

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-SSH/150

- Applicant** : Mr. YIP Ka Shing represented by Grandmax Surveyors Limited
- Site** : Lots 1046, 1047, 1051 (Part) in D.D. 165 and adjoining Government land, Tseng Tau Village, Shap Sz Heung, New Territories
- Site Area** : About 172m² (including about 22m² Government land (12.8%))
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Shap Sz Heung Outline Zoning Plan (OZP) No. S/NE-SSH/11
- Zoning** : “Village Type Development” (“V”)
- Application** : Renewal of Planning Approval for Temporary Eating Place (Outside Seating Accommodation (OSA) of a Restaurant) for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for temporary OSA of a restaurant on the ground floor of two village houses (No. 83 and 85) in Tseng Tau Village for a further period of three years until 1.9.2026 (**Plans A-1 and A-2**). According to the Notes of OZP, while ‘Eating Place’ on the ground floor of an New Territories Exempted House (NTEH) within the “V” zone is permitted as of right, such use on open ground (i.e. OSA) as an extension to a ground floor eating place in an NTEH within the “V” zone requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission until 1.9.2023.
- 1.2 According to the information submitted by the applicant, the OSA with an area of about 172m² could accommodate a maximum number of 80 people and the opening hours are 7:00 a.m. to 9:30 p.m. daily. The Site is connected to Sai Sha Road via a local track (**Drawing A-1**).
- 1.3 The Site was the subject of three previous applications (No. A/NE-SSH/89, 107 and 136) which were submitted by applicants different from the current applicant for the same use. The last previous application No. A/NE-SSH/136

was approved by the Rural and New Town Planning Committee (the Committee) on 1.9.2020 for a period of three years and is the same as that under the current application in terms of the site area, number of seats provided, operation hours and access arrangement. All the approval conditions of the last application have been complied with.

- 1.4 In support of the application, the applicant has submitted an application form with attachments which were received on 30.6.2023 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the attachments of the application form at **Appendix I**, as summarized below:

- (a) the restaurant has been operating for many years in the district and in good demand in the locality. The restaurant is the only restaurant in Tseng Tau Village and its adjoining villages;
- (b) the Site is the subject of three previous applications (No. A/NE-SSH/89, 107 and 136) for the same use approved by the Committee in 2014, 2017 and 2020 respectively with validity of the latest approval up to 1.9.2023. All approval conditions under the said planning permissions have been complied with and the provision of landscape, drainage facilities and fire services installations are now maintained in good conditions; and
- (c) the Tseng Tau Tsuen (Sai Kung) Management Committee has no objection to the application and they will be responsible for managing the limited vehicular traffic generated from the customers.

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. 31) by posting site notice and sending notice to the current owner by registered mail. Detailed information would be deposited at the meeting for Members’ inspection. As for the Government land, the “owner’s consent/notification” requirements are not applicable.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for ‘Application for Eating Place within “V” zone in Rural Areas under section 16 of the Town Planning Ordinance’ (TPB PG-No. 15A) and ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ (TPB-PG No. 34D) are relevant to the application. The relevant planning assessment criteria are summarized at **Appendices II** and **III**.

5. Background

The Site is not subject to any active enforcement cases.

6. Previous Applications

6.1 The Site was the subject of three previous applications (No. A/NE-SSH/89, 107 and 136) which were submitted by applicants different from the current applicant for the same use under the current application. The applications were approved with conditions for a temporary period of three years by the Committee on 13.6.2014, 28.7.2017 and 1.9.2020 respectively mainly on considerations that the applied use on a temporary basis would not frustrate the long-term planning intention of “V” zone; generally in line with TPB PG-No. 15A and would unlikely create any nuisance to the local residents and cause any adverse impacts on the surrounding areas. All approval conditions imposed for the previous applications have been complied with. The planning permission of the last application No. A/NE-SSH/136 will be valid until 1.9.2023.

6.2 Details of the above applications are summarized at **Appendix IV** and the location is shown on **Plans A-1** and **A-2**.

7. Similar Application

There is no similar application for OSA use within the same “V” zone.

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

8.1 The Site is:

- (a) hard-paved, fenced off and currently used as OSA of a restaurant on the ground floor of two adjoining Small Houses;
- (b) situated at the village fringe of Tseng Tau Village; and
- (c) abutting a local track leading to Sai Sha Road.

- 8.2 The surrounding areas are predominantly rural in nature. To the west of the Site is a comprehensive residential/commercial development zoned “Comprehensive Development Area” (“CDA”) which is currently under construction and to the east are village houses of Tseng Tau.

9. 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.

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/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) the Site consists of three private lots all in D.D. 165 with different ownership and adjoining Government land. The lots are held under the Block Government Lease demised for agricultural purpose which contains restrictions that no structures are allowed to be erected on the Site without prior approval of the Government. As regards Government land, neither occupation nor works of any kind thereon is allowed without prior approval from LandsD; and
- (b) there is no guarantee to the grant of a right of way to the Site or approval of the EVA.

Environment

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

- (a) no in-principle objection to the application having considered that there has been no environmental complaint against the Site in the past three years; and
- (b) in order to minimize the noise nuisance from the crowd noise and use of machine/equipment to the nearby residents from the applied use, the approval condition on the limitation of operation hours should be imposed.

Landscape

10.1.3 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) it is noted that there is no change as the major development parameters of this renewal application compared with the previous application. Landscape impact arising from the continuous use within the Site is not anticipated; and
- (b) the applicant is advised that approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. Tree removal applications should be submitted direct to LandsD for approval.

Buildings Matters

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

- (a) there is no record of approval by the Building Authority for any building at the Site. Should any NTEH be involved, LandsD should be consulted; and
- (b) should there be any existing structures not being NTEH, the applicant's attention should be drawn to the detailed advisory comments at **Appendix V**.

Fire Safety

10.1.5 Comment of the Director of Fire Services (D of FS):

he has no in-principle objection to the renewal application subject to the existing fire service installations (FSIs) implemented on the Site being maintained in efficient working order at all times.

Food and Environmental Hygiene

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

- (a) no objection to the application subject to the compliance of licensing requirements or conditions to be imposed in the relevant restaurant license;
- (b) the applicant/licensee of OSA should be reminded that the operation of the OSA of a restaurant must not cause any environmental nuisance to the surrounding and the applicant/licensee of OSA should continue to observe the licensing

conditions of OSA all the times;

- (c) the refuse generated by the proposed OSA are regarded as trade refuse. The applicant/licensee of the OSA is responsible for its removal and disposal at their expenses; and
- (d) the operation of any business should not cause any obstruction or environment nuisance in the vicinity.

10.2 The following Government departments have no objection/comment on the application:

- (a) Chief Engineer/Mainland North, Drainage Services Department;
- (b) Principal Project Coordinator/Special Duty, Drainage Services Department;
- (c) Commissioner for Transport;
- (d) Chief Highway Engineer/New Territories East, Highways Department;
- (e) Chief Engineer/Construction, Water Supplies Department
- (f) Director of Agriculture, Fisheries and Conservation;
- (g) Director of Electrical and Mechanical Services;
- (h) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (i) Project Manager/North, Civil Engineering and Development Department; and
- (j) District Officer/Tai Po, Home Affairs Department.

11. Public Comment Received During Statutory Publication Period

On 7.7.2023, the application was published for public inspection. During the statutory public inspection period, no public comment was received.

12. Planning Considerations and Assessments

12.1 The application is for renewal of a planning permission (No. A/NE-SSH/136) for temporary OSA of a restaurant for a further period of three years in the “V” zone of Tseng Tau Village. The OSA is not entirely in line with the planning intention of the “V” zone which is primarily intended for development of NTEH/Small House by indigenous villagers. However, as advised by the DLO/TP of LandsD, there is at present no Small House application received for the Site. The temporary OSA for a further period of three years would not frustrate the long-term planning intention of the “V” zone.

12.2 The current scheme is the same as that under the previously approved scheme (No. A/NE-SSH/136) in terms of the site area, number of seats provided, operation hours and access arrangement. All approval conditions of the previous application have been complied with and there has been no material change in planning circumstances since the last approval. According to DEP,

no environmental complaint relating to the Site has been received in the past three years.

- 12.3 The Site is located at the western fringe of Tseng Tau Village and abuts a local access road leading to Sai Sha Road. It is currently paved, fenced off and used for the applied use with a valid planning permission. The applied use is considered not incompatible with the surrounding areas which is mixed with village houses and comprehensive residential/commercial development. Government departments concerned have no objection to nor adverse comment on the application. In view of the above, the OSA under application is generally in line with the TPB PG-No. 15A for application for eating place within the “V” zone.
- 12.4 The application also generally complies with TPB PG-No. 34D on ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ in that there has been no material change in planning circumstances since the approval of the previous application; no major adverse departmental and local comments against the renewal application; all approval conditions for the previous application have been complied with; and the approval period sought is not unreasonable.

13. **Planning Department’s Views**

- 13.1 Based on the assessments made in paragraph 12, the Planning Department 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 on a temporary basis for a period of three years and be renewed from 4.9.2023 to 1.9.2026. The following approval conditions and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 9:30 pm and 7:00 am, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (c) the existing fire service installations implemented on the Site shall be maintained at all times during the planning approval period; and
- (d) if any of the above planning conditions (a), (b) or (c) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory Clauses

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

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

the applied use is not in line with the planning intention of the "V" zone which is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for the 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. There is no strong planning justification 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) to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form and Attachments received on 30.6.2023
Appendix II	Relevant Extract of TPB Guidelines No. 15A for Application for Eating Place within "Village Type Development" zone in Rural Areas under section 16 of the Town Planning Ordinance
Appendix III	Relevant Extract of TPB Guidelines No. 34D on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
Appendix IV	Previous s.16 Applications
Appendix V	Recommended advisory clauses
Drawing A-1	Location plan submitted by the applicant
Drawing A-2	Lot index plan submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

Relevant Extract of Town Planning Board Guidelines No. 15A 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)

The relevant planning criteria for assessing applications include:

- (a) the eating place use should not create any environmental nuisance or cause inconvenience to the residents nearby. Such use should preferably be located at the fringe of a village area, e.g. area abutting the main road. For any eating place use that is situated amidst the existing village houses, sympathetic consideration may only be given if there are no objections from local residents;
- (b) the eating place use should not have any adverse traffic impact on its surrounding areas nor should it affect any pedestrian circulation in the area;
- (c) sympathetic consideration may be given if the eating place use would not have adverse impacts on drainage, sewage disposal facilities or fire safety aspects;
- (d) for any application on open ground as an extension to ground floor eating place in a NTEH or as a free-standing development, the eating place use should not adversely affect the land availability for village type development. Application sites with configurations/ dimensions which are not suitable to be delineated separately for village type development or which are considered not suitable for village type development (e.g. within 20m of public roads constructed/ maintained by the Highways Department or 15m of other local public roads), sympathetic consideration may be given by the Board on individual merits;
- (e) for a village located adjacent to recreational uses or tourist attraction spots, favourable consideration may be given to eating place use which will provide catering facilities to serve the visitors and tourists. In such circumstances, adequate car parking spaces should be provided to serve the eating place use as required by the Transport Department. If it is impossible to provide car-parking spaces at the application site, the applicant should demonstrate that there are adequate car-parking facilities conveniently located in the vicinity to serve the eating place use; and
- (f) all other statutory or non-statutory requirements of relevant Government departments should be met.

Relevant Extract of Town Planning Board Guidelines No. 34D on
“Renewal of Planning Approval and Extension of Time for Compliance
with Planning Conditions for Temporary Use or Development”
(TPB- PG No. 34D)

1. The relevant assessment criteria for assessing applications for renewal of planning approval include:
 - (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
 - (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
 - (c) whether the planning conditions under previous approval have been complied with to the satisfaction of the relevant Government departments within the specified time limits;
 - (d) whether the approval period sought is reasonable; and
 - (e) any other relevant considerations.
2. Under normal circumstances, the approval period for renewal application should not be longer than the original validity period of the temporary approval. In general, the Board is unlikely to grant an approval period exceeding three years unless there are strong justifications and the period is allowed for under the relevant statutory plans. Depending on the circumstances of each case, the Board could determine appropriate approval period, which may be shorter than the time under request.

Previous S.16 Applications

Application No.	Uses/Developments	Date of Consideration	Approved Conditions
A/NE-SSH/89	Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of 5 Years	13.6.2014	A1 – A6
A/NE-SSH/107	Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of 3 Years	28.7.2017	A1, A4 – A8
A/NE-SSH/136	Renewal of Planning Approval for Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of 3 Years	1.9.2020 ¹	A1, A5, A8 – A9

Approval Conditions

- A1 No operation between the specified time, as proposed by the applicant
- A2 The submission and implementation of landscape and tree preservation proposals
- A3 The submission and implementation of a drainage proposal
- A4 The submission and implementation of water supplies for firefighting and fire services installations proposal
- A5 Revocation clause
- A6 Reinstatement clause
- A7 Maintenance of existing trees and landscape planting on the application site
- A8 Maintenance of the drainage facilities on the application site
- A9 Maintenance of the fire services installations on the application site

¹ In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 24.7.2020 for consideration of the application has been rescheduled.

Recommended Advisory Clauses

- (a) to note the comments of District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) that:
 - (i) a recent site inspection revealed that an unauthorized fishpond was erected on Lots Nos. 1046 and 1047. The applicant is required to clear the as-built fishpond. Otherwise, enforcement action would be taken against the unauthorized structures according to case priority. Should the Board approve the application, the lot owners are required to submit a Short Term Waiver (“STW”) application to regularize the unauthorized fishpond. Besides, given the applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered;
 - (ii) the applicant has submitted a Short Term Tenancy (“STT”) application for the concerned Government land. Upon renewal of the s.16 application approved by the Board, LandsD will continue to consider the STT and STW applications in accordance with the established procedures and guidelines. However, there is no guarantee at this stage that the STT and STW applications would be approved. If the STT/STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of rental/waiver fee and administrative fee as considered appropriate; and
 - (iii) no trees on any Government land shall be interfered with unless with prior approval of this office or other relevant authorities.
- (b) to note the comments of the Director of Environmental Protection (DEP) that:
 - (i) the applicant is reminded to observe and adopt the pollution abatement measures outlined in the General Environmental Guidelines for Outside Seating Accommodation; and
 - (ii) the applicant should have a proper planning and good house-keeping for noisy machines/equipment (such as locating the machine/equipment away from Noise Sensitive Receives (NSRs), use of quiet machine, adopting noise mitigation/silencing measures) to avoid noise nuisances to nearby residents.
- (c) to note the comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) that approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. Tree removal applications should be submitted direct to LandsD for approval;
- (d) to note the comments of the Director of Food and Environmental Hygiene that:

- (i) the operation of the OSA of a restaurant must not cause any environmental nuisance or obstruction to the surrounding, and the applicant/licensee of the OSA should continue to observe the licensing conditions of OSA at all times;
 - (ii) the refuse generated by the proposed OSA are regarded as trade refuse. The applicant /licensee of the OSA is responsible for its removal and disposal at their expenses; and
 - (iii) the operation of any business should not cause any obstruction or environment nuisance in the vicinity.
- (e) to note the comments of the Chief Building Surveyor/New Territories West, Buildings Department that:
 - (i) if any existing structures are erected on leased land without approval of the Buildings Department (BD) (not being an NTEH), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;
 - (ii) 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 the 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;
 - (iii) for UBW erected on leased land, enforcement action may be taken by the BD to affect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be constructed as an acceptance of any existing building works or UBW on the Site under the BO;
 - (iv) if the applied use under the application is subject to the issue of a licence, the applicant should be reminded that any structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority;
 - (v) in connection with (ii) above, the Site shall be provided with the means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulation 5 and 41D of the Building (Planning) Regulations respectively; and
 - (vi) if the Site does not abut on a specific street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulations at the building plan submission stage.