

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1091

- Applicant** : Ms. CHAN Yau Chi represented by Metro Planning and Development Company Limited
- Site** : Lots 1279 S.A (Part), 1298 (Part) and 1301 (Part) in D.D. 119, Pak Sha Tsuen, Yuen Long, New Territories
- Site Area** : 760 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/13
- Zoning** : “Residential (Group C)” (“R(C)”)
[Restricted to a maximum plot ratio of 0.4 and maximum building height of 3 storeys (9m)]
- Application** : 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-1a**). According to the Notes of the OZP for the “R(C)” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by a warehouse for storage of construction materials without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Site involves five previous applications for various temporary uses. The last application (No. A/YL-TYST/873) for the same use as the current application was approved with conditions for a period of 3 years by the Rural and New Town Planning Committee (the Committee) of the Board on 18.5.2018. However, the planning permission was revoked on 18.8.2020 due to non-compliance with time-limited approval condition on implementation of fire service installations (FSIs) proposal. Compared with the last application, the current application is submitted by the same applicant for the same use on the same site with the same site layout and development parameters albeit with shorter operation hours.
- 1.3 According to the applicant, the proposal is for a grocery store to serve the nearby residents. No workshop activities will be carried out within the Site and only light goods vehicle (LGV) will be allowed to access the Site. Plans showing the

vehicular access leading to the Site, site layout, internal layout, as-built drainage facilities and FSIs proposal submitted by the applicant are at **Drawings A-1 to A-5** respectively.

1.4 The major development parameters of the current application and the previously approved application are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TYST/873 (a)	Current Application No. A/YL-TYST/1091 (b)	Difference (b)-(a)
Applied Use	Proposed Temporary Shop and Services for a Period of 3 Years		---
Site Area	About 760 m ²		---
Total Floor Area (Non-domestic)	About 745 m ²		---
No. and Height of Structure	1 • for shop and services (grocery store), toilet, staff room and store room (6.5m, 1 storey)		---
No. of Loading/Unloading Space	1 (for LGV) (7m x 3.5m)		---
Operation Hours	8:00 a.m. to 8:00 p.m. daily	9:00 a.m. to 5:00 p.m. daily	Shorter operation hours

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

- (a) Application Form with annex and plans received on 29.3.2021 **(Appendix I)**
- (b) Further Information (FI) received on 5.5.2021 responding to departmental comments **(Appendix Ia)**
- (c) FI received on 11.5.2021 providing FSIs proposal **(Appendix Ib)**
[(b) and (c) 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 **(Appendix I)**. They can be summarised as follows:

- (a) The Site was the subject of three previous planning applications for the same use as the current application. Similar shop and services have been approved in the area. The proposal is not incompatible with the surrounding environment. Approval of the application would help phase out undesirable uses in the area.
- (b) There will be insignificant environmental, drainage and traffic impacts on the surrounding environment.

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. 31A) by posting site notice and sending notice to the Shap Pat Heung Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is currently not subject to planning enforcement action.

5. **Previous Applications**

5.1 The Site involves five previous applications for temporary warehouse and/or shop and services (grocery store) with/without eating place covering different extents of the Site. Details of the applications are summarised in **Appendix II** and the boundaries of the sites are shown on **Plan A-1b**.

Rejected Applications (2 cases)

5.2 Applications No. A/YL-TYST/525 and 586 for temporary warehouse uses were rejected by the Committee and the Board on review in 2011 and 2012 respectively, mainly on the grounds that the developments were not in line with the planning intention of the “R(C)” zone and the developments would generate adverse environmental and/or traffic impacts on the surrounding area.

Approved Applications (3 cases)

5.3 Applications No. A/YL-TYST/620, 714 and 873 for temporary shop and services (grocery store) (with eating place for the first application) covering the same Site and submitted by the same applicant as the current application were all approved with conditions each for a period of 3 years by the Committee between 2012 and 2018, mainly on the considerations that the proposals were not incompatible with the surrounding uses; the proposals would not frustrate the long-term development of the area; and the concerns of relevant government departments could be addressed by imposing approval conditions. However, all three planning permissions were revoked between 2014 and 2020 due to non-compliance with time-limited approval conditions on submission (for the first application only) and/or implementation of FSIs proposal.

5.4 Compared with the last application (No. A/YL-TYST/873), the current application is submitted by the same applicant for the same use on the same site with the same site layout and development parameters albeit with shorter operation hours.

6. Similar Applications

- 6.1 There were 12 similar applications, including two rejected applications and ten approved applications, for various temporary shop and services with/without other uses within/straddling the subject “R(C)” zone. Details of the applications are summarised in **Appendix III** and the locations of the sites are shown on **Plan A-1a**.

Rejected Applications (2 cases)

- 6.2 Applications No. A/YL-TYST/905 and 914 were rejected by the Committee and the Board on review respectively in 2018 mainly on the grounds that the proposed development was not in line with the planning intention of the “R(C)” zone (for the former application only); the proposed development would generate adverse environmental or drainage impacts on the surrounding areas; and approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent for other similar applications for temporary uses, thus nullifying the statutory planning control mechanism (for the latter application only).

Approved Applications (10 cases)

- 6.3 Applications No. A/YL-TYST/577, 737, 738, 760, 774, 805, 821, 894, 924 and 1087 were all approved with conditions each for a period of 3 years by the Committee between 2012 and 2021, mainly on the considerations that the proposals were not incompatible with the surrounding uses; the proposals would not frustrate the long-term development of the area; and the concerns of relevant government departments could be addressed by imposing approval conditions. However, 7 of the 10 planning permissions were revoked between 2013 and 2021 due to non-compliance with approval conditions.

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

- 7.1 The Site is:

- (a) accessible from Kung Um Road to its east via a local track; and
- (b) currently occupied by a warehouse for storage of construction materials without valid planning permission (**Plan A-4**).

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

- (a) comprise predominately open storage/storage yards and warehouses with scattered residential structures, parking of vehicles, a vehicle repair workshop and vacant land/structures;
- (b) there are residential structures in the vicinity of the Site with the nearest one located to its immediate east;
- (c) to the further south of the Site is an area zoned “Undetermined” (“U”) on the OZP; and

- (d) except for two storage yards and one warehouse in the nearby “U” zone operating with valid planning permission (No. A/YL-TYST/941), the other open storage/storage yards, warehouses, parking of vehicles and workshop in the vicinity are suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the “R(C)” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.

9. Comments from Relevant Government Departments

- 9.1 The following government departments have been consulted and their views on the application and public comments, where relevant, are summarised as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lots 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) Lot No. 1279 S.A in D.D. 119 is covered by Short Term Waiver (STW) No. 3724 to permit structures erected thereon for the purpose of “Eating Place and Shop (Grocery Store)”, while Lot No. 1298 in D.D. 119 is covered by STW No. 3599 to permit structures erected thereon for the purpose of “Temporary Warehouse for Storage of Building Materials (Ceramic Tiles)”.
- (c) Should planning approval be given to the subject planning application, the STW holder(s) will need to apply to her office for modification of the STW conditions where appropriate and the lot owner(s) of the lot(s) without STW will need to apply to her office to permit the structures to be erected or regularise any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by her department acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by her department.

Traffic

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

- (a) The land status of the access road/path/track leading to the Site from Kung Um Road shall be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track shall be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (c) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

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

- (a) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (b) His department shall not be responsible for the maintenance of any access connecting the Site and Kung Um Road.

Environment

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

- (a) There was no substantiated environmental complaint concerning the Site received in the past three years.
- (b) Should the planning application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" to minimise any potential environmental nuisances on the surrounding areas.

Drainage

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

- (a) He has no objection in principle to the proposed development.
- (b) Based on the drainage proposal enclosed in the application, the applicant would maintain the same drainage facilities as those implemented under previous planning application No. A/YL-TYST/873.

- (c) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the maintenance of the drainage facilities implemented under application No. A/YL-TYST/873 and the submission of records of the existing drainage facilities on site to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to FSIs being provided to his satisfaction.
- (b) The applicant should be reminded of the detailed comments on the submitted FSIs proposal and general comments at **Appendix V**. Revised FS Notes incorporated with the proposed FSIs should be submitted to his department for approval.

Building Matters

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

- (a) As there is no record of approval granted by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) The applicant should be reminded of the detailed comments at **Appendix V**.

District Officer's Comments

9.1.8 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

Her office has not received any comment from the village representatives in the vicinity regarding the application.

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC); and
- (d) Commissioner of Police (C of P).

10. Public Comments Received During the Statutory Publication Period

On 9.4.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received from individuals. One individual objected to the application on the grounds that the proposed use will cause adverse environmental impact and fire safety risks on the surrounding area (**Appendix IV-1**). The other individual mainly raised concerns on the progress in compliance of approval conditions of the previous application (**Appendix IV-2**).

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(C)” on the OZP. The planning intention of the “R(C)” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. Although the applied use is not entirely in line with the planning intention of the “R(C)” zone, it could serve any such need for shop and services in the area and there is also no known programme for long-term development at the Site.
- 11.2 The proposed grocery store would be carried out within a 6.5m-high structure with a floor area and plot ratio of about 745m² and 0.98 respectively. The proposed scale of the structure is akin to a warehouse and is considered not compatible with the intended low-rise, low-density residential uses in the “R(C)” zone. Moreover, while the applicant was advised that the storage use that existed on Site at the time of consideration of the last planning application No. A/YL-TYST/873 was not condoned by the planning approval and shall be discontinued immediately, the Site remains in use as a warehouse for storage of construction materials (**Plan A-4**). Although there are various warehouses in the surrounding area, the majority of which are suspected UD subject to enforcement action taken by the Planning Authority.
- 11.3 The Site is the subject of three previously approved planning applications for similar shop and services uses (No. A/YL-TYST/620, 714 and 873) covering the same site, which were submitted by the same applicant with the same site layout and development parameters as the current application. All three planning permissions were revoked due to non-compliance with time-limited approval conditions on submission (for the first application only) and/or implementation of FSIs proposal. Although the applicant had been advised in the last two approvals that should she 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, no justifications have been provided in the current submission to substantiate the prolonged delay and repeated failure in implementation of the FSIs proposal. While the applicant has submitted FSI proposal for the current application, it has yet to be accepted by D of FS due to various technical deficiencies of the submission. Approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent for other similar applications for temporary uses, thus nullifying the statutory planning control mechanism.
- 11.4 Relevant concerned departments, including C for T, DEP and CE/MN, DSD, have no comment/no adverse comment on the application.

- 11.5 Although the Committee had approved ten similar applications for temporary shop and services with/without other uses in the subject “R(C)” zone, there is also one similar application (No. A/YL-TYST/914) rejected by the Board on review on the grounds that approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent for other similar applications for temporary uses, thus nullifying the statutory planning control mechanism, amongst other grounds. In this regard, rejecting the current application is generally in line with the Board’s previous decision on the rejected application.
- 11.6 There were two public comments received during the statutory publication period as summarised in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.5 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 as mentioned in paragraph 10 above, the Planning Department does not support the application for the following reason:

three previous planning permissions granted on the Site by the Board for the same applied use were revoked due to non-compliance of the approval conditions, which were all submitted by the same applicant as the current application. Approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.

- 12.2 Alternatively, 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 28.5.2024 but with shorter compliance periods to monitor the fulfilment of the approval conditions. The following conditions of approval and advisory clauses for the application are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 5:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicles, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the site, as proposed by the applicant, at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;

- (e) the submission of a condition record of the existing drainage facilities on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 28.8.2021;
- (f) the submission of a revised fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 28.8.2021;
- (g) in relation to (f) above, the implementation of the revised 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 28.11.2021;
- (h) if any of the above planning conditions (a), (b), (c) or (d) 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 (e), (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 V**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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. Attachments

- Appendix I** Application Form with annex and plans received on 29.3.2021
- Appendix Ia** FI received on 5.5.2021
- Appendix Ib** FI received on 11.5.2021
- Appendix II** Previous Applications covering the Application Site

Appendix III	Similar Applications within/straddling the subject “R(C)” zone on the OZP
Appendices IV-1 and IV-2	Public Comments received during the Statutory Publication Period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Site Layout Plan
Drawing A-3	Internal Layout Plan
Drawing A-4	As-built Drainage Proposal
Drawing A-5	FSIs Proposal
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Applications Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2021**