

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-LTYYY/396

- Applicant** : Mr Chan Ping Shing represented by Goldrich Planners & Surveyors Limited
- Site** : Lots 1211 S.C (Part), 1248 (Part) and 1249 (Part) in D.D 130, Fuk Hang Tsuen, Tuen Mun, New Territories
- Site Area** : About 580.8 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTYYY/10
- Zoning** : “Residential (Group D)” (“R(D)”)
[restricted to maximum plot ratio of 0.2 and a maximum building height of 2 storeys (6m)]
- Application** : Temporary Shop and Services with Ancillary Storage Area and Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services with ancillary storage area and office for a period of 3 years (**Plan A-1**). According to the Notes for the “R(D)” zone on the OZP, ‘Shop and Services’ is a Column 2 use which requires permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission.
- 1.2 The Site is involved in a previous application (No. A/TM-LTYYY/320) for proposed temporary shop and services (real estate agency and local provisions store) with ancillary storage area and office for a period of 3 years which was approved by the Rural and New Town Planning Committee (the Committee) on 25.11.2016. However, the permission was revoked on 25.4.2019 due to non-compliance with the approval condition on the implementation of drainage proposal. Details of the previous application are summarized at paragraph 5 below and **Appendix II**.

- 1.3 A comparison of the major development parameters of the previously approved application and current application is as follows:

| Major Development Parameters | Previously Approved Application No. A/TM-LTY Y/320 (a) | Current Application No. A/TM-LTY Y/396 (b) | Difference (b)-(a) |
|-------------------------------------|---|---|---|
| Applied Use | Proposed Temporary Shop and Services (Real Estate Agency and Local Provisions Store) with Ancillary Storage Area and Office for a Period of 3 Years | Temporary Shop and Services with Ancillary Storage Area and Office for a Period of 3 Years | The applied use similar but more general in the current application |
| Site Area | About 604.7 m ² (including about 23.1 m ² of government land (GL)) | About 580.8 m ² | -23.9 m ² (-3.95%) |
| Gross Floor Area (GFA) | 493.6 m ² | About 279.8m ² | -213.8m ² (-43.29%) |
| Number of Structures | 4 (1 for real estate agency and local provision store; 1 for ancillary storage area and office; 1 toilet and 1 open staircase and platform) | 3 (1 for real estate agency and local provision store and the shed projection; 1 toilet and 1 open staircase and platform) | -1 (-25%) |
| Maximum Building Height | 2 storeys (not exceeding 7.5m) | | Same |
| Car Parking Space | 1 (5m x 2.5m) (for private car) | | Same |
| Loading/Unloading (L/UL) Space | 1 (7m x 3.5m) (for light goods vehicle) | | Same |
| Operation hours | 9:00 a.m. to 8:00 p.m. daily | 8:00 a.m. to 9:00 p.m. daily | +2 hours |

- 1.4 Compared with the last approved Application No. A/TM-LTY Y/320, the current application is submitted by the same applicant with the same agent for the same use at the same site with smaller site area, reduction in number of structures and GFA.
- 1.5 According to the applicant, the Site is accessible from Tat Fuk Road via Wong Kong Wai Road (**Plan A-3**) and a pedestrian access at the southern of the Site (**Drawing A-1**).
- 1.6 The location plan, lot index plan, site plan, drainage proposal, tree preservation and landscape proposal and swept path analysis are at **Drawings A-1 to A-7** respectively.

- 1.7 In support of the application, the applicant has submitted the following documents:
- (a) Application Form and Supplementary Planning **(Appendix I)** Statement with Drainage Proposal, Tree Preservation and Landscape Proposal and Swept Path Analysis received on 5.3.2020
 - (b) Supplementary Information providing replacement **(Appendix Ia)** pages of **Appendix I** received on 6.3.2020
 - (c) Further Information clarifying no heavy goods **(Appendix Ib)** vehicles will be allowed to enter the Site received on 7.4.2020
(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 in the Supplementary Planning Statement at **Appendix Ia**. They can be summarised as follows:

- (a) There are several village houses in Fuk Hang Tsuen and residential developments namely Botania Villa and The Sherwood to the further west of the Site (**Plan A-1**). The proposed development serves to meet the needs of local people.
- (b) The proposed development consists of 1-2 storeys converted-container structures. It is compatible with the surrounding environment which comprises mainly domestic structures of 1-2 storeys. No significant adverse visual impact is anticipated.
- (c) A comprehensive drainage network for rainwater collection is formed (**Drawing A-4**).
- (d) 7 existing trees on the southern portion of the Site (**Drawing A-5**) will be properly maintained in accordance with the guidelines from the Greening, Landscape and Tree Management Section of Development Bureau including 'Tree Care During Construction' and 'Pictorial Guide for Tree Maintenance'.
- (e) The proposed use (real estate agency and local provisions store) is small in scale and aims at serving residents in the vicinity, no significant traffic impact to the local road network is expected.

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 not subject to planning enforcement action.

5. Previous Application

- 5.1 The Site is involved in one previous Application No. A/TM-LTY Y/320. 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-LTY Y/320 for proposed temporary shop and services (real estate agency and local provisions store) for a period of 3 years was approved with conditions by the Committee on 25.11.2016. The major considerations were that the proposed development would not jeopardize the long term planning intention of the “R(D)” zone and not incompatible with the surrounding uses. However, the planning permission was revoked on 25.4.2019 due to non-compliance with the approval condition on the implementation of the drainage proposal.
- 5.3 When compared with the last approved Application No. A/TM-LTY Y/320, the current application is submitted by the same applicant and the same agent for the same use at the same site with smaller site area, reduction in number of structures and GFA.

6. Similar Application

There is one similar application (No. A/TM-LTY Y/395) for proposed temporary shop and services with ancillary office for a period of 3 years in the same “R(D)” zone which was approved with conditions by the Committee on 20.3.2020. Details of the similar application are summarised at **Appendix III** and its location is shown on **Plan A-1**.

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

- 7.1 The Site is:
- (a) paved and partly fenced;
 - (b) currently occupied by two 2 storeys container-converted structures for the applied use without valid planning permission; and
 - (c) accessible via parking of vehicles area to its immediate north leading to Tat Fuk Road which is connected to Fuk Hang Tsuen Road or Wong Kong Wai Road (**Drawing A-1** and **Plan A-3**).
- 7.2 The surrounding areas have the following characteristics:
- (a) to its immediate north and northeast are parking of vehicles;
 - (b) to its immediate south, west and northwest are residential dwellings intermixed with storages and open storage of containers and some vacant land; and
 - (c) to the further southeast/south are amenity areas and a factory; to the further southwest is a marble workshop.

8. Planning Intention

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.

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

- (a) The Site falls within Lot Nos. 1211 S.C (Part), 1248 (Part) and 1249 (Part) in DD. 130 (“the Lots”). The Lots concerned are Old Schedule 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 two 2-storey container-converted structures for office as well as storage and toilet were erected on Lot Nos. 1211 S.C and 1249 in DD. 130. No permission has been given for the erection of the structures. It is also noted that a fire pump room and F.S. water tank on Lot No. 1249 in DD. 130 suspected for the proposed shop use have been excluded from the Site. The configuration of the existing structures does not entirely tally with the proposal as shown on **Drawing A-3**.
- (c) The Site is accessible via a strip of GL and a number of private lots leading from Tat Fuk Road. His office does not carry out maintenance works for the said GL nor guarantee that right-of-way will be given to the Site.
- (d) If planning permission is given by the Board, the lot owner may consider submitting a formal application to his office for a Short Term Waiver to permit erection of the proposed structures on the Lots. However, there is no guarantee that the application will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by LandsD 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 administration fee etc.
- (e) His office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alterations of structures within the Lots

irrespective of whether planning permission will be given or not. Enforcement action will also be taken should any structures are found erected without any prior approval given by his office or any unauthorized occupation of GL.

Traffic

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

- (a) The proposed vehicular access (i.e. via Wong Kong Wai Road and Tat Fuk Road) from the public road to the Site is not and will not be maintained by HyD.
- (b) As no public road is affected and the applicant shall be responsible for his own access arrangement, he has no comment on the application from highways maintenance point of view.

Environment

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

- (a) Should the application be approved, the applicant is advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (CoP) issued by DEP to minimise potential environmental impacts on the surrounding environment.
- (b) There has been no environmental complaint concerning the Site received in the past 3 years.
- (c) Sewage arising from the subject site should be directed to nearby public sewer. 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 ProPECC PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” and are duly certified by an Authorized Person (AP).

Drainage

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

- (a) He has 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 a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area.
- (c) In regards to the proposed drainage proposal, his comments are below:

- (i) The applicant should refer to the guidelines as specified in “Technical Note to prepare a Drainage Submission” which is available at DSD’s website (https://www.dsd.gov.hk/EN/Technical_Documents/DS D_Guidelines/index.html).
- (ii) Presumably it is the intent of the applicant to make drainage connection to public drainage to discharge runoff from the Site. According to his records, no DSD maintained facility in the vicinity of the Site. In this regard, the applicant should be reminded to identify such public drainage and consult, as appropriate, the relevant authorities/owners of the existing drainage for consent of the connection works.
- (iii) Details of the proposed u-channel and catchpits and how it could be connected to the existing drainage system should be clarified and clearly shown in the proposed drainage proposal.
- (iv) Peripheral drainage channels should be provided to intercept the surface runoff from the uphill catchment so as to avoid the Site from overflow influence. Please review.
- (v) The proposed drainage works, whether within or outside the lot boundary, should be constructed and maintained by the lot owner at their own expense. For any works to be carried out outside his lot boundary, the applicant should consult DLO/TM and seek consent from relevant lot owner before commencement of the drainage works.
- (vi) 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.
- (vii) The proposed works should neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.

Fire Safety

9.1.5 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.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. 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 is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Landscape

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

- (a) With reference to the aerial photo of 2019, the Site is situated in an area of rural landscape character predominated by temporary structures and tree clusters. The Site is hard paved with existing trees along the southern boundary within the Site. The applied use appears to be already in operation. In consideration of previous approved application No. A/TM-LTY/320 for similar use, significant change to the landscape character arising from the application is not envisaged.
- (b) Should the application be approved, a condition should be included to require the applicant to maintain all existing trees within the Site in good condition for the duration of the planning approval period.

Building Matters

9.1.7 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 (BA) for any structures at the Site.
- (b) The applicant's attention is drawn to the following points:
 - (i) If the existing structures are erected on leased land without approval of the BA (not being a New Territories Exempted House), they are unauthorized under the Building Ordinance (BO) and should not be designated for any approved use under the application.
 - (ii) Before any new building works (including erection of containers and connection of drainage) are to be carried out on the Site, the prior approval and consent of BD should be obtained, otherwise they are unauthorized building works (UBW). An Authorised Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO.

- (iii) For UBW erected on leased land, enforcement action may be taken by 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.
- (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 (B(P)R) 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 B(P)R 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.

Others

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

The Site falls within the Study Site 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 comment on the application as far as the Study is concerned.

- 9.1.9 Comments of the Director of Leisure and Cultural Services (DLCS):

Vegetation with trees are planted along Tat Fuk Road. Given that only light goods vehicles will be used for loading and unloading, he has no comment on the application but the applicant should ensure that no vegetation with trees thereat would be affected.

District Officer's Comments

- 9.1.10 Comments of the District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD):

He has distributed consultation letters to the concerned locals and understand that they will provide their comments (if any) to the Board direct.

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

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Director of Food and Environmental Hygiene (DFEH);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (e) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES (A&M), AMO);
- (f) Commissioner of Police (C of P); and
- (g) Commissioner for Transport (C for T).

10. Public Comment Received During Statutory Publication Period

On 13.3.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 3.4.2020, one public comment was received by an individual objecting to the application on the ground that the approval of the application would result in a delay in the implementation of the planning intention of the “R(D)” zone. (**Appendix IV**).

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services with ancillary storage area and office for a period of 3 years at the site zoned “R(D)”. 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. Whilst the applied use is not entirely in line with the planning intention of the “R(D)” zone, there is no known development programme at the Site and the applied development could provide shop and services use to meet any such demand in the area. Approval of the application on a temporary basis for 3 years would not jeopardize the planning intention of the “R(D)” zone.
- 11.2 The Site is surrounded by residential dwellings, vacant land, parking of vehicles, open storage of containers and structures for storage use (**Plan A-2**). The development under application is considered not incompatible with the surrounding land uses.
- 11.3 Relevant government departments, including C for T, CE/MN of DSD, CTP/UD&L of PlanD and DEP have no objection to or no adverse comment on the application. The proposed development will unlikely create significant adverse traffic, drainage, landscape and environmental 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 Site will be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will be advised to follow the latest CoP in order to minimise the possible environmental impacts on the nearby sensitive receivers.

- 11.4 The planning permission of previous application No. A/TM-LTY/320 submitted by the same applicant for the same use was revoked due to non-compliance with the approval condition on the implementation of drainage proposal. The applicant explained that the implemented drainage facilities was found inconsistent with the approved drainage proposal thus the approval condition was not complied with. For the current application, the applicant has submitted a drainage proposal with photographic evidence showing the completed drainage facilities. CE/MN, DSD has no objection to the application. Sympathetic consideration may be given to the current application. Nevertheless, shorter compliance periods are recommended in order to closely monitor the progress of compliance with approval conditions. Should the application be approved, the applicant should be advised that should the applicant fail to comply with any of the approval conditions again resulting in the revocation of planning permission, sympathetic consideration would not be given to any of the application.
- 11.5 Regarding the public comment, the planning considerations and assessments in paragraphs 11.1 to 11.4 above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10 above, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 24.4.2023. 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) no medium or heavy goods vehicles, exceeding 5.5 tonnes as defined in the Road Traffic Ordinance is allowed to enter/exit the site, as proposed by the applicant, at any time during the planning approval period;
- (c) the existing fencing of the Site shall be maintained at all times during the planning approval period;
- (d) the existing tree planting within the Site shall be maintained in good condition at all times during the planning approval period;
- (e) the submission of a revised drainage proposal 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 24.7.2020;
- (f) in relation to (e) above, the implementation of drainage proposal within **6 months** from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 24.10.2020;

- (g) the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (h) the submission of fire service installations proposal within **3 months** from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 24.7.2020;
- (i) in relation to (h) above, the implementation of fire service installations proposal within **6 months** from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 24.10.2020;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (g) 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
- (k) if any of the above planning conditions (e), (f), (h) or (i) 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 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 the planning intention of the "Residential (Group 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. 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

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| Appendix I | Application Form and Supplementary Planning Statement received on 5.3.2020 |
| Appendix Ia | Supplementary Information received on 6.3.2020 |
| Appendix Ib | Further Information received on 7.4.2020 |

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| Appendix II | Previous s.16 Application Covering the Application Site |
| Appendix III | Similar Application |
| Appendix IV | Public Comment received during statutory publication period |
| Appendix V | Advisory Clauses |
| Drawing A-1 | Location Plan |
| Drawing A-2 | Lot Index Plan |
| Drawing A-3 | Site Plan |
| Drawing A-4 | Drainage Proposal |
| Drawing A-5 | Tree Preservation and Landscape Proposal |
| Drawings A-6 and A-7 | Swept Path Analysis |
| Plan A-1 | Location Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plan A-4 | Site Photos |

PLANNING DEPARTMENT
APRIL 2020