

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/500

<u>Applicant</u>	: Kam Tsin Village Ho Tung Transport Company Limited
<u>Site</u>	: Shop No. 1, 8th Lane, Kam Tsin Village, Lot 2341 (Part) in D.D. 92 and Adjoining Government Land, Sheung Shui, New Territories
<u>Site Area</u>	: About 38.16 m ² (including about 8.8 m ² of Government Land (23%))
<u>Lease</u>	: New Grant No. 8654 for Building Purpose
<u>Plan</u>	: Draft Kwu Tung South Outline Zoning Plan No. S/NE-KTS/17
<u>Zoning</u>	: “Government, Institution or Community” (“G/IC”)
<u>Application</u>	: Proposed Eating Place (Restaurant)

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed eating place (restaurant) use at a single-storey village house (the House) at the application site (the Site). The Site falls within an area zoned “G/IC” on the draft Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/17 (**Plan A-1**). According to the Notes of the OZP, ‘Eating Place’ use is a Column 2 use within the “G/IC” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently used for fast food shop without valid planning permission.
- 1.2 The Site is the subject of 2 previous planning applications both for shop and services (fast food shop¹) use submitted by the same applicant of the subject application. The last application No. A/NE-KTS/480 was approved with conditions by the Rural and New Town Planning Committee (the Committee) in 2019 on a temporary basis for a period of 5 years until 4.10.2024.

1 According to the Definition of Terms issued by the Board, ‘Restaurant’ is for the sale of food or drinks mainly for consumption on the premises while ‘Fast Food Shop’ is for the selling of quick meals including drinks mainly for consumption off the premises.

However, the application was revoked on 4.4.2021 due to non-compliance with approval conditions.

- 1.3 According to the submission, a toilet is provided within the House. The operation hours are from 7:00 a.m. to 4:00 p.m. from Mondays to Saturdays and there will be no operation on Sundays and public holidays. No parking space will be provided. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 24.6.2021 with a Replacement Page received on 29.6.2021 (Appendix I)
 - (b) Further Information (FI) of 17.7.2021[#] (Appendix Ia)
 - (c) FI of 30.7.2021[#] (Appendix Ib)
- [#] *exempted from publication*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendices I, Ia and Ib**. They are summarised as follows:

- (a) The existing fast food shop at the Site was established for more than 60 years to serve the nearby villagers and the students of Kam Tsin Village Ho Tung School.
- (b) The shop owner buys goods at Sheung Shui and returns to the Site by taxi, hence there is no need for loading/unloading arrangement. The wastewater generated from the restaurant will be disposed to the sewer in the village. The restaurant use will not affect the environment and residents.
- (c) The applicant has submitted a fire service installations (FSIs) proposal.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is not the “current land owner” of the Site (i.e. Lot 2341 in D.D. 92) 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 site notice and sending notice to the Sheung Shui District Rural Committee (SSDRC) by registered mail. Detailed information would be deposited at the meeting for Members’ inspection. The remaining of the Site (about 2.5% of the Site) is Government land and the “owner’s consent/notification” requirements as set out in TPB PG-No. 31A is not applicable.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines ‘Application for Development/Redevelopment within “G/IC” Zone for Uses other than GIC uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 16) is relevant to this application. In general, sites zoned “G/IC” are intended to be developed or redeveloped solely for GIC uses unless it can be established that the provision of GIC facilities would not be jeopardised and the concerned Government departments have no objection to releasing a particular “G/IC” site or a certain part of it for non-GIC uses. Other relevant extracts of TPB PG-No.16 are as follows:

- (a) the proposed development should not adversely affect the provision of GIC facilities in the district on a long-term basis;
- (b) the proposed development should be compatible in land-use terms with the GIC uses on the site and the surrounding areas;
- (c) the scale and intensity of the proposed development should be in keeping with that of the adjacent area;
- (d) the proposed development should be sustainable in terms of the capacities of existing and planned infrastructure;
- (e) the proposed development should not cause or be susceptible to adverse environmental impacts; and
- (f) all other statutory or non-statutory requirements of relevant Government departments should be met.

5. Background

- 5.1 The Site is not subject to any active enforcement action.
- 5.2 The Site falls within the south-eastern part of a large “G/IC” zone (**Plan A-1**) near Kam Tsin. It was first zoned “G/IC” on 12.7.1991 to reflect some existing GIC uses in the area including a kindergarten, a primary school, a secondary school and a house of prayer (**Plan A-2**). Four village houses (including the subject House) surrounded by the schools/kindergarten on three sides were included into the “G/IC” zone. The House was in existence before the Site was first zoned “G/IC” in 1991. There has not been any planned GIC use for the Site.

6. Previous Application

- 6.1 The Site is the subject of 2 previous applications all approved with conditions by the Committee. Details of the applications are summarised at **Appendix II** and their locations are shown on **Plans A-1 and A-2**.
- 6.2 Applications No. A/NE-KTS/323 and 480 both for shop and services (fast food shop) use submitted by the same applicant of the subject application were approved in 2012 and 2019 respectively for a period of 5 years (despite the applications were for permanent use) mainly on the grounds that the use was not incompatible with the surrounding land uses, small in scale and would not cause adverse environmental, drainage, traffic and landscape impact. They were approved on a temporary basis so as not to frustrate the long-term planning intention of “G/IC” zone. For the former application, all the approval conditions were complied with. For the last application, it was revoked on 4.4.2021 due to non-compliance with approval conditions in relation to the submission and implementation of FSIs proposal.

7. Similar Application

There is no similar application within the same “G/IC” zone.

8. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plan A-4)

- 8.1 The Site is:
- (a) occupied by a single-storey village house and accessible from Kam Tsin Road; and
 - (b) currently used for fast food shop without valid planning permission.
- 8.2 The surrounding areas are predominantly rural in nature with the following characteristics:
- (a) to its north is Kam Tsin Village Ho Tung School (a primary school);
 - (b) to its east is Kam Tsin Village Ho Tung Kindergarten;
 - (c) to its south is the village cluster of Kam Tsin; and
 - (d) to its west is Kam Tsin Road, and to the northwest and further west is St. Paul’s House of Prayer and De La Salle Secondary School, New Territories.

9. Planning Intention

The planning intention of the “G/IC” zone is primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organizations providing social services to meet community needs, and other institutional establishments.

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/North, Lands Department (DLO/N, LandsD):

- (a) the lot under the application (the Lot) is held under New Grant No. 8654 for building purpose without any guarantee of right of access, which is subject to General Conditions of Sale published in Government Notification No. 364 of 1934 as amended by Government Notification 50 of 1940 and further subject to Additional Special Conditions (collectively referred to as “the Conditions”). The Lot has an area of 675 sq.ft (lot boundary shown on **Plan A-2**). According to the Conditions, not more nor less than two traditional Chinese village-type houses shall be erected on the lot and open space at least equal to half the roofed-over area of the building shall be provided at the rear of the building. In terms of the user restriction, the proposed eating place (restaurant) use is not in contravention with lease condition. The applicant should make his own arrangement for acquiring access to the Site, and there is no guarantee that any adjoining Government land will be allowed for vehicular access to the Site for the proposed use; and
- (b) the Site is found encroached upon Government land without approval from his office. His office reserves the right to take necessary land control actions against the irregularities on Government land. If the planning application is approved, the owner(s) of the lot/occupier concerned shall apply to his office for a Short Term Tenancy (STT) to cover any Government land being occupied. Such application will be considered by his department acting in the capacity as landlord at its sole discretion and there is no guarantee that such application will be

approved. If the STT is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of rent and administrative fees as considered appropriate by his office.

Environment

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

- (a) noting that all wastewater collected from toilet, kitchens and washing areas (including that from basins, sinks and floor drains) would be properly disposed to the existing public sewer, he has no adverse comment on the application. His advisory comments are at **Appendix IV**; and
- (b) there is no environmental complaint against the Site received by DEP in the past 3 years.

Drainage

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

he has no objection to the application from drainage point of view, given that the sewage discharge arrangement, if any, is agreeable by Environmental Protection Department (EPD). The applicant is reminded to maintain the drainage works in the vicinity properly and rectify the drainage system if it is found to be inadequate or ineffective during operation.

Building Matters

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

noting that the building erected on the Site is a New Territories Exempted House (NTEH) under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap 121), DLO/N, LandsD should be in a better position to comment on the application.

Fire Safety

10.1.5 Comments of the D of FS:

- (a) he has no objection in principle to the proposal subject to FSIs

being provided to his satisfaction; and

(b) his detailed comments are at **Appendix IV**.

Food Licensing

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

he has no specific comment on/objection to the application. The premises on private lot portion of the Site is covered with a Light Refreshment Restaurant Licence, which was first issued in 2004. The current licence cover the period up to 13.7.2022 and is renewable yearly. Provision of seating areas was allowed under this type of licence. His advisory comments are at **Appendix IV**.

District Officer's Comments

10.1.7 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) he has consulted the locals from 20.7.2021 to 3.8.2021; and
- (b) the North District Council (NDC) member of the subject Constituency cum Indigenous Inhabitant Representative (IIR) of Kam Tsin Village and the other IIR of Kam Tsin Village support the proposal. The Chairman of SSDRC, the Chairman of Lung Shan Area Committee and the Resident Representative (RR) of Kam Tsin Village have no comment.

10.2 The following Government department(s) have no objection/no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department
- (b) Commissioner for Transport (C for T)
- (c) Chief Highway Engineer/New Territories East, Highways Department
- (d) Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD
- (e) Commissioner of Police
- (f) Project Manager (North), Civil Engineering and Development Department

11. Public Comment

On 2.7.2021, the application was published for public inspection. During the three-week statutory publication period, 2 public comments (**Appendices III-1 and**

III-2) from 2 individuals were received, with one indicating no comment. The remaining comment expresses concern on the non-compliance with approval condition relating to FSIs as its customers are probably students.

12. Planning Considerations and Assessments

- 12.1 The application is for eating place (restaurant) at the House on the Site, which falls within an area zoned “G/IC” on the draft Kwu Tung South OZP No. S/NE-KTS/17 (**Plan A-1**). The planning intention of the “G/IC” zone is primarily for the provision of GIC facilities serving the needs of the local residents and/or a wider district, region or the territory.
- 12.2 The Site is situated at the south-eastern part of the subject “G/IC” zone. The “G/IC” zone is to reflect the existing GIC facilities including 3 schools and a house of prayer. The House in the subject application was in existence before the Site was first zoned “G/IC” on 12.7.1991, which is within a private lot with building entitlement under the lease. There has all along been no planned G/IC use for the Site and no intention to use the Site for GIC purpose.
- 12.3 The Site abuts the school and kindergarten on its north, east and west, and existing village houses of Kam Tsin village in its south (**Plan A-2**). The proposed use is considered not incompatible with the surrounding uses comprising village houses and GIC facilities. Given its small scale (about 38m²) with limited seating capacity, adverse traffic, drainage, fire safety and landscape impacts are not anticipated. In addition, the operation of the restaurant will be subject to licensing control under the Food Business Regulation. C for T, CE/MN, DSD, D of FS, CTP/UD&L, PlanD and DFEH have no adverse comment on or no objection to the application. Approval conditions as suggested by concerned departments are set out in paragraph 13.2.
- 12.4 Regarding TPB PG-No.16, as mentioned above, the “G/IC” zone is to reflect the existing GIC facilities. Considering the small scale of the Site and it is not designated for any GIC use, approval of the application would not adversely affect the provision of GIC facilities in the district. The proposed restaurant would not bring about adverse impacts on the surrounding areas, and all concerned departments have no objection to the application. The application is considered not in contravention with the TPB Guidelines.
- 12.5 The Site is the subject of 2 previously approved applications for fast food shop as stated in paragraph 6. The last application no. A/NE-KTS/480 was revoked on 4.4.2021 due to non-compliance with approval conditions in relation to the submission and implementation of FSIs proposal. FSI proposal is submitted under this application. D of FS has no objection in principle to the application. Compared with the previous approved

application No. A/NE-KTS/480, the current application is for restaurant use which is similar to the previous planning permission for fast food shop use except with seating arrangement. Approving the subject application is in line with the previous decisions of the Committee.

- 12.6 There are 2 public comments as stated in paragraph 11. In this regard, the departmental comments and planning considerations and assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, PlanD 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 until 13.8.2025, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following condition of approval and advisory clauses are also suggested for Members' reference :

Approval condition

the submission and implementation of fire service installations proposal to the satisfaction of the Director of Fire Services or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are at **Appendix IV**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (a) the proposed use is not in line with the planning intention of the "Government, Institution or Community" ("G/IC") zone which is primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. There is no strong planning justification in the submission for a departure from such planning intention; and
 - (b) the approval of the application would set an undesirable precedent for other similar applications for eating place use in the "G/IC" zone. The cumulative approval of such applications would result in a loss of land available for GIC uses in the area.

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 date when the validity of the permission should expire.
- 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 received on 24.6.2021 with a Replacement Page received on 29.6.2021
Appendix Ia	FI of 17.7.2021
Appendix Ib	FI of 30.7.2021
Appendix II	Previous Applications
Appendices III-1 and III-2	Public Comments
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2021**