

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/TP/679**

<b><u>Applicant</u></b>	Mr. Timothy WONG Yik represented by Toco Planning Consultants Ltd.
<b><u>Site</u></b>	Government land adjoining Lot 2060 in D.D. 6, No. 105 Kam Shek New Village, Tai Po, N.T.
<b><u>Site Area</u></b>	About 34.4 m <sup>2</sup>
<b><u>Land Status</u></b>	Government land
<b><u>Plan</u></b>	Draft Tai Po Outline Zoning Plan (OZP) No. S/TP/29
<b><u>Zoning</u></b>	“Village Type Development” (“V”)
<b><u>Application</u></b>	Temporary Eating Place (Extension of a Restaurant) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for extension of an existing restaurant located on ground floor of a village house at No. 105 Kam Shek New Village for a period of 3 years (**Plan A-2**). According to the Notes of the OZP, ‘Eating Place’ other than on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use within the “V” zone requiring planning permission from the Town Planning Board (the Board). The Site is currently occupied by the applied use without valid planning permission.
- 1.2 The Site, with an area of about 34.4m<sup>2</sup>, is occupied by a single-storey structure with a height of about 2.8m which provides a restaurant operating area of about 32.3m<sup>2</sup> and an open area covered by canopy of about 2.1m<sup>2</sup>. According to the applicant, the restaurant extension will accommodate a maximum of 20 persons. The operating hours are from 7:00 a.m. to 9:30 p.m. daily. No cooking facilities will be provided within the restaurant extension. The applied use will be served by existing stormwater drain, public sewers and firefighting facilities. The Site is accessible via internal circulation area of Kam Shek New Village and a footpath leading from Wilson Trail. Site plan, pedestrian circulation plan and layout plan of the applied use are at **Drawings A-1 to A-3** respectively.
- 1.3 The Site is the subject of two previous applications (No. A/TP/619 and 649) submitted by a different applicant for temporary eating place (outdoor seating accommodation (OSA) of a restaurant) which were approved with conditions by

the Rural and New Town Planning Committee (the Committee) on 17.2.2017 and 16.11.2018 respectively. Details of the previous applications are given in paragraph 5 below.

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) application form received on 8.11.2021 (Appendix I)
  - (b) planning statement (Appendix Ia)
  - (c) Further Information (FI) received on 8.12.2021 (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 planning statement and FI at **Appendices Ia** and **Ib** respectively, which are summarized as follows:

- (a) the applied use will support the adjoining restaurant as a popular eating place in Kam Shek New Village to serve the local residents;
- (b) there is no change in the site area, nature of use and operation as compared with the latest previous planning permission for temporary OSA under Application No. A/TP/649, except that the applied use is accommodated within an enclosed structure, which helps provide shelter for the customers and alleviate noise impact and environmental hygiene issues caused by restaurant operation. The facades of the enclosed structure are formed by glass panels and sliding doors which could be removed easily to facilitate fire escape;
- (c) the temporary nature of the application will not jeopardise the long-term planning intention of the “V” zone;
- (d) the applied use is in line with the relevant Town Planning Board Guidelines for eating place within “V” zone;
- (e) the applied use will not affect pedestrian circulation in the area;
- (f) the small-scale development will not result in any significant traffic, environmental, drainage, sewerage and visual impacts on the locality; and
- (g) the applied use will not set an undesirable precedent for similar applications.

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

As the Site involves government land only, 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 Ordinance (TPB PG-No. 31A) is not applicable to the application.

### **4. Town Planning Board Guidelines**

The Town Planning Board Guidelines 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) is relevant to the application. The relevant planning criteria are summarized as follows:

- (a) the eating place use should not create 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.

## **5. Previous Applications**

- 5.1 The Site is the subject of two previous applications (No. A/TP/619 and 649) (**Plan A-2a**) submitted by the same applicant for temporary OSA for a period of 3 years. These two applications were approved with conditions by the Committee on 17.2.2017 and 16.11.2018 respectively mainly on considerations that it would not frustrate the long-term planning intention of the “V” zone; not affect the land availability for village type development; and not result in adverse traffic, drainage, sewerage and fire safety impacts on the surrounding areas.
- 5.2 The planning permission under Application No. A/TP/619 was revoked on 17.2.2018 due to non-compliance with the approval condition to provide fire service installations (FSIs) and water supplies for fire-fighting. For the last previous application No. A/TP/649, all approval conditions have been complied with and the temporary planning permission expired on 17.11.2021. Compared with the last previous application, the current application is submitted by a different applicant for extension of an existing restaurant within a single-storey structure instead of for an OSA covered by canopy.
- 5.3 Details of the previous applications are summarised in **Appendix II** and their location are shown on **Plan A-2**.

## **6. Similar Application**

There is no similar application for temporary eating place within the same “V” zone.

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

- 7.1 The Site is:
- (a) occupied by a single-storey structure serving as an extension of the adjoining restaurant located on the ground floor of a village house at No. 105 Kam Shek New Village;
  - (b) situated at the northern fringe of Kam Shek New Village;
  - (c) accessible via internal circulation area of Kam Shek New Village and a footpath leading from Wilson Trail; and
  - (d) currently used for the applied use without valid planning permission.
- 7.2 The surrounding areas have a suburban character mainly comprises village houses, playground and landscaped areas. Kam Shek New Village Playground is located to the immediate west of the Site and Lam Tsuen River is located to the north.

## **8. Planning Intention**

The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. 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.

## **9. Comments from Relevant Government Departments**

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

### Land Administration

9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site falls on a piece of government land adjoining Lot No. 2060 in D.D. 6 in Kam Shek New Village. A single-storey structure with a total covered area of about 35m<sup>2</sup> was erected thereon without prior approval from LandsD ;
- (c) there is no Small House application received for the Site;
- (d) an application for short term tenancy (STT) in respect of the Site was received by LandsD. Should the Board approve the application, LandsD will continue to process the STT application. However, there is no guarantee at this stage that the STT application would be approved. If the STT 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 as considered appropriate;
- (e) the applicant should be advised that, if the adjoining government land is used for access to the Site, no trees thereon shall be interfered with unless prior approval is obtained from LandsD. Moreover, neither occupation nor works of any kind thereon is allowed without the prior approval from LandsD; and
- (f) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access (EVA) thereto.

### Traffic

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

- (a) no objection to the application from traffic engineering point of view; and
- (b) the Site is not under the management of Transport Department (TD). Management and maintenance parties of the Site should be consulted.

### Licensing

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

- (a) no comment on the application;
- (b) according to the applicant's submission, the applied use is accommodated in an enclosed structure adjoining to the existing restaurant at the ground floor of No. 105 Kam Shek New Village. While the existing restaurant at the ground floor of village house is covered by a valid General Restaurant Licence with validity up to 20.3.2022, the applied use is not covered by any food business licence; and
- (c) proper licence/permit issued by Food and Environmental Hygiene Department (FEHD) is required for any food business/catering service/activities regulated under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation. Detailed comments on licensing requirements are set out in paragraph (c) of **Appendix IV**.

### Environment

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

- (a) no objection to the application from environmental planning perspective;
- (b) it is noted that the current application is largely the same as the previously approved application (No. A/TP/649) in terms of nature of use and operation. According to the applicant, the operating hours of the restaurant remain the same as previous, i.e. from 7:00 am to 9:30 pm; no cooking facilities will be provided within the Site; and sewage generated from the restaurant will be discharged to the existing public sewers;
- (c) the applicant is 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" to minimize any potential environmental nuisance; to carry out

pollution abatement measures in relevant Guidelines, including “Control of Oily Fume and Cooking Odour from Restaurants and Food Business”; and that it is the applicant’s obligation to meet the statutory requirements under relevant pollution control ordinances;

- (d) the Site falls within the consultation zone of Tai Po Water Treatment Works and he has no objection to the application from chlorine risk point of view; and
- (e) in the past three years, three substantiated complaints were reported in 2019 about ventilation system noise and effluent from dish washing discharged to storm drains related to the use at the Site. Actions had been subsequently taken by the subject operator to minimise noise nuisance and rectify wastewater discharge. Since then, no substantiated environmental complaints have been received.

#### Drainage

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

- (a) no comment on the application from public drainage viewpoint;
- (b) the applicant should be advised that operation of the restaurant extension shall not cause additional drainage and sewerage impact to the public stormwater and sewerage systems; and
- (c) the operator of the restaurant shall obtain relevant licence for the extension of restaurant from FEHD.

#### Fire Safety

9.1.6 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application subject to fire service installations (FSIs) being provided to his satisfaction;
- (b) detailed fire services requirements will be formulated upon receipt of formal application via Licensing Authority. The applicant is advised to submit relevant layout plans incorporated with the proposed FSIs for his approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy, and the location of where the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (c) if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123) or license is required for the proposed eating place, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

### Building Matters

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

- (a) the granting of a short term tenancy (STT) for the Site should not be construed as an acceptance of any existing building works or unauthorized building works (UBW) on site under the Buildings Ordinance (BO);
- (b) before any new building works, including alterations and additions works, are carried out on land held under STT, prior approval and consent from the Building Authority (BA) should be obtained, otherwise they are UBW. An Authorised Person (AP) should be appointed to coordinate all new building works in accordance with the BO; and
- (c) for UBW erected on land held under STT, enforcement action may be taken by the BA to effect the removal of the UBW in accordance with the policy for control of UBW in the future. The granting of planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO, and any licence applications for which comments from BD is necessary.

9.2 The District Officer/Tai Po, Home Affairs Department (DO/TP, HAD) has no comment on the application.

### **10. Public Comments Received During Statutory Publication Period (Appendix III)**

The application was published for public inspection. During the statutory public inspection period, a total of 84 public comments from individuals were received. Amongst which, 82 support the application mainly on the grounds of being a popular eating place and a convenient location for social interaction in the neighbourhood; meeting the need to accommodate more customers; not causing adverse impacts on the surrounding areas or obstruction to pedestrian circulation owing to its small scale; not jeopardising the long-term planning intention of the “V” zone or setting undesirable precedent for similar applications owing to its temporary nature (sample at **Appendix III-1**). The remaining two public comments object to the application mainly for the reasons of adverse environmental and fire safety impacts; occupation of government land; blockage of public access and erection of unauthorized structure (**Appendix III-2** to **III-3**). A full set of the public comments is deposited at the meeting for Members’ inspection.

### **11. Planning Considerations and Assessments**

11.1 The application is for using the Site, which is zoned “V” on the OZP, as an extension of the existing restaurant located on the ground floor of a village house



for a period of 3 years. The restaurant extension is not entirely in line with the planning intention of the “V” zone which is primarily intended for development of NTEH/Small Houses by indigenous villagers. However, DLO/TP of LandsD advises that there is at present no Small House application received for the Site. The applied use on a temporary basis for a period of 3 years would neither frustrate the long-term planning intention of the subject “V” zone nor adversely affect the land availability for village type development.

- 11.2 The Site is located at the northern fringe of Kam Shek New Village and adjacent to the Wilson Trail. To the immediate west of the Site is the Kam Shek New Village Playground. The restaurant extension is considered not incompatible with its immediate surrounding uses mainly comprising village houses, playground and landscaped areas. As the existing footpath between the Site and the planter to its north is about 1.5m to 2m in width, adverse impact on pedestrian circulation is not anticipated (**Drawing A-2** and **Plan A-4**). The Site with an area of about 34.4m<sup>2</sup> and the single-storey structure with a height of about 2.8m is relatively small in scale. DEP has no objection to the application from environmental planning perspective, and advises that actions had been taken by the subject operator to minimise noise nuisance and rectify wastewater discharge in response to the three environmental complaints received in 2019. Since then, no substantiated environmental complaints have been received related to the use at the Site. Other relevant government departments consulted, including C for T, DFEH, CE/MN of DSD and D of FS, have no objection to or adverse comment on the application. It is anticipated that the applied use will not cause significant adverse traffic, drainage, sewerage and fire safety impacts on the surrounding areas. In view of the above, the applied use is generally in line with the TPB PG-No. 15A for eating place within the “V” zone.
- 11.3 The Site is the subject of two previously approved applications (No. A/TP/619 and 649) for temporary OSA. These applications were approved mainly on considerations that it would not frustrate the long-term planning intention of “V” zone; not affect the land availability for village type development; and not result in adverse traffic, drainage, sewerage and fire safety impacts on the surrounding areas. The planning circumstances of the current application are similar to the approved applications.
- 11.4 There are 84 public comments received on the application, of which 82 indicate support to the application. Regarding the remaining two public comments raising objection as detailed in paragraph 10 above, government departments’ comments and the 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 public comments mentioned in paragraph 10, 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

24.12.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission of fire service installations (FSIs) 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 24.6.2022;
- (b) in relation to (a) above, the implementation of FSIs 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 24.9.2022; and
- (c) if any of the above planning conditions (a) or (b) 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 to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. 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 permission.
- 13.2 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.
- 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**

<b>Appendix I</b>	Application Form received on 8.11.2021
<b>Appendix Ia</b>	Planning Statement
<b>Appendix Ib</b>	FI received on 8.12.2021
<b>Appendix II</b>	Previous applications
<b>Appendix III</b>	Public comments
<b>Appendix IV</b>	Recommended advisory clauses
<b>Drawing A-1</b>	Site plan submitted by the applicant
<b>Drawing A-2</b>	Pedestrian circulation plan submitted by the applicant
<b>Drawing A-3</b>	Layout plan submitted by the applicant
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
DECEMBER 2021**