

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/205

<u>Applicant</u>	:	熊錦英女士
<u>Site</u>	:	Lots 147 S.A, 175 RP (Part) and 176 S.B ss. 2 in D.D. 38, Sha Tau Kok, New Territories
<u>Site Area</u>	:	About 290m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Man Uk Pin Outline Zoning Plan (OZP) No. S/NE-MUP/11
<u>Zoning</u>	:	“Residential (Group D)” (“R(D)”)
<u>Application</u>	:	Proposed Temporary Shop and Services (Retail Shop for Hardware Groceries and Construction Materials) for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (retail shop for hardware groceries and construction materials) for a period of three years at the application site (the Site) which falls within an area zoned “R(D)” on the OZP (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within the “R(D)” zone requires planning permission from the Town Planning Board (the Board). The Site is occupied with existing temporary structures for domestic and storage uses.
- 1.2 The Site is accessible via Sha Tau Kok Road – Wo Hang (**Plan A-1**). According to the applicant, the proposed shop and services aims to provide hardware groceries and construction materials to the local community. It involves a total floor area of about 157m² which comprises a single-storey shop with a height of about 5m and a floor area of about 95m² and a single-storey storeroom with a height of about 5m and a floor area of about 62m². No workshop activities will be carried out at the Site. A private car parking space and a loading/ unloading (L/UL) bay for van-type light goods vehicles (LGV) will be provided. As advised by the applicant, due to the site constraint, goods vehicles larger than a van-type LGV will not be allowed to enter the Site. Notice boards will be erected to ensure pedestrian safety, and staff will be deployed to manage traffic at the Site. The proposed operation hours are between 8 a.m. and 6 p.m. from Mondays to Saturdays, with no operation on Sundays and public holidays. The proposed layout plan submitted by the applicant is shown in **Drawing A-1**.

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

- (a) Application Form with attachments received on 19.6.2024 (Appendix I)
- (b) Further Information (FI) received on 26.7.2024 and 29.7.2024* (Appendix Ia)
- (c) FI received on 6.8.2024 and 7.8.2024* (Appendix Ib)
- (d) FI received on 5.9.2024* (Appendix Ic)
- (e) FI received on 23.9.2024 and 24.9.2024* (Appendix Id)
- (f) FI received on 14.10.2024* (Appendix Ie)
- (g) FI received on 16.10.2024* (Appendix If)
- (h) FI received on 30.10.2024* (Appendix Ig)
- (i) FI received on 4.11.2024* (Appendix Ih)
- (j) FI received on 15.11.2024* (Appendix Ii)

**accepted and exempted from the publication and recounting requirements*

1.4 On 16.8.2023 and 25.10.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to the applicant's requests to defer making a decision on the application for two months each to address departmental comments.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FIs at **Appendices I to Ii** and summarised below:

- (a) the temporary nature of the proposed use will not jeopardize the long-term planning intention of the "R(D)" zone;
- (b) the proposed use is not incompatible with the surrounding areas which are predominated by uses including car repairing workshops, warehouses and open storage yards;
- (c) given the nature and the small-scale of the proposed use, no adverse traffic, environmental, drainage or infrastructural impacts arising from the proposed use are anticipated; and
- (d) should the application be approved, the applicant will liaise with Lands Department (LandsD) regarding any unauthorised structures and occupation of Government Land (GL).

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. 31B) by obtaining the consent of two "current land owners". Detailed information would be deposited at the meeting for Members' inspection.

4. **Background**

The Site is not subject to any active planning enforcement action.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

There is no similar application within the same “R(D)” zone in the vicinity of the Site in the Man Uk Pin area in the past five years.

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

7.1 The Site is:

- (a) occupied with existing temporary structures for domestic and storage uses; and
- (b) accessible via Sha Tau Kok Road – Wo Hang.

7.2 The surrounding areas are of rural character mainly comprising temporary structures, residential dwellings, car park, car repairing workshop, plant nursery and open storage yard. There are two approved applications No. A/NE-MUP/185 for proposed temporary warehouse with ancillary facilities and No. A/NE-MUP/207 for proposed temporary open storage of construction materials, located to the south and north of the Site respectively (**Plan A-2**).

8. Planning Intention

The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board.

9. Comments from Relevant Government Departments

9.1 Apart from the government departments as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided at **Appendices II** and **III** respectively.

9.2 The following government departments object to/ provide comments on the application:

Land Administration

9.2.1 Comments of the District Lands Officer/North, LandsD (DLO/N, LandsD):

- (a) objects to the application;
- (b) the Site comprises Old Schedule Agricultural Lots 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. No

right of access via GL is granted to the Site;

- (c) any surveyed squatter structure on the private lot is tolerated to remain on a temporary basis, provided the location, dimensions, building materials and use are the same as the record in the 1982 Survey (S.C. records). Such tolerance does not create any legal rights or interests or obligations and does not confer on any person the right of occupation of land. The proposed layout plan of this planning application does not tally with the S.C. records. Her office reserves the right to take enforcement action for the irregularities as appropriate;
- (d) the following irregularity covered by the subject planning application has been detected by her office:

unauthorised structures within the said private lots covered by the planning application

there are unauthorised structures on the private lots. The lot owners should immediately rectify the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

- (e) the following irregularities not covered by the subject planning application have been detected by her office:

unauthorised structures within the said private lots not covered by the planning application

there are unauthorised structures within the said private lots, extended and scattered on the adjoining private lots not covered by the subject planning application. The lot owners should immediately rectify the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

unlawful occupation of GL not covered by the planning application

the GL adjoining the Site has been illegally occupied with unauthorised structures without permission. The GL being illegally occupied is not included in the application. Any occupation of GL without Government's prior approval is an offence under Cap. 28. Her office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;

- (f) the lot owners/ applicant shall remove the unauthorised structures and cease the illegal occupation of GL not covered by the subject planning application immediately, and subject to the approval of the Board to the planning application which shall have reflected the rectification as aforesaid required, apply to her office for Short Term Waiver (STW) to permit the structures erected/to be erected. The application for STW will be considered by the Government in its capacity as a landlord and there is no guarantee that it will be approved. The STW, if approved, will be subject to such terms and conditions including the payment of waiver fee and administrative fee as considered appropriate to be imposed by LandsD. In addition, LandsD

reserves the right to take enforcement action against the lot owners/applicant for any breach of the lease conditions, including the breaches already in existence or to be detected at any point of time in future. Besides, given the proposed use is temporary in nature, only erection of temporary structures will be considered; and

- (g) unless and until the unauthorised structures and the unlawful occupation of GL (which regularization could not be considered according to prevailing policy) are duly rectified by the lot owners/applicant or entirely included in the subject planning application, her office objects to the application and it must be brought to the attention of the Board when they consider the application.

District Officer's Comments

- 9.2.2 Local views/comments conveyed by the District Officer (North), Home Affairs Department (DO(N), HAD) are as follows:

the Indigenous Inhabitant Representative (IIR) of Man Uk Pin objects to the application.

10. Public Comments Received During Statutory Publication Period

On 23.8.2024, the application was published for public inspection. During the statutory public inspection period, three comments were received (**Appendix IV**). One comment from the village representative of Man Uk Pin and Loi Tung objects to the application mainly on the grounds of potential adverse traffic impacts and the lack of communication with the villagers. Two comments from the Chairman of the Lung Shan Area Committee and a member of the North District Council indicate no comment on the application.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary shop and services (retail shop for hardware groceries and construction materials) for a period of three years at the Site zoned "R(D)" on the OZP. The proposed use is not in line with the planning intention of the "R(D)" zone, which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. Nevertheless, there is no known development at the Site and it is considered that the approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the "R(D)" zone.
- 11.2 The Site abutting Sha Tau Kok Road – Wo Hang is situated in an area of rural character, which mainly comprises temporary structures, residential dwellings, car park, car repairing workshop, plant nursery and open storage yard. There are two approved applications (No. A/NE-MUP/185 and 207) for proposed temporary warehouse and open storage of construction materials located to the south and the north of the Site respectively (**Plan A-2**). The proposed use is considered not entirely incompatible with the surrounding areas.
- 11.3 The Commissioner for Transport has no comment on the application from traffic engineering perspective. Other government departments consulted, including the

Director of Environmental Protection, Chief Engineer/Mainland North of Drainage Services Department, Director of Fire Services and Chief Highway Engineer/New Territories East of Highways Department have no objection to or no adverse comment on the application. Regarding DLO/N, LandsD's concern on the unauthorised structures erected within/outside the Site and the illegal occupation of GL, the applicant will be advised to liaise with LandsD on these land administration matters should the Committee approve the application.

- 11.4 Regarding the local views conveyed by DO(N), HAD and public comments as detailed in paragraphs 9.2.2 and 10 respectively, government departments' comments and planning assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local views and public comments in paragraphs 9.2.2 and 10 above, the Planning Department considers that the proposed use could be tolerated for a period of three years.
- 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 three years until 6.12.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) 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 6.6.2025;
- (b) in relation to (a) above, the provision of drainage facilities 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 6.9.2025;
- (c) in relation to (b) above, the implemented drainage facilities at the Site shall be maintained at all times during the planning approval period;
- (d) 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 6.6.2025;
- (e) in relation to (d) 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 6.9.2025;
- (f) if the above planning condition (c) 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
- (g) if any of the above planning condition (a), (b), (d) or (e) 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 at **Appendix III**.

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

the proposed use is not in line with the planning intention of the "R(D)" zone, which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board. There is no strong planning justification in the submission for 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 the 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 with Attachment received on 19.6.2024
Appendix Ia	FI received on 26.7.2024 and 29.7.2024
Appendix Ib	FI received on 6.8.2024 and 7.8.2024
Appendix Ic	FI received on 5.9.2024
Appendix Id	FI received on 23.9.2024 and 24.9.2024
Appendix Ie	FI received on 14.10.2024
Appendix If	FI received on 16.10.2024
Appendix Ig	FI received on 30.10.2024
Appendix Ih	FI received on 4.11.2024
Appendix Ii	FI received on 15.11.2024
Appendix II	Government Departments' General Comments
Appendix III	Recommended Advisory Clauses
Appendix IV	Public Comments
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
DECEMBER 2024**