

RNTPC Paper No. A/TM-LTYT/368
For Consideration by
the Rural and New Town
Planning Committee
on 17.5.2019

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-LTYT/368

<u>Applicant</u>	:	Muhammad Yasir Urfat represented by Metro Planning and Development Company Limited
<u>Site</u>	:	Lots 3839 RP (Part) & 3840 RP (Part) in D.D. 124, Shun Tat Street, Tuen Mun, New Territories
<u>Site Area</u>	:	About 800 m ²
<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-LTYT/10
<u>Zoning</u>	:	“Residential (Group D)” (“R(D)”) [Restricted to maximum plot ratio of 0.2 and a maximum building height of 2 storeys (6m)]
<u>Application</u>	:	Proposed Temporary Shop and Services (Retail Shop for Apparel and Potted Plants) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services (retail shop for apparel and potted plants) for a period of 3 years (**Plan A-1**). The Site is currently occupied by two vacant structures.
- 1.2 According to the Notes for the “R(D)” 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 applicant currently seeks temporary permission for a period of 3 years.
- 1.3 The Site is involved in one previous application (No. A/TM-LTYT/317) for a similar use by a different applicant with the same agent was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 28.10.2016. However, the planning permission was subsequently revoked on 28.3.2019 due to non-compliance with the implementation of the fire service installations (FSIs) proposal. Details of the previous application 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-LTYT/317 (a)	Current Application No. A/TM-LTYT/368 (b)	Difference (b)-(a)
Applied Use	Temporary Shop and Services (Retail Shop for Pet Food and Potted Plants) for a Period of 3 Years	Temporary Shop and Services (Retail Shop for Apparel and Potted Plants) for a Period of 3 Years	The business of the retail shop for apparel
Site Area	About 850 m ²	About 800 m ²	- 50 m ² (-5.9%)
Maximum Floor Area	Not exceeding 340 m ²	Not exceeding 348 m ²	+8 m ² (+2.4%)
Number of Structures	3 (2 structures for retail shops and 1 portable toilet)	4 (2 structures for retail shops, 1 pump room for fire services, 1 water tank for fire services)	+1 (+33.3%)
Maximum Building Height	1 storey (not exceeding 7.5m)		Same
Loading/Unloading Space	2 (7m x 3.5m) (for private car/light goods vehicle)		Same
Operation hours	9:00 a.m. to 8:00 p.m. daily	9:00 a.m. to 8:00 p.m. daily	Same

- 1.5 Compared with the last approved Application No. A/TM-LTYT/317, the current application is submitted by a different applicant with the same agent for a similar use on the same site with similar development parameters and layout.
- 1.6 The site plan, proposed layout plan, proposed landscape and tree preservation plan, as-built drainage plan and FSIs proposal are at **Drawings A-1 to A-5** respectively.
- 1.7 In support of the application, the applicant has submitted the following documents:
- (a) Application form of 15.3.2019 (received on 27.3.2019) **(Appendix I)**
 - (b) Supplementary Planning Statement (attached to **Appendix I**) **(Appendix Ia)**
 - (c) Letter of 3.5.2019 providing clarification on the Lot under the application, the details of sewage treatment proposal and a FSIs proposal **(Appendix Ib)**
(*accepted and exempted from publication and recounting requirements*)

2. Justifications from the Applicant

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

- (a) The applicant has complied with all the planning approval conditions of the last approved Application No. A/TM-LTYT/317 except the implementation of the FSIs proposal because the water supply is yet to be provided by the Water Services Department.
- (b) The proposed development is a commercial use which would serve the residents in “R(D)” zone and “Village Type Development” zone at the other side of Shun Tat Street.
- (c) The proposed development is temporary in nature and would not jeopardize the planning intention of the “R(D)” zone in the long-run.
- (d) The proposed development is clean, tidy and a non-polluting use. The scale, nature, and form of the proposed development are compatible with the surrounding environment and would not affect the character of the village.
- (e) The Board has approved a number of similar shops in the “R(D)” zones all over rural Yuen Long.
- (f) The impact generated by the development would be insignificant. No adverse traffic, environmental, landscape and drainage impacts are foreseen.

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 sending a registered mail to the Tuen Mun Rural Committee and by posting notice at the Site. 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 Application

- 5.1 The Site is involved in one previous Application No. A/TM-LTYT/317. Details of the previous application are summarised at **Appendix II** and its location is shown on **Plan A-1**.
- 5.2 Application No. A/TM-LTYT/317 for temporary shop and services (retail shop for pet food and potted plants) for a period of 3 years as approved with conditions by the Committee on 28.10.2016. The major considerations were that the proposed development would not jeopardize the long term planning intention of

the “R(D)” zone, not incompatible with the surrounding uses and no adverse comment from relevant government departments. However, the planning permission of Application No. A/TM-LTYT/317 was revoked on 28.3.2019 due to non-compliance with the implementation of the FSIs proposal.

- 5.3 When compared with the last approved Application No. A/TM-LTYT/317, the current application is submitted by a different applicant for a similar use at the same site with similar development parameters and layout.

6. Similar Application

There is no similar application in the same “R(D)” zone.

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

- 7.1 The Site is:

- (a) hard-paved and fenced;
- (b) currently occupied by two vacant structures;
- (c) abutting and accessible via Shun Tat Street.

- 7.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) to the east are parking of vehicles and storage of recycling materials, which are suspected unauthorised developments (UDs), open storage of vehicles, a vehicle repair workshop and residential dwellings;
- (b) to the immediate south and southwest are fallow/cultivated agricultural land and some village-type development/temporary structures for dwelling purposes, and to the further south and southwest are orchard, some vacant land and residential dwellings;
- (c) to the west is an open storage yard for containers, which is suspected UD; and
- (d) to the immediate north is Shun Tat Street, and to the further north across Shun Tat Street are storage and parking of vehicles and container vehicles, which are suspected UD, and some vacant land.

8. Planning Intention

The planning intention of the “R(D)” zone is intended primarily for improvement and upgrading temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from 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 within the Lots Nos. 3839 RP (Part) and 3840 RP (Part) in D.D. 124 ("the Lots"). The Lots are Old Schedule Agricultural Lots 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) Site inspection revealed that the existing structures for retail shops are still vacant. The proposal does not entirely tally with the Built Over Area ("B.O.A.") of the existing structures and the permitted B.O.A. and use of retail shop for pet food and potted plants as approved in Short Term Waiver No. MR 17003.
- (c) The Site is accessible via a strip of government land leading from Shun Tat Street. His Office does not carry out maintenance works for the said road nor guarantee that right-of-way will be given to the Site.
- (d) If planning permission is given by the Board, the lot owner is required to submit application to his Office for revision of the B.O.A. and user of Short Term Waiver No. MR 17003. He would advise that the proposal will only be considered upon his receipt of formal application. The application, if received, will be considered by Lands Department acting in the capacity as the landlord at its sole discretion. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, deposit and administrative fee, etc. However, there is no guarantee that the application will be approved and he reserves his comment on such.
- (e) Notwithstanding the above, his Office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alterations of structures on the Site or any unauthorized occupation of government land irrespective of whether planning permission will be given or not.

Traffic

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

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

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

- (a) The proposed access arrangement of the Site from Shun Tat Street should be commented and approved by TD.
- (b) The proposed access from the Site to Shun Tat Street is not and will not be maintained by HyD.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) The proposed shop and services use within a site zoned “R(D)” is not anticipated to have any adverse environmental implications, he has no objection to the application. Nevertheless, please remind the applicant to refer to the revised “*Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites*” (the COP) to minimize the potential environmental impact.
- (b) According to the Further Information provided by the applicant, the existing toilet will be replaced by a portable toilet and the proposed portable toilet will be provided, cleaned and disinfected by sewage treatment and disposal company. He has no comment on the proposal.
- (c) No environmental complaint regarding the Site was received between 2016 and Feb 2019.

Landscape

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

- (a) The Site is subject to last approved planning Application No. A/TM-LTTY/317 for temporary retail shop for pet food and potted plants. The application was later revoked due to non-compliance with conditions not related to landscape matters. In view of the similar nature of the proposed use, significant change to the landscape character arising from the application is not envisaged.
- (b) It should be reminded that approval of the S.16 application by the Board does not imply the approval of tree works (such as felling/transplanting or pruning) and/or requirements under lease.

Tree works applications should be submitted direct to DLO for approval.

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) According to the applicant's submission, the existing drainage facilities which was implemented under an approval application No. A/TM-LTYT/317 will be maintained for the subject development. They have no objection in principle to the application from public drainage point of view. Should the Board consider that the application is acceptable from the planning point of view, he would suggest that a condition should be stipulated in the approval letter requiring the applicant to maintain the existing drainage facilities and submit a condition record of the existing drainage facilities to the satisfaction of the Director of Drainage Services or of the Board.
- (b) Detailed comments are at **Appendix III**.

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 FSIs being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. In addition, the applicant should also be advised on the following points:
 - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) The applicant should be reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) There is no record of approval by the Building Authority for the structures existing at the Site and BD is not in a position to offer comments on their suitability for the use related to the application.
- (b) If the existing structures are NTEH under the Buildings Ordinance (Application to the New Territories) Ordinance, DLO should be in a better position to comment on the application.
- (c) The applicant's attention is drawn to the following points:
 - (i) If the existing structures (not being a NTEH) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
 - (ii) Before any new building works (including structures and toilet as temporary buildings and connection of drains) 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.
 - (iii) For UBW erected on lease 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 be no construed as an acceptance of any existing building works or UBW on the Site under the BO.
 - (iv) In connection with (ii) above, 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.
 - (v) 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) Regulation at the building plan submission stage.
 - (vi) Formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments will be provided at the building plan submission stage.

Natural Conservation and Agriculture

9.1.9 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

The Site falls within “R(D)” zone. According to the most recent aerial photo (26 January 2017) from the Geospatial Information Hub of the Lands Department, the Site and its surrounding area are mainly disturbed in nature. Noting that the proposed development would not involve felling or damage of trees, he has no strong views on the subject application from natural conservation perspective.

Others

9.1.10 Comments of the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD) and the Chief Town Planner/Housing and Office Land Supply (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

9.1.11 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) Head (Geotechnical Engineering Office), Civil Engineering and Development Department (H(GEO), CEDD);
- (e) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (f) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES(A&M), AMO); and
- (g) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 9.4.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 30.4.2019, one public comment was received. A member of the Tuen Mun District Council supported the application without giving specific reason (**Appendix IV**).

11. Planning Considerations and Assessments

- 11.1 The subject application is for temporary shop and services (retail shop for apparel and potted plants) for a period of 3 years at a site zoned “R(D)” on the OZP. The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board. There is no known development proposal to implement the zoned use. The proposed development could provide commercial use to meet any such demand in the area. Approval of the application on a temporary basis for 3 years would not jeopardize the long-term planning intention of the “R(D)” zone.
- 11.2 The Site is surrounded by vehicle park, fallow/cultivated agricultural land, residential dwellings and open storage yard. The proposed development is considered 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 one application (No. A/TM-LTYT/317) in 2016 for shop and services covering the Site. Approval of the application is in line with the previous decision of the Committee. However, the last planning permission (No. A/TM-LTYT/317) for a similar use was revoked on 28.3.2019 due to non-compliance with the implementation of the FSIs proposal. It is noted that the current application is submitted by a different applicant with the same agent. In this regard, the current applicant has submitted a FSIs proposal and D of FS has no objection in principle to the application. 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 applicant 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 Regarding the public comment, the planning considerations and assessment in paragraphs 11.1 to 11.4 are relevant.

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 3 years until **17.5.2022**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the existing fencing of the Site shall be maintained at all times during the planning approval period;
- (c) the existing tree planting within the Site shall be maintained in good condition at all times during the planning approval period;
- (d) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) the submission of a condition record of the existing drainage facilities within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 17.8.2019;
- (f) the submission of a fire service installations 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 17.8.2019;
- (g) the implementation of the 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 17.11.2019;
- (h) if any of the above planning conditions (a), (b), (c) 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
- (i) if any of the above planning conditions (e), (f) or (g) 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 V**.

- 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 "R(D)" zone which is intended primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings for low-rise, low-density residential development subjects to planning permission from the Board. There is no strong planning justification in the submission for 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 applicant.

14. Attachments

Appendix I	Application Form of 15.3.2019 received on 27.3.2019
Appendix Ia	Supplementary Planning Statement (attached to Appendix I)
Appendix Ib	Letter of 3.5.2019 providing clarification on the Lot under the application, the details of sewage treatment proposal and a FSIs proposal
Appendix II	Previous Application Covering the Application Site
Appendix III	Detailed Comments of Drainage Services Department
Appendix IV	Public Comment Received During Statutory Publication Period
Appendix V	Advisory Clauses
Drawing A-1	Site Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape & Tree Preservation Plan
Drawing A-4	As-built 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-4a & 4b	Site Photos