

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-LTYT/416

<u>Applicant</u>	: Sam Lai Holding Limited represented by Metro Planning & Development Company Limited
<u>Site</u>	: Lot 1367 (Part) in D.D.130, Tsoi Yuen Tsuen, Tuen Mun, New Territories
<u>Site Area</u>	: About 50 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plans</u>	: Draft Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTYT/11 (currently in force) Approved Lam Tei and Yick Yuen OZP No. S/TM-LTYT/10 (at the time of submission)
<u>Zonings</u>	: “Residential (Group D)” (“R(D)”) <i>[Restricted to a maximum plot ratio of 0.2 and a maximum building height of 2 storeys (6m)]</i> <i>[no change on the current OZP]</i>
<u>Application</u>	: Proposed Temporary Shop and Services for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services for a period of 3 years (**Plan A-1**). The Site falls within an area zoned “R(D)” on the OZP. According to the Notes for “R(D)” zone on the OZP, ‘Shop and Services’ is a Column 2 use which requires permission from the Town Planning Board (the Board). The Site is currently vacant and overgrown with grass and vegetation (**Plans A-2 and A-4**). The Site is not involved any previous application.
- 1.2 The Site is accessible from Tat Fuk Road via a pedestrian footpath. (**Plans A-2 and A-3**). According to the applicant, the proposal is for a real estate agency to serve the residents in Tsoi Yuen Tsuen. The proposed development involves a one-storey temporary structure (not exceeding 4m high) with a total floor area of about 32 m² for a real estate agency and toilet. No vehicle could enter/park at the Site. The operation hours are from 9:00 a.m. to 7:00 p.m. daily, including public holidays. The site plan,

proposed layout plan and proposed drainage plan submitted by the applicant are at **Drawings A-1 to A-3** respectively.

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

- (a) Application Form and attachments received on 4.8.2021 **(Appendix I)**
- (b) Supplementary Information (SI) received on 6.8.2021 **(Appendix Ia)**
- (c) Further Information (FI) received on 3.9.2021 responding to departmental comments **(Appendix Ib)**
(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 at **Appendices I to Ib**. They can be summarised as follows:

- (a) The proposed use is in line with the planning intention of the “R(D)” zone and the proposed ‘Shop and Services’ use is under Column 2 of the zone.
- (b) The nature and form of development are not incompatible with the surrounding environment.
- (c) The proposed development will generate insignificant environmental and drainage impacts to its surrounding.
- (d) There is a similar application (No. A/TM-LTTY/368) for shop and services use in the same “R(D)” zone which was approved by the Board.

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 Section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notice to the Tuen Mun Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to planning enforcement action.

5. Previous Application

There is no previous application covering the Site.

6. Similar Applications

- 6.1 There are two similar applications (No. A/TM-LTYT/317 and 368) at the same site for temporary shop and services for pet food, apparel and/or potted plants within the same “R(D)” zone. The applications were approved by the Committee. Details of the applications are summarised in **Appendix II** and their locations are shown on **Plan A-1**.
- 6.2 All of these two similar applications were approved on considerations that the temporary use would not jeopardize the long-term planning intention; the proposed development was not incompatible with the surrounding land uses; and the use was unlikely to create significant adverse traffic, environmental, drainage and visual impacts on the surrounding areas. Amongst these approved applications, the planning permission for application No. A/TM-LTYT/317 was subsequently revoked due to non-compliance with time-limited approval condition.

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

7.1 The Site is:

- (a) currently vacant and overgrown with grass and vegetation (**Plan A-2 and A-4**); and
- (b) accessible from Tat Fuk Road via a footpath (**Plan A-2**).

7.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):

- (a) to the immediate northeast and east are vacant land and residential dwellings. To the further east is Tat Fuk Road;
- (b) to the immediate south is vacant land. To the further south are residential dwellings and Kong Sham Western Highway;
- (c) to the west are residential dwellings intermixed with vacant land and temporary structures for storage use which are suspected unauthorised developments (UDs); and
- (d) to the north are residential dwellings, an orchard and vacant land.

8. Planning Intention

The “R(D)” zone is intended 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 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/Tuen Mun, Lands Department (DLO/TM, LandsD):

- (a) The Site falls within a portion of Lot 1367 in D.D. 130 (the “Lot”). The Lot is 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 currently accessible (on foot only) from Tat Fuk Road via a footpath. His office is not responsible for the maintenance and management of the footpath nor guarantee that any right-of-way will be given over Government land (GL).
- (c) If planning permission is given by the Board, the lot owner is required to submit an application to his office for a Short Term Waiver to permit erection of structures on the Lots. However, there is no guarantee that the application will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, deposit and administration fee etc.
- (d) His office reserves the right to take enforcement actions as considered appropriate against any unauthorised erection/extension/alternations of structures within the Lot irrespective of whether planning permission will be given or not. Enforcement action will also be taken should any structures are found erected without any prior approval given by his office or any unauthorised occupation of GL.

Traffic

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

He has no adverse comment on the application. The applicant should note the detailed comments at **Appendix IV**.

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

The existing access adjacent to the Site is not and will not be maintained by HyD.

Environment

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

- (a) In view that the proposed use will not involve heavy vehicles and dusty activities, he has no objection to the application.

- (b) The applicant is advised that if septic tank and soakaway system is used in case of unavailability of public sewer, its design and construction should follow the requirements of the Practice Note for Professional Persons (ProPECC PN) 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” and are duly certified by an Authorised Person (AP).
- (c) Should the application be approved, the applicant shall be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” (“COP”).

Landscape

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

With reference to the aerial photo of 2020 and the site photo, the Site is entirely a scrubland with only a few banana trees. No significant landscape resources is observed within the Site. It is situated in an area of miscellaneous rural fringe landscape character predominated by small houses, farmlands and scrublands, with some warehouses and open storage yards in the vicinity. In view of the small scale and low-rise nature of the proposed structure, the applied use is considered not entirely incompatible with the landscape character of the surrounding environment.

Drainage

- 9.1.6 Comments of the Chief Engineer/Mainland North, DSD (CE/MN, DSD):

- (a) He has no in-principle objection to the captioned application from public drainage viewpoint.
- (b) Should the application be approved, a condition should be stipulated requiring the applicant to submit a detailed drainage proposal for the development and to implement and maintain the drainage facilities proposed in the drainage proposal to his satisfaction.
- (c) The applicant should note the detailed comments at **Appendix IV**.

Fire Safety

- 9.1.7 Comments of the Director of Fire Services (D of FS):

He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction. The applicant should note the detailed comments at **Appendix IV**.

Water Supplies

- 9.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

He has no objection to the application. The applicant should note his detailed comments at **Appendix IV**.

Building Matters

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

- (a) Before any new building works are to be carried out on the Site, the prior approval and consent of the Building Authority (BA) should be obtained, otherwise they are unauthorised building works (UBWs). An AP should be appointed as the co-ordinator for the proposed building works in accordance with Building Ordinance (BO).
- (b) The applicant should note the detailed comments at **Appendix IV**.

Others

9.1.10 Comments of the Director of Electrical and Mechanical Services (DEMS):

He has no particular comment from electricity supply safety aspect at this stage. The applicant should note the detailed comments at **Appendix IV**.

District Officer's Comments

9.1.11 Comments of District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD):

He has distributed consultation letters to the locals concerned and understand that they would provide their comments (if any) to the Board direct.

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (c) Commissioner of Police (C of P).

10. Public Comments Received During the Statutory Publication Period

On 13.8.2021, the application was published for public inspection. During the statutory public inspection period, three objecting public comments (**Appendices III-1 to III-3**) were received from local residents on the ground that the proposed development will change the tranquil environment of the area and have noise nuisance to the village.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services for a period of 3 years at the Site zoned "R(D)" on the OZP, which is primarily intended for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. Although

the proposed development is not entirely in line with the planning intention of the “R(D)” zone, the development could provide shop and services to serve any such demand in the area. Moreover, there is no known development programme at the Site. As such, approval of the application on a temporary basis for 3 years would not jeopardise the long-term planning intention of the “R(D)” zone.

- 11.2 The Site is at the fringe of the “R(D)” zone of Tsoi Yuen Tsuen and in an area predominantly occupied by residential dwellings intermixed with storage, orchard and vacant land (**Plan A-2**). The proposed development is considered not incompatible with the surrounding land uses.
- 11.3 Relevant government departments, including C for T, DEP, CE/MN, DSD, CTP/UD&L, PlanD and D of FS have no objection to or no adverse comments on the application. The proposed use will unlikely create significant adverse traffic, environmental, drainage, landscape and fire safety impacts to the surrounding areas. To minimise any potential environmental nuisances and to address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. Any non-compliance with these 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 planning application be approved, the applicant will be advised to follow the relevant mitigation measures and requirements in the “COP” in order to minimise any potential environmental impact on the surrounding areas.
- 11.4 The Committee has approved two similar applications within the same “R(D)” zone. Approval of the application is in line with the Committee’s previous decisions.
- 11.5 There were three public comments received objecting to the application during the statutory publication period as summarised in paragraph 10 above. The planning considerations and assessments in the paragraphs 11.1 to 11.4 are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, 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 **24.9.2024**. 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 vehicle is allowed to be parked or enter the Site, as proposed by the applicant, at any time during the planning approval period;

- (c) 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 **24.3.2022**;
- (d) in relation to (c) 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 **24.6.2022**;
- (e) in relation to (d) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **24.3.2022**;
- (g) in relation to (f) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **24.6.2022**;
- (h) if any of the above planning conditions (a), (b) or (e) 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
- (i) if any of the above planning conditions (c), (d), (f) or (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

The recommended advisory clauses are 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 applied use is not in line with the planning intention of "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. No strong planning justification has been given 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 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 Attachments received on 4.8.2021
Appendix Ia	SI received on 6.8.2021
Appendix Ib	FI received on 3.9.2021
Appendix II	Similar Applications
Appendices III-1 to III-3	Public Comments
Appendix IV	Advisory Clauses
Drawing A-1	Site Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2021**