

RNTPC Paper No. A/YL-KTN/831  
For Consideration by  
the Rural and New Town  
Planning Committee  
on 10.6.2022

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

**APPLICATION NO. A/YL-KTN/831**

<b><u>Applicant</u></b>	: Mr. TANG Wai Ip
<b><u>Site</u></b>	: Lot 540 (Part) in D.D. 109, Kam Tin North, Yuen Long, New Territories
<b><u>Site Area</u></b>	: About 1,787 m <sup>2</sup>
<b><u>Lease</u></b>	: Block Government Lease (demised agricultural use)
<b><u>Plan</u></b>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<b><u>Zoning</u></b>	: “Village Type Development” (“V”) [maximum building height of 3 storeys (8.23m)]
<b><u>Application</u></b>	: Proposed Temporary Eating Place for a Period of 5 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary eating place for a period of 5 years (**Plan A-1**). According to the Notes of “V” zone of the OZP, ‘Eating Place’ other than on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently formed, paved and vacant (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the proposed use involves three single-storey structures (not exceeding 3.5m high) with a total floor area of about 225.5m<sup>2</sup> for eating place, electric meter room and storage uses. Six private car parking spaces and a loading/unloading space for light goods vehicle will be provided at the Site. The operation hours are from 8:00 a.m. to 10:00 p.m. daily, including public holidays. A maximum of 70 visitors at one time will be accommodated at the Site.

The Site is accessible from Kong Tai Road via a local access. A site layout plan submitted by the applicant is at **Drawing A-1**.

- 1.3 The Site is involved in two previous applications (No. A/YL-KTN/200 and 671) (details at paragraph 6 below). The last application No. A/YL-KTN/671, submitted by the same applicant as the current application, was approved with conditions by the Rural and New Town Planning Committee (the Committee) in September 2019. Nevertheless, the planning permission was revoked in December 2021 due to non-compliance with approval conditions related to the provision of boundary fencing and implementation of drainage and fire service installations (FSIs) proposals. A comparison of the major development parameters of the last approved application and the current application is summarised below:

	<b>Last Application No. A/YL-KTN/671 (a)</b>	<b>Current Application (b)</b>	<b>Difference (b) – (a)</b>
Applied Use	Proposed temporary eating place for a period of 3 years	Proposed temporary eating place for a period of 5 years	No change (except approval period sought from 3 years to 5 years)
Site Area (m <sup>2</sup> )(about)	1,787	1,787	-
No. of Structures	3	3	-
Total Floor Area (m <sup>2</sup> )(about)	225.5	225.5	-
No. of Storey	1	1	-
Building Height (m)(about)	Not exceeding 3.5	Not exceeding 3.5	-
No. of Parking Spaces			-
- Private car parking spaces	6	6	
- L/UL space (for LGV)	1	1	

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

- (a) Application form with supplementary information (**Appendix I**) received on 19.4.2022.
- (b) Further information (FI) received on 7.6.2022 (**Appendix Ia**)

## 2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form, supplementary information and FI at **Appendices I and Ia**. They can be summarised as follows:

- (a) The proposed development is intended to serve the nearby villagers and residents. It will provide an alternative dining choice, which could help redistribute and relieve the traffic load in the Kam Tin Town Centre.
- (b) The proposed development is on a temporary basis which will not jeopardise the long-term planning intention of the “V” zone. The proposed development is not incompatible with the surrounding land uses which are rural in character.
- (c) Similar application for temporary eating place use in the vicinity has been approved by the Committee.
- (d) The eating place use under application will not create adverse traffic, environmental, drainage and landscape impacts to the surrounding areas.
- (e) The Site is the subject of a planning application (No. A/YL-KTN/671) approved for the same use and submitted by the same applicant. Nevertheless, the planning permission was revoked due to the applicant’s failure to obtain in a timely manner approval of the Lands Department on the Short Term Waiver application for implementation of the relevant approval conditions. The applicant commits to comply with all the approval conditions should the current application be approved.

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

The applicant is not a “current land owner” but has complied with the requirement 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 Pat Heung Rural Committee by registered post. Detailed information would be deposited at the meeting for Member’s inspection.

## 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) are relevant to the application. Relevant extract of the Guidelines is at **Appendix II**.

## 5. **Background**

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

## 6. **Previous Applications**

- 6.1 The Site is the subject of 2 previous applications (No. A/YL-KTN/200 and 671). The former application for temporary open storage of construction machineries was rejected by the Committee which was not relevant to the current application. The latter application (No. A/YL-KTN/671) for the same applied use as the current application and submitted by the same applicant was approved with conditions by the Committee in September 2019 mainly on the grounds that temporary approval of the application would not frustrate the long-term planning intention; the development was not incompatible with the surrounding land uses; the application was generally in line with the TPB PG-No.15A in that relevant departments generally had no adverse comments and/or their technical concerns could be addressed by appropriate approval conditions. Nevertheless, the application was revoked in December 2021 due to non-compliance with approval conditions related to the provision of boundary fencing, and implementation of drainage and FSIs proposals.
- 6.2 Compared with the last application No. A/YL-KTN/671, the applied use, site area / boundary and major development parameters of the current application remain unchanged except the approval period sought is increased from 3 years to 5 years. Details of which are set out in paragraph 1.3 above.
- 6.3 Details of the previous applications are summarised at **Appendix III**. Their locations are shown on **Plan A-1**.

## 7. **Similar Application**

- 7.1 There is a similar application (No. A/YL-KTN/641) for temporary eating place within the “V” zone in the vicinity of the Site in the past 5 years. The application was approved with conditions by the Committee in February 2019 on similar considerations as stated in paragraph 6.1 above. However, the planning permission was revoked in July 2021 due to non-compliance with approval conditions.
- 7.2 Details of the similar application are summarized at **Appendix III**. The location is shown on **Plan A-1**.

## **8. The Site and Its Surrounding Areas (Plans A-1 to A-4)**

8.1 The Site is:

- (a) currently formed, paved and vacant;
- (b) accessible from Kam Tin Bypass and Kong Tai Road via a local track.

8.2 The surrounding areas have the following characteristics:

- (a) to its north, northwest and west are vacant land. To its northeast is a site with construction works in progress (with valid planning permission for temporary shop and services use under Application No. A/YL-KTN/796). Kam Tin River is at its further north;
- (b) to its southeast is a residential development within the “Residential (Group C) 2” (“R(C)2”) zone, namely Seasons Monarch (四季名園) (the nearest about 20m away); and
- (c) to its south are residential structures/dwellings, an open storage yard, a ruin, a warehouse, a site with construction works in progress (with valid planning permission for temporary public vehicle park use under Application No. A/YL-KTN/764) and grassland.

## **9. 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. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

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

All 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 in **Appendices IV and V** respectively.

## **11. Public Comments Received During Statutory Publication Period (Appendix VI)**

During the statutory public inspection period, 18 public comments from individuals were received. The commenters object to the application mainly on the grounds that the proposed use is not in line with the planning intention; the proposed development will cause noise nuisance, air quality and light pollution to the nearby residents during its operation; the proposed use will result in adverse traffic, environmental and fire safety risk thus affecting the living quality of the nearby residents; and the applicant's previous planning permission was revoked due to non-compliance of approval conditions.

## **12. Planning Considerations and Assessments**

- 12.1 The application is for proposed temporary eating place for a period of 5 years at the Site zoned "V". 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. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. The proposed temporary eating place is not entirely in line with the planning intention of the "V" zone. According to the applicant, the applied use is to serve nearby villagers and residents. DLO/YL of LandsD advises that there is no Small House application approved or under processing at the Site. In this regard, it is considered that the approval of the application on a temporary basis would not jeopardize the long-term planning intention of the "V" zone.
- 12.2 The proposed development is considered not incompatible with the surrounding land uses which are mainly rural in character predominated by residential dwellings/structures, open storage yard, warehouse, vacant land and sites approved for various temporary uses.
- 12.3 In relation to the relevant assessment criteria set out under TPB PG-No. 15A (**Appendix II**), the Site is located at the fringe of the "V" zone and is readily accessible from Kong Tai Road and Kam Tin Bypass and the local access leading to the Site does not pass through the nearby residential developments. Moreover, relevant government departments consulted, including C for T, CE/MN of DSD and D of FS, have no adverse comment on the application from traffic, drainage and fire safety aspects. DEP has no objection to the application and advises that the applicant should provide the necessary pollution control measures and ensure not causing environmental nuisance to the public and people living nearby. To address the technical requirements of other concerned government departments, appropriate approval conditions are recommended in paragraph 13.2 below. The applicant will also be advised to adopt the latest 'Code of Practice on Handling

the Environmental Aspects of Temporary Uses and Open Storage Uses' in order to alleviate any potential impact. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. Nevertheless, in accordance with TPB PG-No. 15A, a shorter approval period of three years, instead of five years sought, is recommended so as to retain planning control on the development at the Site and to cater for changing circumstances in future.

- 12.4 The Site is the subject of an approved application (No. A/YL-KTN/671) submitted by the same applicant as the current application for the same applied use in 2019. All development parameters are the same as the previously approved application. However, the planning permission was revoked due to non-compliance with the approval conditions as stated in paragraph 6 above. In the current application, drainage and FSIs proposals are submitted in support of the application. CE/MN of DSD and D of FS have no adverse comment on the applications. Other government departments also have no objection to the application as stated in paragraph 12.3 above. Should the Committee decide to approve the application, the applicant will be advised that should he fail to comply with the approval conditions again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 12.5 18 public comments objecting to the application were received during the statutory publication period as mentioned in paragraph 11 above. In this regard, government departments' comments and planning assessments above are relevant.

### **13. Planning Department's Views**

- 13.1 Based on the assessments made in paragraph 12 and having taking into account the public comments in paragraph 11, the Planning Department has no objection to the applied proposed temporary eating place for a period of 3 years, instead of 5 years as sought by the applicant.
- 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 3 years up to 10.6.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

#### Approval conditions

- (a) no operation between 10:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) the implementation of the accepted drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Service or of the Town Planning Board by 10.12.2022;
- (c) in relation to (b) above, the implemented drainage facilities 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 Director of Fire Services or of the Town Planning Board by 10.12.2022;
- (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 Director of Fire Services or of the Town Planning Board by 10.3.2023;
- (f) if any of the above planning condition (a) or (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;
- (g) if any of the above planning condition (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 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 proposed development is not in line with the planning intention of the "V" zone which is intended 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 the "V" 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.

## **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 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 applicants.

## **15. Attachments**

<b>Appendix I</b>	Application form received on 19.4.2022
<b>Appendix Ia</b>	FI received on 7.6.2022
<b>Appendix II</b>	Relevant extract of TPB PG-No. 15A
<b>Appendix III</b>	Previous and similar applications
<b>Appendix IV</b>	Government departments' general comments
<b>Appendix V</b>	Recommended advisory clauses
<b>Appendix VI</b>	Public comments
<b>Drawing A-1</b>	Site layout plan
<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  
JUNE 2022**