installations proposal, a revised layout plan, as well as clarification on the business of the retail shop, the dimension of the shelter and loading/unloading arrangements
(accepted and exempted from publication and recounting requirements) **(Appendix Ia)**
- (c) Letter of 1.4.2019 providing responses to the comments of the Transport Department (TD) with a site layout plan and a section diagram
(accepted and exempted from publication and recounting requirements) **(Appendix Ib)**

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the application are detailed at **Appendices I to Ib**. They can be summarised as follows:

- (a) Some of the applicants' customers are local residents in Lam Tei area. The applicants wish to continue serving the customers and local villagers.
- (b) The dimensions of the outdoor canopy are 4.3m (L) x 1.9m (W) x 3.5m (H). It serves as a rain shelter. An area of 0.5m from carriageway and 3.5m underneath the canopy would be cleared of obstacles.
- (c) Regarding loading/unloading arrangements, the applicants clarified that they would carry or use trollies to deliver the goods to and from the Site.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicants are the sole "current land owner". Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site is currently not subject to planning enforcement action.

5. Previous Applications

- 5.1 The Site is involved in four previous Applications No. A/TM-LTYYY/73, 75, 303 and 328. Details of the previous applications are summarised at **Appendix II** and their locations are shown on **Plans A-1 and A-2**.
- 5.2 Application No. A/TM-LTYYY/73 covering the southern portion of the Site together with the adjoining lot to the west for temporary real estate agency office for a period of 3 years was approved with condition by the Committee on 16.3.2001. The major considerations were that the proposed development would serve nearby villagers, not adversely affect the existing character of the villages, not incompatible with the surrounding uses, no adverse impacts on the area and no adverse comment from relevant government departments.
- 5.3 Application No. A/TM-LTYYY/75 with a smaller site area for retail shop on permanent basis was approved with conditions by the Committee on 30.3.2001. Application Nos. A/TM-LTYYY/303 and 328 covering the same site for temporary retail shop for a period of 5 years were approved with conditions by the Committee on 5.2.2016 and 3.3.2017 respectively. The major considerations were similar to those for Application No. A/TM-LTYYY/73. However, Application No. A/TM-LTYYY/303 was revoked on 5.8.2016 due to non-compliance with the submission of drainage and FSIs proposals, while Application No. A/TM-LTYYY/328 was revoked on 3.9.2017 due to non-compliance with the implementation of the drainage proposal as well as the submission and implementation of FSIs proposal.

- 5.4 When compared with the last approved Application No. A/TM-LTY Y/328, the current application is submitted by the same applicants for a similar use at the same site with similar development parameters and layout.

6. Similar Applications

- 6.1 There are two similar applications (No. A/TM-LTY Y/233 and 339) for temporary shop and services in the same “V” zone. Details of the similar applications are at **Appendix III**. Their locations are shown on **Plan A-1**.
- 6.2 Application Nos. A/TM-LTY Y/233 and 339 were approved with conditions by the Committee on 30.3.2012 and 11.8.2017 respectively. The major considerations were that the temporary use would not jeopardize the long-term planning intention; not incompatible with the residential dwellings; and concerned government departments have no objections to or adverse comments on the application.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4)

- 7.1 The Site is:
- (a) currently occupied by a single-storey building and is vacant;
 - (b) abutting and accessible via Lam Tei Main Street, which is a one-way street.
- 7.2 The surrounding areas have the following characteristics (**Plan A-2**):
- (a) Lam Tei Main Street is predominately occupied by local stores and restaurants on both sides, some of which are temporary structures;
 - (b) to the further east are Lam Tei Market cum Hawker Bazaar, latrine, a refuse collection point and some storages which are suspected unauthorised developments (UDs);
 - (c) to the further south are vacant land and village-type houses;
 - (d) to the west are some commercial, shop and services and restaurants. To the further west is Castle Peak Road – Lam Tei Section; and
 - (e) to the north across Lam Tei Main Street are village-type houses, and to the further north is Miu Fat Buddhist Monastery.

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. 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. Other commercial, community and recreational uses may be permitted on application to the Board.

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/Tuen Mun, Lands Department (DLO/TM, LandsD):

- (a) The Site falls on the Lot No. 694 S.L ss. 1 in D.D. 130 (“the Lot”) and the adjoining government land. The Lot is held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) A Short Term Waiver (“STW”) and a Short Term Tenancy (“STT”) were issued for Lot No. 694 S.L in D.D. 130 (“the Mother Lot”) and its adjoining government land respectively to permit erection of structures for Retail Shop and Real Estate Agency Office purposes. The lot owner has applied for cancel and re-issue of the STW and STT due to sub-division of the Mother Lot. Site inspection revealed that a structure for Shop purpose was erected on the Site. The layout and usage of existing structure tally with the proposal.
- (c) The Site is accessible via a strip of government land leading from the Lam Tei Main Street. His Office does not and will not carry out maintenance works for the said road nor guarantee that right-of-way will be given to the Site.
- (d) There is no Small House/NTEH application at and in the vicinity of the Site being handled by his Office.
- (e) If planning permission is given by the Board, the lot owner may consider submitting formal applications to his Office for a STW and STT to permit erection of the proposed structures on the Lot and adjoining government land. However, there is no guarantee that the applications will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by Lands Department acting in the capacity as the landlord at its sole discretion. In the event that the applications are approved, they would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, rent, deposit and administrative fee, etc.

- (f) Notwithstanding the above, his Office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alterations of structures of whether planning permission will be given or not.

Building Matters

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

- (a) As there is no record of approval by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a NTEH) are erected on the leased land without the approval of the Buildings Department (BD), they are unauthorised building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (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) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) Fire barriers with sufficient fire resistance rating should be provided to separate the building and the adjacent unit under Regulation 90 of the Buildings (Construction) Regulations at the building plan submission stage.
- (f) The proposed office should be provided with windows in compliance with Building (Planning) Regulations 30 and 31.
- (g) Detailed comments will be made at the building plan submission stage.

Environment

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

- (a) Village sewerage is being constructed at Lam Tei Main Street and sewer connection to public sewer is preferred.
- (b) If septic tank and soakaway system is used in case of unavailability of public sewer, its design and construction should follow the requirements of the Practice Note for Professional Persons (ProPECC PN) 5/93 "*Drainage Plans subject to Comment by the Environmental Protection Department*" and are duly certified by an Authorized Person (AP).
- (c) No environmental complaint regarding the Site was received between 2016 and Feb 2019.

Traffic

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

He has no comment on the application from traffic engineering viewpoints.

9.1.5 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

He has no objection in principle to the application but have the following comments from highways maintenance point of view:

- (a) The applicant shall be required to vacate the road verge at their own cost to facilitate inspection, maintenance, improvement or repair works of public highways, street furniture and the like upon prior notification from his department.
- (b) The applicant shall be required to vacate the road verge without prior notice in emergencies and his department would not be responsible for any damage done to their properties in case they are removed due to emergencies.
- (c) The applicant should take all necessary measures to avoid causing any damage to public roads/street furniture and make good any damage done at his own expenses to his satisfaction arisen from his activity.
- (d) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and exclusive road drains.

Drainage

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

- (a) They have no objection in principle to the application from public drainage point of view.
- (b) Should the application be approved, a condition should be included to request the applicant to submit, implement and maintain an updated drainage proposal for the Site to ensure that it will not cause adverse drainage impact on the adjacent area.
- (c) In regards to the stormwater drainage plan attached in the submission material, the applicant should be reminded to incorporate the following comments when submitting the updated drainage proposal:
 - (i) It is noted that the applicant intended to make use of the existing drainage channel adjacent to the Site, which according to their record is not maintained by DSD. The applicant should be reminded to consult the Home Affairs Department (HAD) and relevant authorities / owners accordingly.
 - (ii) The applicant should be reminded to check the condition of the above mentioned drainage channel to ensure it is in working conditions.
 - (iii) The applicant is required to rectify the drainage system if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by a failure of the drainage system.
 - (iv) The proposed works should neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.
- (d) There is currently no existing public sewerage facility available for connection at the Site. However, the Site is in the vicinity of the village sewerage project at Lam Tei currently under construction and targeted to be completed by 2019. In this regard, Environmental Protection Department, the planning authority of sewerage infrastructure, should be consulted on the sewage treatment / disposal arrangement.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction. Should the application be approved, a condition should be included to request the applicant to implement the accepted FSIs proposal to his satisfaction.
- (b) The FSIs proposal is considered acceptable to his Department. The installation/ maintenance/ modification/ repair work of FSI shall be undertaken by an Registered Fire Service Installation Contractor (RFSIC). The RFSIC shall after completion of the installation/ maintenance/ modification/ repair work issue to the person on whose instruction the work was undertaken a certificate (FS 251) and forward a copy of the certificate to the D of FS.
- (c) The applicant should be reminded that if the proposed structure(s) is required to comply with the BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Landscape

9.1.8 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

Since the application involves conversion of use of the ground floor of an existing building and adjoining government land between the lot and Lam Tei Main Street, no significant landscape impact is envisaged.

Others

9.1.9 Comments of the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD) and the Chief Town Planner/Housing and Office Land Supply, Planning Department (CTP/HOLS, PlanD):

The Site falls within the Study Area of the on-going Preliminary Land Use Study for Lam Tei Quarry and the Adjoining Areas (the Study) jointly commissioned by CEDD and PlanD. They have no specific comments as far as the Study is concerned.

District Officer's Comments

9.1.10 Comments of the District Officer (Tuen Mun), HAD (DO(TM), HAD):

He has distributed consultation letters to the locals concerned and understand that they would provide their comments (if any) to the Board direct. He has no further comments.

9.2 The following government departments have no comment on the application:

- (a) Director of Leisure and Cultural Services (DLCS);
- (b) Director of Food and Environmental Hygiene (DFEH);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Director of Agriculture, Fisheries and Conservation (DAFC);
- (e) Head (Geotechnical Engineering Office), Civil Engineering and Development Department (H(GEO), CEDD);
- (f) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (g) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES (A&M), AMO); and
- (h) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 15.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 6.4.2019, no public comment was received.

11. Planning Considerations and Assessments

11.1 The subject application is for temporary shop and services (retail shop) with ancillary office for a period of 5 years at a site zoned "V" on the OZP. 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. 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. Other commercial, community and recreational uses may be permitted on application to the Board. Whilst the proposed development is not entirely in line with the planning intention of the "V" zone, according to DLO/TM, LandsD, there is no Small House/NTEH application at and in the vicinity of the Site. The proposed development could provide commercial use to meet any such demand in the area. Approval of the application on a temporary basis for 5 years would not jeopardize the long-term planning intention of the "V" zone.

11.2 The Site is located on Lam Tei Main Street, which is predominately occupied by shops, restaurants and local stores on both sides. The proposed development is not incompatible with the surrounding land uses.

- 11.3 Relevant government departments, including C for T, CE/MN of DSD, CHE/NTW of HyD, CTP/UD&L of PlanD, DEP and D of FS have no objection to or adverse comment on the application. The proposed use will unlikely create any adverse traffic, environmental, drainage, landscape or visual impacts on the surrounding areas. There has been no environmental complaint concerning the Site received in the past 3 years. To minimise any potential environmental nuisances and to address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority.
- 11.4 The Committee previously approved four applications (No. A/TM-LTYT/73, 75, 303 and 328) for shop and services covering the Site and two similar applications (No. A/TM-LTYT/233 and 339) in the same “V” zone. Approval of the application is in line with the previous decisions of the Committee. However, the last planning permission (No. A/TM-LTYT/328) for a similar use was revoked on 3.9.2017 due to non-compliance with the implementation of the drainage proposal as well as the submission and implementation of FSIs proposal. In this regard, the current applicants have submitted drainage and fire service installations proposals. Concerned government departments including CE/MN of DSD and D of FS have no objection in principle to the application and consider that their technical requirements could be addressed through imposing approval conditions. CE/MN of DSD requests the applicant to submit, implement and maintain an updated drainage proposal. D of FS considers the FSIs proposal acceptable and requests the applicant to implement the accepted FSIs proposal. Besides, the Site is currently vacant. In view of the above, sympathetic consideration may be given to this application. Nevertheless, shorter compliance periods are recommended in order to closely monitor the progress on compliance with the associated approval conditions. The applicants will be advised that should they fail to comply with any of the approval conditions again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further consideration.
- 11.5 There is no public comment received during the publication period.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11, 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 5 years until 3.5.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 9:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) the submission of an updated drainage proposal within **3** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 3.8.2019;
- (c) in relation to (b) above, the implementation of the updated drainage proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 3.11.2019;
- (d) in relation to (c) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (e) the implementation of the accepted fire service installations 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 3.11.2019;
- (f) if any of the above planning conditions (a) or (d) 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
- (g) if any of the above planning conditions (b), (c) or (e) 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 is not in line with planning intention of the "V" zone which 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. There is no strong planning justification in the submission for a departure from such 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 attachments and plans received on 8.3.2019
Appendix Ia	Letter of 26.3.2019 providing a revised fire service installations proposal, a revised layout plan, as well as clarification on the business of the retail shop, the dimension of the shelter, loading/unloading arrangements
Appendix Ib	Letter of 1.4.2019 providing responses to the comments of the Transport Department with a site layout plan and a section diagram
Appendix II	Previous Applications Covering the Application Site
Appendix III	Similar s.16 Applications within the same "V" Zone on the approved Lam Tei and Yick Yuen OZP No. S/TM-LTY Y/10
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Site Layout Plan
Drawing A-3	Section Diagram
Drawing A-4	Stormwater Drainage Plan
Drawing A-5	Fire Service Installations Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2019**