

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

**APPLICATION NO. A/YL-TYST/1168**

- Applicant** : Mr. LEUNG Sie Ho, Kevin
- Site** : Lots 1355 RP and 1356 RP (Part) in D.D. 121, Tong Yan San Tsuen, Yuen Long, New Territories
- Site Area** : 2,175 m<sup>2</sup> (about)
- 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 Eating Place (Restaurant with Ancillary Outside Seating Accommodation) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for temporary eating place (restaurant with ancillary outside seating accommodation (OSA)) for a period of 3 years at the application site (the Site) (**Plan A-1a**). According to the Notes of the OZP for the “R(B)” zone, ‘Eating Place’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site was formerly occupied by a primary school (i.e. Wai Kwan Primary School) which ceased operation in 2007, though the structures have been renovated and converted. The Site is currently occupied by the applied use without valid planning permission (**Plans A-2 to A-4b**).
- 1.2 According to the applicant, the temporary eating place involves an OSA of 152m<sup>2</sup> and 10 existing one-storey buildings and structures. No audio equipment will be used in the open area of the Site. The applicant undertakes that no vehicles would queue back or reverse onto/from public road. Plans showing the site layout with run-in/ out proposal, tree preservation proposal and fire service installations (FSIs) proposal submitted by the applicant are at **Drawings A-1 to A-3** respectively.

- 1.3 The Site is the subject of 6 previous applications (No. A/YL-TYST/161, 674, 740, 789, 878 and 961) (details at paragraph 5 below).
- 1.4 The major development parameters of the current application are the same as the previously approved application and are summarised as follows:

<b>Major Development Parameters</b>	<b>Previously Approved Application No. A/YL-TYST/961</b>	<b>Current Application No. A/YL-TYST/1168</b>
Applied Use	Temporary Eating Place and OSA of Restaurant for a Period of 3 Years	Temporary Eating Place (Restaurant with Ancillary OSA) for a Period of 3 Years
Site Area	About 2,175 m <sup>2</sup>	
Total Floor Area (Non-domestic)	About 860 m <sup>2</sup>	
No. and Height of Structures	10 • for seating areas with food preparation rooms, kitchen, storage rooms, toilets, and water tanks with ancillary facilities (not more than 4.5m, 1 storey)	
No. of Parking Spaces	10 (for private cars) (5 m x 2.5 m each)	
No. of Loading/Unloading Space(s)	Nil	
Operation Hours	12:00 p.m. to 11:00 p.m. daily	

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

- |     |   |               |
|-----|---|---------------|
| (a) | Application Form with plans received on 16.6.2022 | (Appendix I)  |
| (b) | Further Information (FI) received on 18.7.2022    | (Appendix Ia) |
| (c) | FI received on 5.8.2022                           | (Appendix Ib) |
| (d) | FI received on 8.8.2022                           | (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 FI (**Appendix Ia**). They can be summarised as follows:

- (a) The applied use is in line with the planning intention, it will not change the character and amenity of the area and can provide an alternative option of eating place for nearby residents. The OSA can make the environment more appealing to guests and provide an opportunity for customers to intimate with nature.
- (b) The applied development would not affect the 15 existing trees on the Site, which are generally in fair condition. The existing eating place meets all other statutory and licensing requirements, including those of the Buildings Department, Fire Services Department, Food and Environmental Hygiene Department, and Environmental Protection Department.

### **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 the 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. Previous Application**

5.1 The Site involves in 6 previous applications (No. A/YL-TYST/161, 674, 740, 789, 878 and 961). Except for the first application (No. A/YL-TYST/161) for proposed extension of the former school building which is not relevant to the current application, the remaining five applications were for eating place with ancillary uses. Details of the applications are summarised in **Appendix II** and the boundaries of the sites are shown on **Plan A-1b**.

5.2 Applications No. A/YL-TYST/674, 740, 789, 878 and 961 for proposed eating place with various ancillary uses were all approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board each for a period of 3 years between 2014 and 2019, mainly on considerations that the proposals were not incompatible with the surrounding areas and approval of the applications on a temporary basis would not frustrate the long-term use of the area. However, the planning permissions for the first three applications were subsequently revoked between 2014 and 2017 due to non-compliance with approval conditions. All the time-limited approval conditions under the last application (No. A/YL-TYST/961) had been complied with and the permission lapsed on 18.5.2022.

5.3 Compared with the last application (No. A/YL-TYST/961), the current application was submitted by the same applicant for the same use on the same site with the same site layout and development parameters.

### **6. Similar Application**

There is no similar application for eating place use within the same “R(B)1” zone on the OZP.

### **7. 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.

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

### **8.1 The Site is:**

- (a) abutting Tong Yan San Tsuen Road to its west (**Plan A-2**);
- (b) paved and fenced off; and
- (c) currently occupied by the applied use without valid planning permission (**Plans A-2, A-4a and A-4b**).

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

- (a) mixed in character with predominately residential structures/developments (including Evergreen Place and Ping Shan Garden), warehouses/storage yards, parking of vehicles/car parks, playgrounds, co-operative societies, two petrol filling stations (PFSs), an electricity substation, a social welfare facility and a plant nursery;
- (b) there are residences in the vicinity of the Site with the nearest one (i.e. Evergreen Place) located about 60m to its southeast;
- (c) to the north, northwest, west and southwest of the Site are areas zoned “Government, Institution or Community”, “Open Space”, “Other Specified Uses” annotated “PFS” and “Industrial” respectively on the OZP; and
- (d) the warehouse to the south of the Site is a suspected unauthorised development (UD) subject to enforcement action taken by the Planning Authority.

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

All 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. Public Comment Received During the Statutory Publication Period**

On 24.6.2022, the application was published for public inspection. During the first three weeks of the statutory publication period, no public comment was received.

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

11.1 The application is for temporary eating place (restaurant with ancillary OSA) for a period of 3 years at the 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 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 aforesaid planning intention, the applied use could meet any demand for eating places in the area. Given that there is no known development proposal for 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 applied use is generally not incompatible with the surrounding area, which comprises predominantly residential developments, community facilities and warehouses/storage yards (**Plan A-2**).
- 11.3 There is no adverse comment from concerned government departments, including the Commissioner for Transport, Director of Environmental Protection, Director of Fire Services and Chief Engineer/Mainland North, Drainage Services Department. Adverse traffic, environmental/sewerage, fire safety and drainage impacts on the surrounding areas are not envisaged. There has been no substantiated environmental complaint concerning the Site received in the past three years. Furthermore, relevant approval conditions are recommended in paragraph 12.2 below to address the technical requirements of concerned government departments. Should the planning application be approved, the applicant will also be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.
- 11.4 There are no similar applications within the subject “R(B)1” zone. Given that five previous approvals for similar eating place uses have been granted to the Site, approval of the current application is generally in line with the Committee’s previous decisions.
- 11.5 There is no public comment received on the application during the statutory public inspection period.

## **12. Planning Department’s Views**

- 12.1 Based on the assessments made in paragraph 11 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 12.8.2025. 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 12.11.2022;

- (c) the submission of a revised run-in/out proposal within **6** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 12.2.2023;
- (d) in relation to (c) above, the implementation of the revised run-in/out proposal within **9** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 12.5.2023;
- (e) 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 12.2.2023;
- (f) in relation to (e) 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 12.5.2023;
- (g) 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
- (h) if any of the above planning condition (b), (c), (d), (e) or (f) 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 had been given in the submission to justify 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 plans received on 16.6.2022
<b>Appendix Ia</b>	FI received on 18.7.2022
<b>Appendix Ib</b>	FI received on 5.8.2022
<b>Appendix Ic</b>	FI received on 8.8.2022
<b>Appendix II</b>	Previous Applications
<b>Appendix III</b>	Government Departments' General Comments
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan with Run-in/out Proposal
<b>Drawing A-2</b>	Tree Preservation 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>Plans A-4a and A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
AUGUST 2022**