

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1104

- Applicant** : Mr. CHEUNG Chi Fai represented by Metro Planning and Development Company Limited
- Site** : Shan Ha Lot No. 1 in D.D. 121, Shan Ha Tsuen, Yuen Long, New Territories
- Site Area** : 96 m² (about)
- Lease** : Block Government Lease (demised for house use)
- Plan** : Approved Tong Yan San Tsuen (TYST) Outline Zoning Plan (OZP) No. S/YL-TYST/14 currently in force

Draft TYST OZP No. S/YL-TYST/13 at the time of submission
- Zoning** : “Village Type Development” (“V”)
[Restricted to a maximum building height of 3 storeys (8.23m)]
[No change to the “V” zone]
- Application** : Temporary Eating Place for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary eating place for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “V” zone, ‘Eating Place’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by a one-storey village house for the applied use without valid planning permission (**Plans A-2** and **A-4**).
- 1.2 According to the applicant, the proposal is intended for a small restaurant with about six tables to serve the nearby villagers. There will be no vehicular access within the Site and loading/unloading activities will take place at a nearby public car park. Plans showing the vehicular access leading to the Site and site layout submitted by the applicant are at **Drawings A-1** and **A-2** respectively.
- 1.3 The major development parameters of the application are summarised as follows:

Applied Use	Temporary Eating Place for a Period of 3 Years
Site Area	About 96 m ²
Total Floor Area (Non-domestic)	About 108 m ²
No. and Height of Structures	1 • for eating place, kitchen and toilet (6.5m, 1 storey with two cocklofts)
Operation Hours	9:00 a.m. to 9:00 p.m., with no operation on Sundays and Public Holidays

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

- (a) Application Form with plans received on 8.7.2021 (Appendix I)
- (b) Supplementary Information received on 15.7.2021 (Appendix Ia)
- (c) Further Information (FI) received on 3.8.2021 (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 in the Application Form and FI (**Appendices I and Ib**). They can be summarised as follows:

- (a) The applied use can meet the catering demand of nearby villagers. Similar eating places have been approved in Yuen Long district and the circumstances of the current application are similar to those approved applications.
- (b) The proposal is small in scale and not incompatible with the surrounding environment. The temporary proposal would not jeopardise the long-term planning intention.
- (c) There is an existing public car park adjacent to the Site for use by visitors. There will be insignificant environmental and traffic impacts on the surrounding area.

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 Ping Shan 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. Town Planning Board Guidelines

The Town Planning Board Guidelines for ‘Application for Eating Place within “V” Zone in Rural Areas under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 15A) are relevant to the application. The relevant assessment criteria are at **Appendix II**.

6. Previous Application

The Site is not involved in any previous application.

7. Similar Application

There is no similar planning application within the subject “V” zone.

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

8.1 The Site is:

- (a) accessible from Shan Ha Road to its north via a local track;
- (b) occupied by a one-storey building named 聚秀堂, an ancestral hall, at the eastern fringe of the village house cluster of Shan Ha Tsuen; and
- (c) currently used for the applied use without valid planning permission.

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

- (a) comprise predominantly village houses intermixed with scattered parking of vehicles, workshops, open storage/storage yards, warehouses and vacant land/structures;
- (b) surrounded by the village houses of Shan Ha Tsuen with the nearest ones to its immediate west, south and north; and
- (c) except for an open storage/storage yard, a workshop and a warehouse located to the further northeast of the Site, as well as a parking of vehicles operating with valid planning permission (No. A/YL-TYST/1043), the other parking of vehicles, workshops, open storage/storage yards and warehouses in the vicinity are suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

9. Planning Intention

The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. 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 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 The following government departments have been consulted and their views on the application and public comments, where relevant, are summarised as follows:

Land Administration

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

- (a) The Site comprises an Old Schedule House Lot (OSHL) held under the Block Government Lease. The applied use does not conflict with the lease conditions of the OSHL. According to recent inspection by her office, erected on the OSHL is a single storey ancestral hall.
- (b) There is no Small House application approved/under processing within the Site.

Traffic

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

- (a) The land status of the access road/path/track leading to the Site from Shan Ha 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 no parking, queuing and reverse movement of vehicles on public road are allowed.

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

Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.

Environment

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

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 Aspect of

Temporary Uses and Open Storage Use” (Code of Practice) to minimise any potential environmental nuisances on the surrounding area.

Drainage

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

He has no objection in principle to the applied use from the public drainage point of view. Should the application be approved, the applicant should also be reminded of the detailed comments at **Appendix IV**.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. In addition, the applicant should be advised of the detailed comments at **Appendix IV**.

Building Matters

10.1.7 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 IV**.

Food and Environmental Hygiene

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

- (a) She has no objection / adverse comments on the application.
- (b) According to her office record, an application for Light Refreshment Restaurant License at the Site was received on 14.5.2021. The subject license application is now under referral to concerned government departments and full clearance is pending.
- (c) The applicant should be reminded of the detailed comments at **Appendix IV**.

District Officer's Comments

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

Her office has not received any comment from locals.

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

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

11. Public Comments Received During the Statutory Publication Period

11.1 On 20.7.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, a total of 90 public comments were received. Of which, 55 expressed support / positive views, 30 raised objection / expressed adverse views and the remaining five comments did not express any particular views or stance. A full set of public comments will be deposited at the meeting for Members' inspection.

Supporting Comments / Positive Views (55 comments)

11.2 52 supporting comments were received from various residents and individuals, including 49 comments based largely on one set of standard template (extracted at **Appendix III-1**), two other individual supporting comments (**Appendices III-2 to III-3**) and one comment expressing support with no associated grounds (**Appendix III-4**). The supporting comments were mainly based on the grounds that the proposal could provide a convenient, affordable and hygienic dining option to nearby residents and workers.

11.3 Three other individuals expressed positive views to the application (**Appendices III-5 to III-7**).

Objections / Adverse Comments (30 comments)

11.4 30 objections/adverse comments were received from a village representative of Shan Ha Tsuen (in the form of petition letters with 71 signatures, **Appendix III-8**) and various residents and individuals (extract examples at **Appendices III-9 and III-10**). The salient issues of the objections and adverse comments are summarised as follows:

- (a) The Site is occupied by an ancestral hall intended to worship and pay tribute to ancestors. An eating place is considered an inappropriate and disrespectful use for the subject building, which would disturb the peace and tranquility it deserves.

- (b) The current operator did not obtain consent from all relevant stakeholders to establish an eating place at the Site. No relevant government licenses have been obtained for the existing operation.
- (c) The proposed development will generate adverse environmental pollution, environmental hygiene and sewerage impacts and fire safety risk on the surrounding area.

Comments with No Particular Views (5 Comments)

- 11.5 Five comments were received without stating any particular stance or views (extract example at **Appendix III-11**).

12. Planning Considerations and Assessments

- 12.1 The application is for temporary eating place for a period of 3 years at the Site zoned “V” on the OZP. The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion, and for development of Small Houses by indigenous villagers. Although the applied use is not entirely in line with the planning intention of the “V” zone, it could serve any such need for eating place in the area. Moreover, the Site is currently occupied by a one-storey village house and DLO/YL, LandsD advised that there is currently no Small House application approved/under processing at the Site. Approval of the application on a temporary basis of 3 years would not frustrate the long-term planning intention of the subject “V” zone.
- 12.2 The proposal is small scale and generally not incompatible with the surrounding area, which comprises predominantly village houses intermixed with parking of vehicles (**Plan A-2**).
- 12.3 The application is generally in line with TPB PG-No. 15A in that the Site is located at the fringe of the village house cluster (**Plan A-2**) and there is no adverse comment from concerned government departments, including C for T, DEP, CE/MN of DSD, D of FS and DFEH. Significant impacts on traffic, environmental, sewerage, drainage, fire safety and hygiene aspects are not envisaged. Furthermore, relevant approval conditions are recommended in paragraph 13.2 below to address the technical requirements of concerned government departments. Any non-compliance with the 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 also be advised to follow the latest Code of Practice to minimise any potential environmental impact on the surrounding areas.
- 12.4 There is no previous application concerning the Site and no similar application within the subject “V” zone.
- 12.5 There were 90 public comments received with supporting, objection and other views during the statutory publication period as summarised in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.4 above are relevant. Regarding the matter in relation to the occupation of the

ancestral hall, the applicant is advised to resolve any land issues with the concerned owner(s) of the Site and liaise with the locals to address their concerns.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments summarised in paragraph 11 above, the Planning Department has no objection to the application.
- 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 until 27.8.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 9:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) 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 27.2.2022;
- (d) in relation to (c) 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 27.5.2022;
- (e) if any of the above planning conditions (a) or (b) 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
- (f) if any of the above planning conditions (c) or (d) 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**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Member's reference:

the applied use is not in line with the planning intention of the "Village Type Development" zone which is primarily for development of Small Houses by indigenous villagers. No strong planning justification has been given in the

submission to justify 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 applicant.

15. Attachments

Appendix I	Application Form with plans received on 8.7.2021
Appendix Ia	Supplementary Information received on 15.7.2021
Appendix Ib	FI received on 3.8.2021
Appendix II	Relevant Extracts of TPB PG-No. 15A
Appendices III-1 and III-11	Public Comments received during the Statutory Publication Period (extracted)
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2021**