

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PS/605

- Applicants** : Mr. SHING Ho Kiu represented by Mr. LI Kin Ming, Vincent
- Site** : Lot 134 RP in D.D. 123, Ping Shan, Yuen Long, New Territories
- Site Area** : About 93 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ping Shan Outline Zoning Plan (OZP) No. S/YL-PS/18
- Zoning** : “Village Type Development” (“V”)
[Restricted to maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Shop and Services (Real Estate Agency) 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 (real estate agency) for a period of 3 years. The Site falls within an area zoned “V” on the Approved Ping Shan Outline Zoning Plan (the OZP) No. S/YL-PS/18 (**Plan A-1**). According to the Notes of the OZP for “V” zone, ‘Shop and Services’ (except those on the ground floor of a New Territories Exempted House (NTEH)) requires planning permission from the Town Planning Board (the Board). The Site is currently used for open storage of construction materials without valid planning permission.
- 1.2 The Site is the subject of a previous Application No. A/YL-PS/582, covering the same site for the same use by the same applicant, which was approved by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) on 22.3.2019. The application was revoked on 22.9.2019 due to non-compliance with approval condition on fire safety aspect. Details of the previous application are at **Appendix II**.
- 1.3 A comparison of the major development parameters of the current application and the last application is as follows:

Major Development Parameters	Previously Approved Application No. A/YL-PS/582 (a)	Current Application No. A/YL-PS/605 (b)	Difference (b) – (a)
Development/Use	Proposed Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years		No Change
Site Area	93 m ² (about)		No Change
No. of Structures	2	1	-1
Gross Floor Area (GFA)	28m ²	40m ²	+12m ²
Building Height	2.6m	3.7m	+1.1m
Operation Hours	10:00 a.m to 9:00 p.m every day		No Change

1.4 Compared with the last approved application No. A/YL-PS/582, the current application is submitted by the same applicant for the same use on the same Site with different development parameters. The layout plan submitted by the applicant is at **Drawing A-1**.

1.5 In support of the application, the applicant submitted the following documents:

- (a) Application Form and attachments received on **(Appendix I)** 23.4.2020
- (b) Further Information (FI) clarifying the there is no car maneuvering space and loading/unloading bay at the Site received on 1.6.2020 (*accepted and exempted from publication requirements*) **(Appendix Ia)**

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 7 of the Application Form at **Appendix I**. They can be summarised as follows:

- (a) The proposed real estate agency would provide convenience to and serve the local villagers and nearby residents for buying/selling/renting flats. The proposed development could also make better use of undeveloped rural land.
- (b) The applicant would submit drainage proposal, fire services installations (FSIs) proposal and landscape proposal if the application is approved.

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 obtaining the consent of current land owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is currently not subject to any planning enforcement action. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorized development under the Town Planning Ordinance, enforcement action would be instigated.

5. **Town Planning Board Guidelines**

The Town Planning Board Guidelines for “Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance” (TPB PG-No. 12C) are relevant to this application. According to the said Guidelines, the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarized as follows:

- (a) The intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
- (b) Within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including temporary uses) are however exempted from the requirement of EcoIA.

6. **Previous Application**

The Site is the subject of one previous Application No. A/YL-PS/582 (covering the same Site) for the same use by the same applicant which was approved by the Committee on 22.3.2019. The application was revoked on 22.9.2019 due to non-compliance with approval condition on fire safety aspect. Details of the previous application are summarized at **Appendix II** and the location is shown on **Plan A-1**.

7. **Similar Applications**

7.1 Within the same “V” zone, there are 5 similar applications (No. A/YL-PS/418, 475, 517, 518 and 542) covering two sites for temporary shop and services uses (real estate agency or convenient store) for a period of 3 or 5 years, all of which were approved by the Committee from 2013 to 2017. Details of these applications are summarized at **Appendix III** and the locations of these application sites are shown on **Plan A-1**.

7.2 Three of these similar applications (No. A/YL-PS/475, 517 and 542) for temporary convenient store for a period of 3 or 5 years were approved by the

Committee on 27.3.2015, 22.4.2016 and 23.6.2017 respectively. Another two similar applications (No. A/YL-PS/418 and 518) for temporary real estate agency for a period of 3 or 5 years were approved by the Committee on 11.10.2013 and 27.5.2016 respectively. All of which were approved on similar considerations of not frustrating the long-term planning intention of “V” zone, not incompatible with the surrounding land uses, not envisaging adverse ecological impacts and no objection or adverse comment from concerned Government departments.

7.3 However, amongst these approved applications, Applications No. A/YL-PS/418, 475 and 517 were subsequently revoked on 11.7.2015, 27.9.2015 and 22.10.2016 respectively due to non-compliance with the approved conditions.

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

8.1 The Site is:

- (a) currently used for open storage of construction materials without valid planning permission; and
- (b) accessible from Fuk Shun Street (**Plan A-2**).

8.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):

- (a) to the east and southeast within the same “V” zone are parking of vehicles, storage yards and plant nurseries; to the further southeast is the residential development named Vienna Villa;
- (b) to the south and southwest within the same “V” zone are residential dwellings, plant nursery, storage yards, parking of vehicles and to the further south is the village cluster of Shing Uk Tsuen;
- (c) to the west and northwest across Fuk Shun Street within the same “V” zone are storage yard, eating place, real estate agency, vehicle repairing workshop and residential dwellings; and
- (d) to the north and northeast across Fuk Shun Street within the same “V” zone are residential dwellings, parking of vehicles, grave and shrubland.

9. 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. 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) 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 regularize any irregularities on the Site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications of any of the above will be considered by LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application 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 LandsD.
- (c) There is no Small House application received or approved within the Site.

Traffic

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

Noting that there would be no vehicular access and parking spaces proposed to the Site and the traffic flow for the Site would be negligible, he has no comment on the application from traffic engineering point of view.

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

It is noted that no vehicular access is proposed under the application. He has no comment on the application.

Environment

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

Should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (“COP”).

Drainage

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

- (a) The Site is relatively small and he has no objection in principle to the application from a drainage point of view.
- (b) The applicant should 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.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire services 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), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Landscaping

- 10.1.7 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 generally hard paved and vacant. The Site is situated in an area of miscellaneous rural fringe landscape character. Although similar nature of the proposed use is not observed in the vicinity, the maximum building height of the proposed development of 3.7m is similar to the adjacent developments. Significant change to the landscape character arising from the application is not anticipated.

Nature Conservation

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

It is noted that the Site is paved and disturbed, he has no comment on the application from nature conservation point of view.

Building Matters

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

- (a) Before any new building works (including containers/open sheds as temporary buildings demolition and land filing) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW) under the Building Ordinance (BO). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) 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.
- (c) 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.
- (d) 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.

District Officer's Comments

10.1.10 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 departments have no comment on the application:

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Chief Engineer/Land Works, CEDD (CE/LW, CEDD);
- (c) Antiquities and Monuments Office, Development Bureau (AMO, DevB);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Director of Leisure and Cultural Services (DLCS);
- (f) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (g) Commissioner of Police (C of P).

11. Public Comments Received During the Statutory Publication Period

On 5.5.2020, the application was published for public inspection. During the statutory public inspection period, two public comments were received from individuals objecting to the application (**Appendix IV**). The main objecting reasons are summarized below:

- (a) the applied use is not in line with the planning intention of the “V” zone;
- (b) the applicant did not consult the residents and stakeholders; and
- (c) the application would have adverse traffic impact on the surrounding area.

12. Planning Considerations and Assessments

12.1 The application is for a temporary real estate agency at the Site zoned “V”. 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 “V” 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 New Territories Exempted Houses. The development is not entirely in line with the planning intention of the “V” zone.

However, the development could provide such facilities in the area to meet any such demand. DLO/YL, LandsD also advises that there is currently no Small House application or approval at the Site. Approval of the application on a temporary basis for 3 years would not jeopardize the long-term planning intention of the “V” zone.

- 12.2 The Site is currently surrounded by residential dwellings, car parks, storage yards and village clusters (**Plan A-2**). The proposed use is not incompatible with the surrounding land uses.
- 12.3 Although the Site falls within the WBA under the TPB PG-No. 12C, the guidelines also specify that planning applications for local and minor uses (including temporary uses) are exempted from the requirement of EcoIA. DAFC has no comment on the application from nature conservation point of view as the Site is paved and disturbed. Adverse ecological impacts are not envisaged.
- 12.4 Concerned Government departments have no objection to or no adverse comment on the application. Relevant approval conditions have been recommended in paragraph 13.2 below to address the technical concerns of concerned Government departments. Any non-compliance with the approval conditions would result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority. Besides, the applicant will also be advised to follow the “COP” in order to minimize any potential environmental impact.
- 12.5 The Site was the subject of a previous Application No. A/YL-PS/582 for the same use which was subsequently revoked due to non-compliance with approval conditions on fire safety aspect. For the current application, D of FS has no in-principle objection to the application subject to FSIs being provided to his satisfaction. Hence, approval condition regarding the submission and implementation of FSIs proposal are recommended in paragraph 13.2. In view of this, sympathetic consideration may be given to the application. However, shorter compliance period is recommended in order to closely monitor the progress on compliance with approval conditions. Moreover, should the application be approved, the applicant will be advised that should he 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 application.
- 12.6 There are 5 similar applications (No. A/YL-PS/418, 475, 517, 518 and 542) for temporary real estate agency or convenient store uses in the “V” zone for a period of 3 or 5 years approved by the Committee. Approval of the current application is in line with the previous decisions of the Committee.
- 12.7 There are two public comments received (**Appendix IV**) objecting to the application on the grounds as summarized in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.6 above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments in paragraph 11 above, the Planning Department has no objection to the application for the proposed temporary shop and services (real estate agency) for a period of 3 years.
- 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 12.6.2023. 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 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) 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 12.9.2020;
- (c) in relation to (b) 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 12.12.2020;
- (d) if the above planning condition (a) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (e) if any of the above planning conditions (b) or (c) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

The recommended advisory clauses are attached at **Appendix V**.

- 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 "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. 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 reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form and attachments received on 23.4.2020
Appendix Ia	FI clarifying the there is no car manoeuvring space and loading/unloading bay at the Site received on 1.6.2020
Appendix II	Previous Application
Appendix III	Similar s.16 Applications within the Same “V” Zone
Appendix IV	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JUNE 2019**