

RNTPC Paper No. A/YL-KTS/964
For Consideration by the
Rural and New Town
Planning Committee
on 14.7.2023

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/964

<u>Applicant</u>	:	Easy Best Creation Limited represented by R-riches Property Consultants Limited
<u>Site</u>	:	Lot 283 RP in D.D. 113, Kam Tin, Yuen Long, New Territories
<u>Site Area</u>	:	About 769m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
<u>Zoning</u>	:	“Agriculture” (“AGR”) (about 96%) “Village Type Development” (“V”) (about 4%) <i>[maximum building height of 3 storeys (8.23m)]</i>
<u>Application</u>	:	Proposed Temporary Eating Place with Ancillary Facilities for a Period of 3 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary eating place with ancillary facilities for a period of three years and filling of land at the application site (the Site), which is zoned “AGR” and “V” on the Kam Tin South OZP (**Plan A-1**). ‘Eating Place’ is a Column 2 use in the “V” zone but it is neither a Column 1 nor Column 2 use in the “AGR” zone. According to the covering Notes of the OZP, temporary use or development not exceeding a period of three years requires planning permission from the Town Planning Board (the Board). Filling of land within “AGR” zone also requires planning permission from the Board. The Site is currently fenced, paved and mainly vacant with some construction materials deposited (**Plans A-2 to A-4**).

- 1.2 According to the applicant, the proposed development involves erection of two 2-storey structures with a building height of about 7m and a total floor area of about 360m² for eating place (restaurant), washroom and storage uses. The applicant also applies for regularisation of filling of land to not more than +11.4mPD (from +11.2mPD) for the whole site. Six staff members will be stationed at the Site to support the operation and the proposed eating place will accommodate 30 visitors per day. The operation hours will be from 9:00 a.m. to 9:00 p.m. daily including public holidays. The Site is accessible from Kam Ho Road via a local track. Parking spaces for six private cars and one light goods vehicle are proposed within the Site. The site layout plan and land filling plan submitted by the applicant are at **Drawings A-1 and A-2**.
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form with supplementary information (**Appendix I**) received on 24.5.2023
 - (b) Further Information (FI) received on 7.7.2023* (**Appendix Ia**)

** 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 application form, supplementary information and FI at **Appendices I and Ia**. They can be summarised as follows:

- (a) Temporary approval of the application will not jeopardise the long-term planning intention. The proposed development is not incompatible with the surrounding environment.
- (b) The proposed use is to serve the nearby locals. It can better utilise the Site to meet the pressing demand for restaurants in the area given its proximity to the villages.
- (c) Filling of land is essential for site formation of structures and circulation space. The Site will be reinstated to an amenity area upon expiry of the planning approval.
- (d) The proposed development will not induce environmental nuisance nor adverse traffic and environmental impacts to the surrounding areas. The applicant will strictly follow the “Control of Oil Fume and Cooking Odour from Restaurants and Food Business” issued by the Environmental Protection Department (EPD) to minimise any possible environmental nuisance, and the Professional Persons Environmental Consultative Committee Practice Notes for sewage treatment at the Site.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to any active planning enforcement case. Should there be sufficient evidence to form an opinion of unauthorised development under the Town Planning Ordinance at the Site, enforcement action would be instigated as appropriate.

5. 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 extracts of the Guidelines are attached at **Appendix II**.

6. Previous Application

There is no previous application at the Site.

7. Similar Application

There is no similar application within the same “AGR” or “V” zones.

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

8.1 The Site is:

- (a) currently fenced, paved and mainly vacant with construction materials deposited; and
- (b) accessible from Kam Ho Road via a local track.

8.2 The surrounding areas have the following characteristics:

- (a) to the east and northeast is a nullah, across which is Pat Heung Depot within an area zoned “Other Specified Uses” annotated “Railway Depot with Commercial/Residential Development”;
- (b) to the south are residential dwellings/structures of the village settlement of Tai Kek (大𨵿) within “V” zone; and
- (c) to the west and northwest is another nullah, across which are woodland, a plant nursery, residential dwellings/structures and a storage yard.

9. **Planning Intentions**

- 9.1 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. As filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.
- 9.2 The planning intention of the “V” zone is to reflect existing recognised 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 ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

10. **Comments from Relevant Government Departments**

- 10.1 Apart from the government department as set out in paragraph 10.2 below, other government 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 III** and **IV** respectively.

- 10.2 The following government department does not support the application:

Agriculture and Nature Conservation

Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) the Site falls within “AGR” zone and is vacant. The agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the proposed development is not supported from agricultural perspective; and
- (b) no comment on the application from nature conservation perspective. Should the application be approved, the applicant shall be reminded to avoid polluting or disturbing the adjacent watercourse during operation.

11. Public Comments Received During Statutory Publication Period (Appendix V)

The application was published for public inspection. During the statutory publication period, four public comments from Kadoorie Farm and Botanic Garden Corporation, villagers of Tai Kek Village (including one comment representing 59 villagers) and an individual were received objecting to the application mainly on the grounds that the proposed use would generate traffic, noise, sewerage and environmental impacts; and the Site should be used for its planned use.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary eating place with ancillary facilities for a period of three years and filling of land at the Site zoned “AGR” (96%) and “V” (4%). The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The planning intention of the “V” zone is to reflect existing recognised 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, and other commercial, community and recreational uses may be permitted on application to the Board. The proposed use is not in line with the planning intention of the “AGR” zone, and DAFC does not support the application from agricultural perspective. Whilst the proposed eating place is not entirely in line with the planning intention of the “V” zone, it could serve the needs of the locals. The District Lands Officer/Yuen Long of the Lands Department (DLO/YL of LandsD) advises that there is no Small House application approved or under processing at the Site. The Site is currently paved and vacant without agricultural or other uses. It is considered that approval of the application on a temporary basis would not frustrate the long-term planning intentions of the “AGR” and “V” zones. Filling of land within the “AGR” zone also requires planning

permission from the Board as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, the Chief Engineer/Mainland North of the Drainage Services Department (CE/MN of DSD) and the Director of Environmental Protection (DEP) have no objection to the application from drainage and environmental perspectives. An approval condition requiring reinstatement of the “AGR” portion of the Site to an amenity area is recommended should the Committee decide to approve the application.

- 12.2 According to the submission, the proposed use is intended to serve the nearby residents. The proposed development is considered not incompatible with the surrounding uses which are rural in character predominated by residential dwellings/structures, woodland and plant nurseries. The Chief Town Planner/Urban Design and Landscape of the Planning Department (CTP/UD&L of PlanD) considers that significant adverse impact on landscape resources and character arising from the proposed use is not anticipated, and has no objection to the application from landscape planning perspective.
- 12.3 The application is generally in line with TPB PG-No.15A. The proposed eating place is located at the fringe of the “V” zone and accessible from Kam Ho Road via a local track. Relevant government departments consulted, including the Commissioner for Transport, DEP, CE/MN of DSD and the Director of Fire Services, have no adverse comment on the application. To address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 13.2 below. To minimise any potential environmental nuisance, the applicant will also be advised to follow the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”; the Practice Note for Professional Person PN 5/93 on “Drainage Plans subject to Comment by EPD” including retention time for grease trap and minimum clearance distance, percolation test and certification by Authorized Person for septic tank and soakaway system; and “Control of Oil Fume and Cooking Odour from Restaurant and Food Business” issued by EPD.
- 12.4 Regarding the public comments objecting to the application as stated in paragraph 11 above, the departmental comments and planning assessments above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11 above, the Planning Department considers that the applied use could be tolerated for a period of three years.
- 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 until

14.7.2026. The following approval conditions and advisory clauses are also 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 14.1.2024;
- (b) in relation to (a) 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 14.4.2024;
- (c) in relation to (b) above, the implemented drainage facilities on 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 14.1.2024;
- (e) in relation to (d) above, the implementation of the accepted 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 14.4.2024;
- (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.
- (h) upon expiry of the planning permission, the reinstatement of the portion of the site falling within "Agriculture" zone to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are at **Appendix IV**.

- 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 intentions of the “AGR” and “V” zones. The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The planning intention of the “V” zone is primarily for development of Small Houses by indigenous villagers. There is no strong planning justification in the submission for a departure from the planning intentions, 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 applicant.

15. Attachments

Appendix I	Application form with supplementary information received on 24.5.2023
Appendix Ia	FI received on 7.7.2023
Appendix II	Relevant extracts of TPB PG-No. 15A
Appendix III	Government departments’ general comments
Appendix IV	Recommended advisory clauses
Appendix V	Public comments
Drawing A-1	Site layout plan
Drawing A-2	Land filling plan
Plan A-1	Location plan

Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
JULY 2023**