

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

**APPLICATION NO. A/YL-TT/429**

<b><u>Applicant</u></b>	: Mr. KWAN Hoi Ngai represented by Goldrich Planners & Surveyors Limited
<b><u>Site</u></b>	: Lots 266 RP (Part) and 268 (Part) in D.D. 117 and Adjoining Government Land, Tai Tong, Yuen Long, New Territories
<b><u>Site Area</u></b>	: 257.8m <sup>2</sup> (about) (including Government land (GL) of about 20.6m <sup>2</sup> )
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
<b><u>Zoning</u></b>	: “Village Type Development” (“V”) [Restricted to a maximum building height of 3 storeys (8.23m)]
<b><u>Application</u></b>	: Temporary Shop and Services (Real Estate Agency) and Eating Place 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 (real estate agency) and eating place for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “V” zone, ‘Shop and Services’ and ‘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 seeks planning permission for 3 years. The Site is currently occupied by the applied uses. While the real estate agency is covered by a planning permission under Application No. A/YL-TT/384, the eating place is without valid planning permission (**Plans A-2, A-4a to A-4c**).
- 1.2 The Site was the subject of one previous application for temporary shop and services (local provision store with ancillary storage area and real estate agency) (No. A/YL-TT/384), which was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 29.7.2016, and the permission is valid up to 29.7.2019. Details of the previous applications are at paragraph 6 below and **Appendix III**. Compared with the last

application, the current application is submitted by a different applicant for similar shop and service use with addition of eating place use on a larger site with different development parameters.

- 1.3 The Site abuts Tai Tong Road to its north (**Plan A-1**) with the main entrance and the emergency exit at the northern and southeastern peripheries of the Site respectively (**Plan A-2 and Drawing A-1**). According to the applicant, the applied uses aim to serve the residents living in the vicinity, whereby real estate agency services will be provided and Chinese cuisine would be served at the eating place (with 128.8m<sup>2</sup> seating area). A plan showing the vehicular access leading to the Site, the site layout plan, the tree preservation plan, and an as-built drainage plan submitted by the applicant are at **Drawings A-1 to A-4** respectively.
- 1.4 A comparison of the major development parameters of the current application and the last approved application is as follows:

<b>Major Development Parameters</b>	<b>Previously Approved Application No. A/YL-TT/384 (a)</b>	<b>Current Application No. A/YL-TT/429 (b)</b>	<b>Difference (b)-(a)</b>
Applied Use	Proposed Temporary Shop and Services (Local Provision Store with Ancillary Storage Area and Real Estate Agency) for a Period of 3 Years	Temporary Shop and Services (Real Estate Agency) and Eating Place for a Period of 3 Years	Replacement of the local provision store with an eating place
Site Area	About 228.6m <sup>2</sup> (including GL of about 16.2m <sup>2</sup> )	About 257.8m <sup>2</sup> (including GL of about 20.6m <sup>2</sup> )	+29.2m <sup>2</sup> (+13%)
Total Floor Area (Non-domestic)	216.27m <sup>2</sup> (including - Real estate agency 77.25m <sup>2</sup> - Local provision store 110.6m <sup>2</sup> - Ancillary storage room 28.42m <sup>2</sup> )	214.4m <sup>2</sup> (including - Real estate agency 49.5m <sup>2</sup> - Food room 33.9m <sup>2</sup> - Seating area 128.8m <sup>2</sup> - Toilet 2.2m <sup>2</sup> )	-1.87m <sup>2</sup> (-0.8%)
No. of Structures	5 (for real estate agency, local provision stores and ancillary storage area uses)	6 (for real estate agency, seating areas, toilets and food room uses)	+1 (+20%)
Height of Structures	5.4m to 6.5m (1 to 2 storeys)		---
Operation Hours	8:00 a.m. to 10:00 p.m. daily (including Sundays and public holidays)		---

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

- (a) Application Form with Appendix and Plans received on 10.4.2018 **(Appendix I)**
- (b) Further Information dated 28.5.2018 clarifying that existing structures are utilised for the applied uses **(Appendix Ia)**

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

The justifications put forth by the applicant in support of the application are detailed in the justification statement of the Application Form at **Appendix I** and further information at **Appendix Ia**. They can be summarized as follows:

- (a) The Site is the subject of a previously approved application No. A/YL-TT/384. Since the applied uses are partially different from the previously approved scheme, a fresh application is thus required.
- (b) The Site falls within the “V” zone on the OZP. Existing structures are utilised for the applied uses. The applied development can serve the local demand for eating places and real estate agency services. The applied uses are on a temporary basis which would not hinder the long-term development of the area.
- (c) There will be no adverse visual, landscape, drainage, sewage and traffic impacts. The development is visually compatible with the surrounding environment. The existing trees and drainage facilities on site will be properly maintained. Wastewater will be pre-treated by grease trap before discharge to the existing public sewer and a kitchen exhaust system will be provided. No parking space and vehicular at the east of the Site access are proposed.

## **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 a notice of the application outside the Site and sending the notice to the Shap Pat Heung Rural Committee by registered post. 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 attached at **Appendix II**.

## **5. Background**

The use in the Site is subject to investigation. Should a material change of use be identified and confirmed in the Site, which constitutes an unauthorized development under the Town Planning Ordinance, enforcement action would be instigated.

## **6. Previous Application**

- 6.1 The Site is the subject of one previous application submitted for proposed temporary shop and services (local provision store with ancillary storage area and real estate agency) (No. A/YL-TT/384) for a period of 3 years. Details of the application are summarized in **Appendix III** and the boundary of the site is shown on **Plan A-1**.
- 6.2 The last application was approved by the Committee on 29.7.2016 on considerations of not jeopardizing long-term planning intention of the “V” zone; not incompatible with surrounding land uses; and no adverse comments from relevant Government departments. All the time-limited approval conditions under the last application, except for the condition requiring the implementation of the fire service installations (FSIs) proposal, have been complied with and the permission is valid up to 29.7.2019.
- 6.3 Compared with the last application, the current application is submitted by a different applicant for similar shop and service use with addition of eating place use on a larger site with different development parameters.

## **7. Similar Applications**

- 7.1 There are a total of 9 similar applications (No. A/YL-TT/289, 301, 302, 327, 343, 344, 357, 418 and 421) for various shop and services uses and no similar application for eating place in the subject “V” zone. Detailed information of the applications is at **Appendix IV** and their locations are shown on **Plan A-1**.
- 7.2 Applications No. A/YL-TT/289, 301, 302, 327, 343 and 418 for temporary shop and services (real estate agency) were approved with conditions by the Committee or allowed by the Town Planning Appeal Board for periods of 12 months or 3 years on 19.8.2011, 20.4.2012, 20.4.2012, 22.12.2015, 16.1.2015 and 12.1.2018 respectively. However, the planning permissions under Applications No. A/YL-TT/289, 301, 302, and 327 were revoked due to non-compliance with approval conditions.
- 7.3 Applications No. A/YL-TT/344, 357 and 421 for temporary shop and services (real estate agency/environmental consultancy and landscaping services/building surveying consultancy) were rejected by the Board on review or the Committee on 15.5.2015, 3.6.2016 and 9.2.2018 respectively mainly on the grounds that approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent.

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

- 8.1 The Site is:
- (a) abutting Tai Tong Road to its north (**Plan A-2**);
  - (b) hard-paved and fenced off; and

- (c) currently occupied for the applied uses. While the real estate agency is covered by planning permission under Application No. A/YL-TT/384, the eating place is without valid planning permission.

8.2 The surrounding areas have the following characteristics:

- (a) to its east is a piece of vacant land and to its southeast is a fallow agricultural land;
- (b) to its immediate west and south are residential dwellings, storage yard and temple. To its further west is an elderly home;
- (c) to its north across Tai Tong Road are some residential dwellings, refuse collection point, car parks, tyre company, motor shop, vehicle repair workshop, workshops, storage yard, fallow agricultural land and unused land ;
- (d) the storage yards, car parks, vehicle repair workshop and workshops in its vicinity are mostly suspected unauthorized development subject to enforcement action taken by the Planning Authority.

## **9. Planning Intention**

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the 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 New Territories Exempted House. 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 summarized as follows:

### **Land Administration**

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

- (a) The Site comprises Old Scheduled Agricultural Lots held under Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) Lots No. 266 RP and 268 in D.D. 117 are covered by Short Term

Waiver (STW) No. 4679 and 4680 respectively to permit structures erected thereon for the purpose of “Temporary Shop and Services (Local Provision Store with Ancillary Storage Area and Real Estate Agency)”.

- (c) The GL within the Site is covered by Short Term Tenancy (STT) No. 3069 for the purpose of “Temporary Shop and Services (Local Provision Store with Ancillary Storage Area and Real Estate Agency)”.
- (d) The Site is accessible to Tai Tong Road via GL. Her office does not provide maintenance work for GL involved and does not guarantee any right-of-way to the Site.
- (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (f) There is no Small House application located within boundary of the Site but there are 5 such applications within the 30m radius circle of the Site under processing. The Small House applications are at departmental circulation stage. She has no comment in this regard.
- (g) Should planning approval be given to the subject planning application, the STW/STT holder(s) will need to apply to her office for modification of the STW/STT if there is any irregularities on site. Such application(s) will be considered by her department acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application(s) 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 her department.

### **Traffic**

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

- (a) It is noted that no vehicular access is proposed or to be granted under the application. He has no comment from highways maintenance point of view.
- (b) If the application is approved, it is recommended to highlight that it is understood from the application that there is and will be no vehicular access to/from the Site.

### **Food and Environmental Hygiene**

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

Please be informed that he offered no specific views on the captioned

application provided that:

- (i) The operation of any eating place should be under a food licence issued by the Food and Environmental Hygiene Department (FEHD). If the operator intends to operate a restaurant business in the territory, a general restaurant/light refreshment restaurant licence should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). The application for restaurant licence, if acceptable by FEHD, will be referred to relevant government departments, such as Building Department, Fire Services Department, Planning Department 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;
- (ii) The applicant is also reminded that the operation of the eating place must not cause any environmental nuisance to the surrounding. The refuse generated by the proposed eating place are regarded as trade refuse. The management or owner of the Site is responsible for its removal and disposal at their expenses. Furthermore, the operation of any business should not cause any obstruction or environment nuisance in the vicinity; and
- (iii) No FEHD's facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.

### **Environment**

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

- (a) There was no substantiated environmental complaint concerning the Site received in the past 3 years.
- (b) The latest "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites" issued by his department should be observed by the applicant.
- (c) Regarding the concerns on air, noise and effluent/sewage discharge arising from the eating place, sewage discharge from the Site should be directed to nearby public sewer. Any effluent discharge from the Site should also comply with the requirements under the Water Pollution Control Ordinance. The applicant is also reminded of his obligation to take appropriate measure to minimize oily fume, cooking odour and noise impact as required under the Air Pollution Control Ordinance and Noise Control Ordinance.

### **Drainage**

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

- (a) Based on the drainage proposal enclosed in the application, apparently the applicant would maintain the same drainage facilities as those implemented under previous planning application No. A/YL-TT/384.
- (b) In view of the above, he has no objection in principle to the applied development. Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the maintenance of the existing drainage facilities and submission of a record of the existing drainage facilities on the Site to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

### **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 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. In addition, the applicant should also be advised on the following points:
  - (iv) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
  - (v) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) However, the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), or application for food licence for the subject eating place 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.

### **Building Matters**

10.1.7 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 (BA) for the structures existing at the site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) The applicant's attention is drawn to the following points:
  - (i) If the existing structures are erected on leased land without approval of BD (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any use under the application.
  - (ii) 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 works or UBW on the Site under the BO.
  - (iii) Before any new building works (including containers/open sheds as temporary buildings) 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 Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
  - (iv) 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 B(P)R at the building plan submission stage.

### **District Officer's Comments**

10.1.8 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

The local consultation was completed on 8.5.2018 and his office has not received any comments from the village representatives in the vicinity regarding the application.

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

- (a) Commissioner for Transport (C for T);
- (b) Director of Agriculture, Fisheries and Conservation (DAFC);

- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (e) Director of Electrical and Mechanical Services (DEMS); and
- (f) Commissioner of Police (C of P).

## **11. Public Comment Received During the Statutory Publication Period**

On 17.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 8.5.2018, no public comment was received.

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

- 12.1 The current application is for temporary shop and services (real estate agency) and eating place at the Site zoned “V” on the OZP. The planning intention of the “V” zone is primarily to designate both existing recognized villages and areas of land considered suitable for village expansion and 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. The applied use is not entirely in line with the planning intention of “V” zone. However, according to DLO/YL of LandsD, there is no Small House application approved/under processing at the Site currently. Also, the shop and services and eating place uses could provide services to meet any such demand in the area. 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 applied development is not incompatible with the surrounding uses which are predominantly rural residential uses mixed with storage yards, car parks, shops, workshops and some agricultural land and unused land.
- 12.3 Government departments consulted, including DFEH, DEP, C for T, CHE/NTW of HyD, CE/MN of DSD, and D of FS, have no objection to or adverse comment on the application. Significant adverse environmental hygiene, traffic, landscape, drainage and sewerage impacts on the surrounding area are not envisaged. To minimize any possible environmental nuisances generated by the temporary use or to address the technical requirements of other concerned government departments, relevant approval conditions are also 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 the Site will be subject to enforcement action by the Planning Authority. Should the planning application be approved, the applicant will also be advised to follow the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize any potential environmental impact.
- 12.4 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. In view of departmental comments in paragraph 12.3 above and that the applied development is located at the fringe of the “V” zone and accessible via Tai Tong Road, the application is in line with TPG PG-No. 15A.

- 12.5 Given that the Committee has approved one application (No. A/YL-TT/384) for a similar shop and services use covering the Site and 9 other similar applications within the subject “V” zone, approval of the subject application is also in line with the Committee’s previous decisions.
- 12.6 There is no public comment received on the application during the statutory publication period.

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

- 13.1 Based on the assessments made in paragraph 12 above, the Planning Department considers that the temporary shop and services (real estate agency) and eating place could be tolerated 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 1.6.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

#### Approval conditions

- (a) no operation between 10:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) the existing trees and landscape planting on the Site shall be maintained at all times during the 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 on the Site 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 1.9.2018;
- (f) 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 1.12.2018;
- (g) in relation to (f) 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 1.3.2019;

- (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;
- (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; and
- (j) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

#### 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 the planning intention of the "V" zone which is primarily for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission to justify 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**

- Appendix I** Application Form with Appendix and Plans received on 10.4.2018
- Appendix Ia** Further Information dated 28.5.2018 clarifying that existing structures are utilised for the applied uses
- Appendix II** Relevant extract of the assessment criteria as set out in the Town Planning Board Guidelines (TPB-PG No. 15A) for Application for Eating Place within "Village Type Development" Zone in

<b>Appendix III</b>	Rural Areas under Section 16 of the Town Planning Ordinance
<b>Appendix IV</b>	Previous application covering the application site
<b>Appendix V</b>	Similar Applications within the Same “V” Zone on the OZP
<b>Drawing A-1</b>	Recommended Advisory Clauses
<b>Drawing A-2</b>	Vehicular Access Plan
<b>Drawing A-3</b>	Site Layout Plan
<b>Drawing A-4</b>	Tree Preservation Plan
<b>Plan A-1</b>	As-built Drainage Plan
<b>Plan A-2</b>	Location Plan
<b>Plan A-3</b>	Site Plan
<b>Plans A-4a to A-4c</b>	Aerial Photo
	Site Photos

**PLANNING DEPARTMENT  
JUNE 2018**