

RNTPC Paper No. A/YL-TT/462
For Consideration by
the Rural and New Town
Planning Committee
on 3.5.2019

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/462

- Applicant** : Shun Tat Shing Engineering Limited represented by Mr. KWOK Chi Man
- Site** : Lot 4773 RP (Part) in D.D. 116, Tai Tong Road, Yuen Long, New Territories
- Site Area** : 234 m² (about)
- Lease** : Block Government Lease (demised for agricultural purposes)
- Plan** : Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
- Zoning** : “Village Type Development” (“V”)
[Restricted to a maximum building height of 3 storeys (8.23m)]
- Application** : Temporary Shop and Services (Retail of Construction Materials) 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 (retail of construction materials) for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “V” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by the applied use without valid planning permission (**Plans A-2, A-4a to A-4b**).
- 1.2 The Site is the subject of two previous planning applications (No. A/YL-TT/145 and 225) submitted by different applicants for temporary storage of furniture and miscellaneous items, and open storage of private vehicles respectively. Both applications were rejected by the Rural and New Town Planning Committee (the Committee) of the Board on 25.7.2003 and 15.8.2008 respectively, mainly on the considerations that the proposed uses were not in line with the planning intention of the “V” zone and incompatible with the surrounding uses. Compared with the last application (No. A/YL-TT/225), the current application is submitted by a different applicant for a different use with a different site layout on a smaller site.

1.3 The Site is directly accessible from Tai Tong Road to its immediate west via a strip of government land (GL) (**Plan A-2**). According to the applicant, the proposed retail use aims to meet the local needs for basic construction/renovation materials, such as sand, stones, bricks, cements and wood, etc., with local residents being the targeted customers. The development mainly consists of one temporary structure separated into two compartments. One compartment is about 5m in height with two floors; the ground floor (100m²) is used for retail of construction materials and the first floor (100m²) for ancillary office. The other compartment (50m²) is 2.6m in height and also used for retail of construction materials. No parking spaces would be provided at the Site. The site layout plan submitted by the applicant is at **Drawing A-1**.

1.4 The major development parameters of the previously rejected application (No. A/YL-TT/225) and the current application are summarised as follows:

Major Development Parameters	Previously Rejected Application No. A/YL-TT/225 (a)	Current Application No. A/YL-TT/462 (b)	Difference (b)-(a)
Proposed Use	Temporary Open Storage of Private Vehicles for a Period of 3 Years	Temporary Shop and Services (Retail of Construction Materials) for a Period of 3 Years	Change in use
Site Area	304 m ² (about)	234 m ² (about)	-60 m ² (about)
Total Floor Area (Non-domestic)	152 m ²	250 m ²	+98 m ²
No. of Structures	1	1	--
Height of Structures	4m (1 storey)	2.6m – 5m (1-2 storeys)	+1m
Parking Spaces	6 for Private Cars (5m x 2.5m)	--	-6
Loading/ Unloading Spaces	--	1 (for light goods vehicle (LGV))	+1
Operation Hours	10:00 a.m. to 6:00 p.m. Mondays to Saturdays, with no operation on Sundays and public holidays	9:00 a.m. to 7:00 p.m. Mondays to Saturdays, with no operation on Sundays and public holidays	Extended Operation Hours

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

- (a) Application Form received on 5.3.2019 **(Appendix I)**
- (b) Supplementary Planning Statement **(Appendix Ia)**
- (c) Further Information dated 3.4.2019 providing clarification on the operation mode **(Appendix Ib)**
[accepted and exempted from publication and recounting]

requirements]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Supplementary Planning Statement at **Appendix Ia** and further information at **Appendix Ib**. They can be summarised as follows:

- (a) The purpose of the planning application is to regularise the existing operation on the Site. Since the proposal is already in operation, no environmental nuisances, such as excavation or filling of land, tree felling or disruption of water sources, would be generated. As the use is temporary in nature, it is not incompatible with the surrounding rural uses and the planning intention of the “V” zone.
- (b) The Site abuts Tai Tong Road where a number of similar shop and services uses have been approved by the Board in the past, such as No. A/YL-TT/418. The proposal represents a better utilisation of land and would also allow for proper management of the Site.
- (c) The proposed use is clean in nature and none of the employees would reside on the Site. No advertisement boards with neon lighting devices would be installed. No night time operation or workshop activities would take place at the Site, including repairing, spray painting and car washing, etc. No harmful or polluting items would be stored on Site.
- (d) The applicant will apply for a Short Term Waiver for the structures should the Board approve the application.
- (e) Customers will be reminded that no parking spaces would be provided at the Site. If customers are unable to carry their purchases by hand, trolleys would be provided to transport the purchases to their parked cars nearby. The customers may access the Site by bus, minibus or taxi. Deliveries (about twice daily) and stockpiling of products (about once per week) would be made via a LGV. The traffic generation from the proposed use would be insignificant.

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 at the Site and sending the notice to the Shap Pat Heung Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not subject to planning enforcement action.

5. Previous Applications

- 5.1 The Site was involved in two previous applications (No. A/YL-TT/145 and 225) submitted by different applicants for temporary storage of furniture and miscellaneous items, and open storage of private vehicles respectively. Details of the applications are summarised in **Appendix II** and the locations of the sites are shown on **Plan A-1**.
- 5.2 Application No. A/YL-TT/145 for temporary storage of furniture and miscellaneous items for a period of 3 years was rejected by the Committee on 25.7.2003 mainly on the considerations that the development was not in line with the planning intention of the "V" zone; the development was not compatible with the surrounding residential and rural character; two areas of land were zoned "Open Storage" ("OS") on the OZP to meet the demand for land for open storage/storage use and there was no information to demonstrate why suitable sites/units within these "OS" zones/flatted factories could not be made available for the development; and approval of the application would set an undesirable precedent for similar uses to proliferate into the subject "V" zone.
- 5.3 The last application (No. A/YL-TT/225) for temporary open storage of private vehicles for a period of 3 years was rejected by the Committee on 15.8.2008 on similar considerations as the former application. In addition, the proposed development was considered not in line with the then Town Planning Board Guidelines for "Application for Open Storage and Port Back-up Uses" (TPB PG-No. 13D) in that there was no previous planning approval granted for the site and there were adverse departmental comment and local objection against the applied use. Besides, there were no exceptional circumstances to merit approval of the case and there was no information in the submission to demonstrate that the development would not cause adverse environmental, drainage and landscape impacts on the surrounding areas.
- 5.4 Compared with the last application (No. A/YL-TT/225), the current application is submitted by a different applicant for a different use (i.e. retail of construction materials) with a different site layout and on a smaller site.

6. Similar Applications

- 6.1 There are 12 similar applications (No. A/YL-TT/289, 301, 302, 327, 343, 344, 357, 384, 418, 421, 429 and 445) concerning three sites within the subject "V" zone. Detailed information of the applications is at **Appendix III** and the locations are shown on **Plan A-1**.
- 6.2 Applications No. A/YL-TT/301, 343 and 418 for temporary shop and services (real estate agency) were related to one site which were approved with conditions by the Committee each for a period of three years on 20.4.2012, 16.1.2015 and 12.1.2018 respectively. Whilst the former planning approval was revoked on 20.7.2014 due to non-compliance with approval conditions on parking arrangement, run in/run-out and landscape aspects, all the approval conditions were complied with under subsequent permission No. A/YL-TT/343. Renewal of

this permission was later granted under Application No. A/YL-TT/418 for 3 years up to 16.1.2021.

- 6.3 Applications No. A/YL-TT/289, 302, 327, 344, 357, 421 and 445 were related to one site for temporary shop and services for real estate agency (for the former four applications), environmental consultancy and landscaping services (for No. A/YL-TT/357) and building surveying consultancy (for No. A/YL-TT/421) respectively. The former three applications were approved with conditions by the Committee on 19.8.2011, 20.4.2012 and *was allowed by the Town Planning Board on appeal by the Board on review* on 22.12.2015 respectively for periods ranging from one to three years. All three approvals were subsequently revoked due to non-compliance with approval conditions. The three subsequent applications (No. A/YL-TT/344, 357 and 421) were either rejected by the Board on review on 15.5.2015 (No. A/YL-TT/344) and 10.8.2018 (No. A/YL-TT/421) or dismissed on appeal *by to* the Town Planning Appeal Board on 25.8.2017 (No. A/YL-TT/357), mainly on the grounds, amongst others, that approval of the application with repeated non-compliances would set an undesirable precedent for other similar planning permissions for temporary uses, thus nullifying the statutory planning control system. The last application (No. A/YL-TT/445) was submitted by a different applicant for temporary shop and services (interior design and decoration engineering company), which was approved with conditions by the Committee for a period of 3 years on 8.3.2019 on the grounds that the development was not incompatible with the surrounding land uses; it could serve the demand in the area; and the proposed development would unlikely cause significant adverse environmental, traffic and drainage impacts to the surrounding areas.
- 6.4 Applications No. A/YL-TT/384 and 429 for temporary shop and services (local provision store with ancillary storage area and real estate agency) and temporary eating place and shop and services (real estate agency) were approved with conditions by the Committee each for a period of three years on 29.7.2016 and 1.6.2018 respectively on similar grounds to application No. A/YL-TT/445.

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

7.1 The Site is:

- (a) accessible from Tai Tong Road to its west via a strip of GL;
- (b) paved and fenced off; and
- (c) occupied by the applied use without valid planning permission.

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

- (a) predominately rural residential intermixed with real estate agencies, parking of vehicles, storages, a warehouse, a workshop, a refuse collection point, some agricultural land and vacant/unused land;
- (b) to the south and southwest of the Site are two real estate agencies with valid planning approvals (No. A/YL-TT/418 and 455 respectively);

- (c) to the further south of the Site is a site with planning approval for temporary shop and services (interior design and decoration engineering company) (No. A/YL-TT/455) but currently used for storage and parking of vehicles; and
- (d) except for the aforementioned real estate agencies, refuse collection point and storage and parking of vehicles, the other storages, workshop and warehouse in the vicinity of the Site are mostly suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. 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 New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/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 Tai Tong Road via GL. Her 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) No Small House applications have been received within the Site.
- (e) Should planning approval be given to the subject planning

application, the lot owner(s) will need to apply to her 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 her department 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 her department.

Traffic

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

- (a) He has no comment on the proposed ingress/egress arrangement under the planning application from traffic engineering viewpoint.
- (b) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

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

- (a) The access arrangement should be commented by the Transport Department (TD).
- (b) If the proposed run-in is agreed by TD, the applicant should provide the run-in/out at Tai Tong Road in accordance with the latest version of Highways Standard Drawing No. H1113 and H1114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing adjacent pavement.
- (c) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.

Environment

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

The applicant is advised to follow the relevant mitigation measures and requirement in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (Code of Practice) issued by the Environmental Protection Department

to minimise any potential environmental nuisance.

Drainage

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the Board consider that the application is acceptable from the planning point of view, approval conditions should be stipulated requiring the submission of a drainage proposal and the implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board.

Fire Safety

9.1.6 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 (FSI) 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 be advised on the following points:
 - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - (ii) The location of where the proposed FSI 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 (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

9.1.7 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 and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorised building works (UBW) under the BO. An Authorised Person 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

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

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

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

10. Public Comment Received During the Statutory Publication Period

On 15.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 6.4.2019, no public comment was received.

11. Planning Considerations and Assessments

11.1 The subject application is for proposed temporary shop and services (retail of construction materials) for a period of three years at a site zoned "V" on the OZP. Although the applied use is not entirely in line with the planning intention of the "V" zone, which is primarily intended for development of Small Houses by indigenous villagers, nevertheless, the proposed use is intended to serve local

residents and could meet any such demand in the area. As advised by DLO/YL, LandsD, no Small House applications have been received within the Site. Approval of the shop and services (retail of construction materials) use on a temporary basis for three years would not frustrate the long-term planning intention of the area.

- 11.2 The Site abuts the major public road of Tai Tong Road and is considered not incompatible with the surrounding uses which are predominantly rural residential mixed with real estate agencies, workshop, warehouse, vacant/unused land and scattered vehicle parks and storages (**Plan A-2**).
- 11.3 There is no adverse comment on the application from concerned government departments and significant adverse traffic, environmental and drainage impacts on the surrounding area are not envisaged. Furthermore, relevant approval conditions are recommended in paragraph 12.2 to address the technical requirements of the concerned departments and to minimise any possible environmental concerns arising from the applied use. Any non-compliance with the approval conditions will result in revocation of the planning permission and UD on the Site will be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will also be advised to follow the Code of Practice in order to minimise any potential environmental impact.
- 11.4 Given that 9 similar applications for various shop and services uses have been approved within the same “V” zone, approval of the subject application is considered in line with the Committee’s previous decisions. Two previous applications for storage/open storage uses covering the Site were rejected by the Committee mainly on the considerations that the proposals were not in line with the planning intention of the “V” zone and incompatible with the surrounding residential and rural character. There were also three similar applications in the subject “V” zone rejected on the grounds, amongst others, that approval of the application with repeated non-compliances would set an undesirable precedent for other similar planning permissions for temporary uses, thus nullifying the statutory planning control system. However, such considerations are not applicable to the current application.
- 11.5 There is no public comment received on the application during the statutory publication period.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 3.5.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no repairing, paint spraying, car washing or any other workshop activities, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (d) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the submission of a run in/out proposal within **6** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 3.11.2019;
- (g) in relation to (f) above, the implementation of run in/out proposal within **9** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 3.2.2020;
- (h) the submission of a 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 3.11.2019;
- (i) in relation to (h) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 3.2.2020;
- (j) in relation to (i) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (k) 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 3.11.2019;
- (l) in relation to (k) 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 3.2.2020;
- (m) if any of the above planning conditions (a), (b), (c), (d), (e) or (j) 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

- (n) if any of the above planning conditions (f), (g), (h), (i), (k) or (l) 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 IV**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the 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 to justify a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form received on 5.3.2019
Appendix Ia	Supplementary Planning Statement
Appendix Ib	Further Information dated 3.4.2019 providing clarification on the operation mode
Appendix II	Previous Applications covering the Application Site
Appendix III	Similar Applications within the same "V" Zone on the OZP
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan with Previous and Similar Applications
Plan A-2	Site Plan

Plan A-3 Aerial Photo

Plans A-4a to A-4b Site Photos

**PLANNING DEPARTMENT
MAY 2019**