

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

**APPLICATION NO. A/YL-PS/576**

- Applicant** : Cheng Wing Ho represented by Metro Planning and Development Company Limited
- Site** : Lot 357 (part) in D.D. 122, Ping Shan, Yuen Long, New Territories
- Site Area** : About 42 m<sup>2</sup>
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ping Shan OZP No. S/YL-PS/18
- Zoning** : “Village Type Development” (“V”)  
[Restricted to maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Eating Place (Light Refreshment Restaurant) 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 eating place (light refreshment restaurant) for a period of 3 years (**Plan A-1**). According to the Notes of “V” zone of the OZP, ‘Eating Place’ other than on the ground floor of a New Territories Exempted House (NTEH) are Column 2 uses which require planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary permission for a period of 3 years, and the Site is currently used for the applied use without valid planning permission.
- 1.2 The major development parameters of the current application are as follows:

<b>Site area</b>	About 42 m <sup>2</sup>
<b>Total floor area</b>	About 35 m <sup>2</sup>
<b>No. of structure</b>	1
<b>Height of structure</b>	1 storey (5m)
<b>No. of parking space</b>	Nil
<b>No. of loading/ unloading bay</b>	Nil
<b>Operation Hours</b>	7:00 a.m. to 11:00 p.m. daily

- 1.3 The lot index plan, location plan, proposed layout plan, proposed drainage plan and proposed footpath plan are at **Drawings A-1** to **A-5** respectively.

- 1.4 According to the applicant, the Site is accessible via a footpath leading from Tsui Sing Road and no parking spaces will be provided. Clients with private cars can use the approved public vehicle park to the east of the Site.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 31.10.2018 (with replacement pages) **(Appendix I)**
  - (b) Supplementary planning statement with drainage assessment, site plan, location plan, proposed layout plan, proposed drainage plan, proposed footpath plan **(Appendix Ia)**
  - (c) Letter of 30.11.2018 providing responses to the Environmental Protection Department (EPD) and Antiquities and Monuments Office (AMO)'s comment (*accepted and exempted from publication and recounting requirement*) **(Appendix Ib)**
  - (d) Letter of 6.12.2018 providing clarification on the category of use of the Site (*accepted and exempted from publication and recounting requirement*) **(Appendix Ic)**

## **2. Justifications from the Applicant**

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

- (a) The proposed development is a community use to serve the villagers' demand for catering. The nature and size of the proposed development further demonstrated that it would not affect the character of the village. Additionally, the proposed development would provide convenience to the villagers and the tourists of Ping Shan Heritage Trail. The proposed development is in line with the planning intention of the "V" zone and will generate benefit to the villagers of Sheung Cheung Wai.
- (b) According to the Notes of the OZP, 'Eating Place' is always permitted on the ground floor of a NTEH. In view that the Site is yet to apply for NTEH, the proposed development requires planning permission though it is temporary in nature. The proposed development is clean, tidy and free from nuisance.
- (c) The proposed development is considered compatible with the surrounding environment.
- (d) Due to limited size of the Site, no vehicular access is proposed for the proposed development. The applicant will make use of the parking space at the adjoining public vehicle park with planning permission No. A/YL-PS/561 for delivery of raw materials for making dessert. The proposed development would not

generate adverse traffic impact.

- (e) The applied use would not generate environmental or noise disturbance. With the implementation of drainage facilities, the proposed development would not generate adverse drainage impact.
- (f) The applicant will properly design and maintain adequate mechanical ventilation and necessary pollution control measures to avoid accumulation of aerial emissions and minimise potential noise and odour nuisances to the public and people living nearby in accordance with relevant EPD's code of practice and guidelines. All wastewater collected from kitchen would be discharged in accordance with the requirements of EPD's Practice Note for Professional Person PN 9/93 "Drainage Plans subject to Comment by the EPD". A discharge license under the WPCO would be obtained before a new discharge is connected.
- (g) Any proposed works, including the proposed drainage facilities, would not encroach into GLA-TYL 1634 and would not cause any adverse impacts to the structures and flow of surface runoff therein.

### **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 posting notice of the application outside the Site and sending a notice to the Ping Shan Rural Committee. Detailed information would be deposited at the meeting for Members' inspection.

### **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) are relevant to this application. The relevant assessment criteria of the Guidelines are summarised below and detailed at **Appendix II**.

- (a) The 'Eating Place' use should not create any 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 also be given to any application which would not have adverse impacts on drainage, sewerage 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) Even if a proposal is considered acceptable in land-use planning terms and other planning criteria are met, under normal circumstances only a temporary approval for a maximum of three years should be considered so as to retain planning control on the development at the site and to cater for changing circumstances in future.

## **5. Background**

The subject use on the Site would be subject to planning enforcement action.

## **6. Previous Application**

There is no previous application covering the Site.

## **7. Similar Application**

There is no similar application in the same “V” zone.

## **8. The Site and Its Surrounding Areas (Plans A-1 to A-4)**

8.1 The Site is:

- (a) currently occupied by an eating place serving dessert; and
- (b) accessed via a footpath leading from Tsui Sing Road.

8.2 The surrounding areas have the following characteristics:

- (a) to the north and northwest are shop and temple which are suspected unauthorised developments (UD), Tin Shui Wai Light Rail Substation, West Rail Line and Tsui Sing Road;
- (b) to the immediate east are a residential dwelling and unused land;
- (c) to the immediate south are restoration works for Tat Tak Communal Hall (a declared monument), unused land and residential dwellings; and
- (d) to the west and southwest are temporary vehicle park permitted under valid planning application No. A/YL-PS/561, temple, vehicle servicing, estate agent, shrine and pet station which are suspected UDs and Tsui Sing Lau Pagoda.

## **9. Planning Intention**

The planning intention of the “V” zone is to reflect existing recognised 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. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

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

10.1 The following government departments have been consulted and their views on the application are summarised as follows:

### **Land Administration**

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises an Old Schedule Agricultural Lot 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) The Site is accessible from Tsui Sing Road via government land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should planning approval be given to the planning application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularise any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.
- (e) According to his record, there is no Small House application(s) approved or currently under processing at and in the vicinity of the Site.

### **Building Matters**

#### 10.1.2 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 New Territories Exempted House) are erected on leased land without the approval of the Buildings Department (BD), they are unauthorized 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 application site under the BO.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling) 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) 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.
- (f) If the proposed use under application is subject to issue of a license, please be reminded that any existing structures on the application site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.
- (g) 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.

### **Traffic**

#### 10.1.3 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):

He has no adverse comment to the application from traffic engineering point of view.

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

- (a) The access arrangement should be commented by TD.
- (b) Currently, only a section of Tsui Sing Road of about 120m abutting Ping Ha Road is maintained by HyD. HyD shall not be responsible for the maintenance of any access connecting the Site and Tsui Sing Road.
- (c) Adequate drainage measures should be provided for the Site to prevent water flowing from the Site to nearby public roads/drains.

**Drainage**

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

The area is relatively small and he has no objection to the application from drainage viewpoint. The applicant is reminded to provide his own drainage facilities to collect the runoff generated from the Site or passing through the Site, and discharge the runoff collected to a proper discharge point. The development should not obstruct overland flow or cause any adverse drainage impact to the adjacent areas and existing drainage facilities.

**Environment**

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

- (a) The applicant will provide necessary pollution control measures and ensure that the proposed use would not cause any environmental nuisance such as noise, oily fume and cooking odour to the public and people living nearby. He has no objection to the application from environmental planning perspective.
- (b) The applicant is advised to properly design and maintain adequate mechanical ventilation and necessary pollution control measures to avoid accumulation of aerial emissions and minimize potential noise and odour nuisances to the public and people living nearby. To minimise noise impact, oily fume and cooking odour emissions from the restaurant, the applicant should make reference to EPD's Pamphlet "Control of Oily Fume and Cooking Odour from Restaurant and Food Business" available from his website. The applicant is also advised to follow the relevant mitigation measures and requirements in the revised "Code of Practice on Handling the Environmental

Aspects of Temporary Uses and Open Storage Sites” to minimise any potential environmental nuisances.

- (c) All wastewater collected from kitchen, including that from basins, sinks and floor drains, should be discharged via a grease trap in accordance with the requirements of EPD’s Practice Note for Professional Person (ProPECC) PN 9/93 “Drainage Plans subject to Comment by the Environmental Protection Department”. He would also like to remind that effluent discharges from the proposed use are subject to control under the Water Pollution Control Ordinance (WPCO). A discharge license under the WPCO shall be obtained before a new discharge is connected.
- (d) There was no environmental complaint pertaining to the Site received in the past 3 years.

### **Fire Safety**

#### 10.1.7 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.
- (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.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123) or application for license for the subject light refreshment restaurant is required, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

### **Landscape**

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

With reference to the aerial photo of 2018, it is observed that the Site is hard paved and occupied by existing temporary structures. The Site is situated in an area of village landscape character disturbed by vehicle parks. Significant change to the landscape character arising from the application is not anticipated.



**Others**

10.1.9 Comments of the Antiquities and Monuments Office, Development Bureau (AMO, DEVB):

- (a) The Site is in vicinity of GLA-TYL 1634 which is temporarily allocated to AMO for the restoration of Tat Tak Communal Hall, a declared monument therein protected under the Antiquities and Monuments Ordinance (Cap. 53).
- (b) The applicant should ensure that any proposed works, including the proposed drainage facilities, should not encroach into GLA-TYL 1634 and should not cause any adverse impacts to the structures and flow of surface runoff therein.

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

- (a) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from the activity/operation, the applicant should arrange disposal properly at her own expenses.
- (c) Proper licence/permit issued by his Department is required if there is any food business/catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. The operation of any eating place should be under a food licence issued by the FEHD. If the operator intends to operate a restaurant business in the territory, a restaurant licence should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). For the operation of other types of food business, relevant food licences should also be obtained from FEHD in accordance with Cap. 132. Under the Food Business Regulation, Cap. 132X, a Food Factory Licence should be obtained from his department for food business which involves the preparation of food for sale for human consumption off the premises before commencement of such business. The application for food business licences under Cap. 132, if acceptable by FEHD, will be referred to relevant government departments for comment. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicant for compliance and the licence will be issued upon compliance of all the requirements.

**District Officer's Comments**

10.1.11 Comments of the District Officer (Yuen Long), Home Affairs

Department (DO(YL), HAD):

His Office has not received any comment from the locals on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Commissioner of Police (C of P);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Director of Leisure and Cultural Services (DLCS); and
- (f) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD).

## **11. Public Comments Received During Statutory Publication Period**

On 9.11.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 30.11.2018, no public comment was received.

## **12. Planning Considerations and Assessments**

12.1 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 development is not entirely in line with the planning intention of the “V” zone, according to the DLO/YL, LandsD, there is no Small House application approved or under processing at the Site. In this regard, temporary approval of the application would not frustrate the long-term planning intention of the zoned use on the OZP.

12.2 The Site is mainly surrounded by shop, temple, shrine, vehicle park, vehicle servicing and residential dwellings (**Plan A-2**). The development is not incompatible with the surrounding land uses.

12.3 According to TPB PG-No. 15A, eating place use in the “V” zone should not create any environmental nuisance, cause inconvenience to the residents nearby and should not have adverse traffic, drainage, sewerage or fire safety impacts on its surrounding areas. The applied development does not contravene the TPB PG-No. 15A. In this regard, concerned government departments, including AC for T/NT of TD, CE/MN of DSD, CHE/NTW of HyD, CTP/UD&L of PlanD, DEP and D of FS have no objection to or no adverse comment on the application. The proposed use will unlikely create significant adverse traffic, environmental and drainage impacts to the surrounding areas. There has been no environmental complaint concerning the Site received in the past 3 years. To minimize any potential environmental nuisances and to address the technical

requirements of concerned Government departments, appropriate approval conditions are recommended in paragraph 13.2 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 “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimise the possible environmental impacts on the nearby sensitive receivers.

12.4 There is no public comment received on the application during the statutory publication period.

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

13.1 Based on the assessment made in paragraph 11 above, the Planning Department has no objection to the application.

13.2 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 **21.12.2021**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

#### Approval conditions

- (a) no operation between 11:00 p.m. and 7:00 a.m. is allowed on the Site, as proposed by the applicant, during the planning approval period;
- (b) the submission of a 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 **21.6.2019**;
- (c) in relation to (b) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **21.9.2019**;
- (d) if the above planning condition (a) is not complied with during the 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 above 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 III**.

13.3 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 "V" zone which is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

#### **14. Decision Sought**

14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

14.2 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.

14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

#### **15. Attachments**

<b>Appendix I</b>	Application form received on 31.10.2018 (with replacement pages)
<b>Appendix Ia</b>	Supplementary planning statement with drainage assessment, site plan, location plan, proposed layout plan, proposed drainage plan, proposed footpath plan
<b>Appendix Ib</b>	Letter of 30.11.2018 providing responses to the EPD and AMO's comment
<b>Appendix Ic</b>	Letter of 6.12.2018 providing clarification on the category of use of the Site
<b>Appendix II</b>	Town Planning Board Guidelines for Application for Eating Place within "V" zone in Rural Areas under Section 16 of the Town Planning Ordinance (TPB PG-No. 15A)
<b>Appendix III</b>	Advisory Clauses
<b>Drawing A-1</b>	Lot Index Plan
<b>Drawing A-2</b>	Location Plan
<b>Drawing A-3</b>	Proposed Layout Plan
<b>Drawing A-4</b>	Proposed Drainage Plan
<b>Drawing A-5</b>	Proposed Footpath Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos