

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

**APPLICATION NO. A/YL-TYST/1119**

- Applicant** : Mr. Law Chun Chung represented by Goldrich Planners and Surveyors Ltd.
- Site** : Lot 1375 RP (Part) in D.D. 121 and Adjoining Government Land (GL), Tong Yan San Tsuen, Yuen Long
- Site Area** : 138 m<sup>2</sup> (about) (including GL of about 12 m<sup>2</sup> or 8.7 %)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/14
- Zoning** : “Residential (Group B)1” (“R(B)1”)  
*[Restricted to a maximum plot ratio of 1, maximum site coverage of 40% and maximum building height of 4 storeys over single-storey carpark (15m)]*
- Application** : 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 temporary shop and services for a period of 3 years (**Plan A-1a**). According to the Notes of the OZP for the “R(B)” 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 the applied use without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Site involves 13 previous applications for various temporary shop uses (**Plan A-1b**). The last application (No. A/YL-TYST/929) 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 7.12.2018. However, the planning permission was revoked on 19.5.2021 due to non-compliance with time-limited approval condition on implementation of fire service installations (FSIs) proposal.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 at the same site with the same layout and development parameters, albeit with longer operation hours.

- 1.3 According to the applicant, the proposal is for a temporary hardware shop serving the nearby residents. No workshop activity (including cutting of metal) will be carried out at the Site. No parking and loading/unloading (L/UL) will be provided within the Site. Plans showing the site layout, drainage and FSIs proposals submitted by the applicant are at **Drawings A-1** and **A-3** respectively.
- 1.4 The major development parameters of the current application are the same as the previously approved application, except for longer operation hours in the current application, which are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TYST/929	Current Application No. A/YL-TYST/1119
Applied Use	Temporary Shop and Services for a Period of 3 Years	
Site Area	About 138 m <sup>2</sup>	
Total Floor Area (Non-domestic)	About 193 m <sup>2</sup>	
No. and Height of Structure	1 • for shop (5m, 2 storeys)	
No. of L/UL Space / Parking Space	Nil	
Operation Hours	8:30 a.m. to 6:30 p.m., with no operation on Sundays and Public Holidays	8:30 a.m. to 6:30 p.m. daily

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with annex and plans received on 20.9.2021 **(Appendix I)**
  - (b) Further Information (FI) received on 25.10.2021 **(Appendix Ia)**
  - (c) FI received on 3.11.2021 **(Appendix Ib)**
  - (d) FI received on 8.11.2021 **(Appendix Ic)**  
*[(b) to (d) 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 Ic**). They can be summarised as follows:

- (a) The Site is subject to 11 planning approvals for the applied use since 2003. Due to complications with the previous contractor, the applicant was unable to implement the FSIs in time for the previous application. However, effort has since been made to engage a new registered fire service contractor and the applicant is confident that the FSIs could be implemented this time around. The applied use would satisfy the local needs of household hardware.
- (b) There will be minimal traffic impact arising from the proposal.

### **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. For GL, the requirements as set out in TPB PG-No. 31A are not applicable.

### **4. Background**

The Site is currently not subject to planning enforcement action.

### **5. Previous Applications**

- 5.1 The Site involves 11 approved previous applications (No. A/YL-TYST/197, 311, 371, 449, 496, 558, 621, 653, 700, 772 and 929) and two rejected previous applications (No. A/YL-TYST/226 and 289) for various temporary uses 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**.

#### ***Approved Applications (11 Cases)***

- 5.2 Applications No. A/YL-TYST/197, 311, 371, 449, 496, 558, 621, 653, 700, 772 and 929 for retail shop for hardware were approved with conditions by the Committee between 2003 and 2018 each for a period of 1 or 3 years. The applications were approved mainly on the considerations that the proposals were generally not incompatible with the surrounding areas; approval of the applications on a temporary basis would not frustrate the long-term development of the area; and departmental concerns could be addressed by imposing approval conditions. However, the planning permissions for applications No. A/YL-TYST/311, 371 and 929 were subsequently revoked between 2006 and 2021 due to non-compliance with approval conditions.

#### ***Rejected Applications (2 Cases)***

- 5.3 Applications No. A/YL-TYST/226 (for proposed temporary storage of building and landscaping materials for a period of 3 years) and 289 (for proposed temporary plant nursery, retail shop and domestic use for a period of 3 years) were rejected by the Board on review in 2004 and by the Committee in 2005 respectively mainly on the grounds that there were potential adverse environmental and drainage (for the former application only) impacts arising from the proposals, amongst others.
- 5.4 Compared with the last application (No. A/YL-TYST/929), the current application is submitted by the same applicant for the same use at the same site with the same layout and development parameters, albeit with longer operation hours.

## **6. Similar Application**

There is no similar planning application within the subject “R(B)1” zone.

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

7.1 The Site is:

- (a) abutting Tong Yan San Tsuen Road to its west;
- (b) formed and fenced off; and
- (c) currently occupied by the applied use without planning permission.

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

- (a) mainly comprise low-rise residential structures/developments and vacant land/structures, with two storage yards and a car service within the subject “R(B)1” zone;
- (b) to the west of Tong Yan San Tsuen Road is a mixture of open storage/storage yards and residential structures, intermixed with an edible oil factory, parking of vehicles, a laboratory, warehouse, restaurant and real estate agency in the adjoining “Industrial” (“I”) zone;
- (c) there are residential structures and developments (namely Jasper Court and Curio Court) in the vicinity of the Site with the nearest residences located to its immediate east and south;
- (d) to the south of the Site is the elevated Yuen Long Highway on land shown as ‘Road’ on the OZP; and
- (e) the storage yards and car service within the “R(B)1” zone, as well as the real estate agency and open storage yards in the adjoining “I” zone are suspected unauthorised developments (UDs) subject to enforcement action taken by the Planning Authority.

## **8. Planning Intention**

The planning intention of the “R(B)” zone is primarily for sub-urban medium-density residential developments in rural areas 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 GL and an Old Schedule Agricultural Lot 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) Within the Site, the GL is covered by Short Term Tenancy (STT) No. 2589 for the purpose of “Temporary Retail Shop for Hardware Groceries”. Lot No. 1375 in D.D. 121 is covered by Short Term Waiver (STW) No. 3294 to permit structures erected thereon for the purpose of “Temporary Retail Shop for Hardware Groceries”.
- (c) Should planning approval be given to the subject planning application, the STW/STT holder(s) will need to apply to her office for modification of the STW/STT conditions where appropriate. Besides, given the applied 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 Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

Adequate drainage measures should be provided to prevent surface water running from the Site to nearby public roads and drains.

### **Environment**

#### 9.1.3 Comments of the Director of Environmental Protection (DEP), Environmental Protection Department (EPD):

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 Use” (Code of Practice) to minimise any potential environmental nuisances on the surrounding areas.

### **Drainage**

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Based on the FI (**Appendix Ia**), apparently the applicant would maintain the same drainage facilities as those implemented under previous application No. A/YL-TYST/929.
- (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/929 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**

#### 9.1.5 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 IV**. Revised layout plans incorporated with the proposed FSIs should be submitted to his department for approval.

### **Building Matters**

#### 9.1.6 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 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**.

### **District Officer's Comments**

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

Her office has not received any comment from the locals.

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

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

## **10. Public Comments Received During the Statutory Publication Period**

On 28.9.2021, 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 raises concerns on the fire safety risks associated with the applied use and suggests to shorten the approval period should the application be approved (**Appendix III-1**). The other individual objects to the application on the grounds that the applied use will generate adverse environmental and fire safety impacts to the surrounding area (**Appendix III-2**).

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

- 11.1 The application is for temporary shop and services at a site zoned “R(B)1” on the OZP. The planning intention of the “R(B)” zone is primarily for sub-urban medium-density residential developments. Although the development under application is not in line with the planning intention of the “R(B)” zone, it could serve any such needs for shop and services in the area. Moreover, there is at present no proposal for residential development at the Site. Approval of the application on a temporary basis of three years would not jeopardise the long-term development of the area.
- 11.2 The Site is located at the fringe of the subject “R(B)1” zone to the east of Tong Yan San Tsuen Road where a mixture of residential and storage uses can be found. While there are residential structures/developments in the vicinity, the development is small in scale and generally not incompatible with the surrounding uses (**Plan A-2**).
- 11.3 There is no adverse comment from concerned government departments, including C for T, DEP, D of FS and CE/MN, DSD. Adverse traffic, environmental, fire safety and drainage impacts on the surrounding areas are not envisaged. Furthermore, relevant approval conditions are recommended in paragraph 12.2 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 be advised to follow the relevant environmental mitigation measures in the latest Code of Practice in order to minimise any potential environmental impact on the surrounding areas.

- 11.4 There is no similar planning application within the subject “R(B)1” zone. Given that 11 previous approvals for similar shop use have been granted to the Site, approval of the current application is generally in line with the Committee’s previous decisions. Although there were two previous applications rejected by the Committee, one of which was for a different use (i.e. storage of building and landscaping materials) and both were rejected mainly on the grounds that there were adverse environmental and/or drainage impacts, amongst others. Such consideration is generally not applicable to the current application as EPD and CE/MN, DSD have no in-principle objection to the application.
- 11.5 The last application (No. A/YL-TYST/929) for the same use as the current application was approved with conditions for a period of 3 years by the Committee on 7.12.2018. However, the planning permission was revoked on 19.5.2021 due to non-compliance with time-limited approval condition on implementation of FSIs proposal. The current application is submitted by the same applicant with the same layout and development parameters. Nevertheless, the applicant has submitted drainage and FSIs proposals for the current application and CE/MN, DSD and D of FS have no in-principle objection to the application. As such, sympathetic consideration may be given to the current application. Should the application be approved, shorter compliance periods are recommended in order to closely monitor the progress on compliance with associated approval conditions. Should the application be approved, the applicant will be advised that should he fail to comply with any of the approval conditions again resulting in revocation of the planning permission, sympathetic consideration would unlikely be given to any further applications.
- 11.6 There are two public comments raising concerns on/objecting to the application 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 mentioned in paragraph 10 above, the 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 12.11.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### **Approval conditions**

- (a) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (b) 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 12.2.2022;



- (c) 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 12.2.2022;
- (d) in relation to (c) above, the implementation of the 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 12.5.2022;
- (e) if the above planning condition (a) 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 (b), (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**.

- 12.3 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 "R(B)" zone which is primarily for sub-urban medium-density residential developments in rural areas. No strong planning justification has been given 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), if any, 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 with annex and plans received on 20.9.2021
<b>Appendix Ia</b>	FI received on 25.10.2021
<b>Appendix Ib</b>	FI received on 3.11.2021
<b>Appendix Ic</b>	FI received on 8.11.2021

<b>Appendix II</b>	Previous Applications
<b>Appendices III-1 and III-2</b>	Public Comments received during the Statutory Publication Period
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Drawing A-2</b>	Drainage Proposal
<b>Drawing A-3</b>	FSIs Proposal
<b>Plan A-1a</b>	Location Plan
<b>Plan A-1b</b>	Previous Applications Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2021**