

APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1215

<u>Applicant</u>	:	Tai Fat Restaurant Limited represented by Mr. CHEUNG Wai-leung
<u>Site</u>	:	Government Land (GL) in front of Shops No. 4-5, Ground Floor (G/F), Blocks 1-9, Treasure Court, 8 Ying Fuk Street, Hung Shui Kiu, Yuen Long, New Territories
<u>Site Area</u>	:	17.26 m ² (about)
<u>Land Status</u>	:	GL covered by Land Licence YLOSA No. 37 (for outdoor restaurant seating accommodation purpose)
<u>Plan</u>	:	Approved Tong Yan San Tsuen (TYST) Outline Zoning Plan (OZP) No. S/YL-TYST/14
<u>Zoning</u>	:	“Residential (Group A)” (“R(A)”) <i>[Restricted to a maximum plot ratio of 5, a maximum site coverage of 42% above the lowest 3 floors and a maximum building height of 12 storeys (36m)]</i>
<u>Application</u>	:	Renewal of Planning Approval for Temporary Eating Place (Outside Seating Accommodation (OSA) of a Licensed Restaurant) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for temporary eating place (OSA of a licensed restaurant) for a period of three years at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP for the “R(A)” zone, ‘Eating Place’ use, unless on the lowest three floors of a building or purpose-designed non-residential portion of an existing building, requires planning permission from the Town Planning Board (the Board). The Site forms part of a footpath immediately outside a licensed restaurant (i.e. Tai Fat Restaurant) and is currently occupied by the applied use with valid planning permission under application No. A/YL-TYST/1010 until 26.6.2023 (**Plans A-2 to A-4**).
- 1.2 The OSA, measuring 14.385m in length and 1.2m in width (i.e. area of about 17.26m²), is located on a 5.1m-wide footpath, which would function as an extension

of the licensed restaurant located on the G/F of a residential development (i.e. Treasure Court) (**Drawing A-1** and **Plan A-2**). According to the applicant, the remaining clear width of the footpath after deducting the OSA occupation will not be less than 3.5m. No fixed or permanent structure will be erected within the OSA. The OSA will accommodate a maximum of 4 tables and 12 stools, which will be removed after the operation hours (i.e. 9:30 p.m.). While the restaurant operates from 7:00 a.m to 11:00 p.m. daily, the operation hours of the OSA are restricted from 9:00 a.m. to 9:30 p.m. daily. A plan showing the layout of the restaurant and the OSA submitted by the applicant is at **Drawing A-1**.

1.3 The Site is the subject of nine previous applications for the same use as the current application approved by the Rural and New Town Planning Committee (the Committee) or by the Board upon review between 2012 and 2020 (details at paragraph 6 below). Compared with the last previously approved application (No. A/YL-TYST/1010), the current application is submitted by the same applicant for the same use at the same site with the same layout, development parameters and operation hours.

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

- (a) Application Form with attachments received on 9.5.2023 (**Appendix I**)
- (b) Supplementary Information (SI) received on 15.5.2023 (**Appendix Ia**)

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 applicant has observed all the terms and conditions of the current OSA licence, and has maintained a very high standard of management in terms of environmental hygiene. The OSA has never operated beyond the allowed operation hours. The proposal will not cause inconvenience or nuisance to the community. No related prosecution or complaint had been received to date; and
- (b) the OSA could benefit the community, especially cyclist patrons who prefer to monitor their parked bicycles at a nearby bicycle parking area (**Plan A-2**).

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

As the Site involves GL only, the “owner’s consent/notification” requirement 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) is not applicable to the application.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development

(TPB PG-No. 34D) are relevant to the application. The relevant assessment criteria are at **Appendix II**.

5. Background

The Site is currently not subject to planning enforcement action.

6. Previous Applications

- 6.1 The Site involves nine previous applications (No. A/YL-TYST/553, 635, 669, 720, 780, 834, 886, 949 and 1010) for temporary eating place (OSA of a licensed restaurant) covering the same site, albeit with different approval periods sought. Details of the applications are summarised in **Appendix III** and the location of the site is shown on **Plan A-1**.
- 6.2 Application No. A/YL-TYST/553 was approved with conditions by the Board upon review on 11.5.2012 for a period of one year mainly on the consideration that the clear width of the footpath after the occupation of the OSA would not be less than 3.5m; the approval period sought was shortened from five years to one year; the proposed operation hours had been shortened to between 9:00 a.m. and 10:30 p.m.; and no permanent structures would be erected in the OSA.
- 6.3 The remaining eight applications were approved with conditions for a period of one to three years by the Committee between 2013 and 2020 mainly on considerations that the proposal was not in conflict with the planning intention of the “R(A)” zone; generally not incompatible with the surrounding areas; in line with the prevailing TPB PG-No. 34 (or its later versions); and there were no adverse departmental comments. As for the last application (No. A/YL-TYST/1010), the planning permission is valid until 26.6.2023.

7. Similar Application

There is no similar application within the same “R(A)” zone on the OZP.

8. Planning Intention

The planning intention of the “R(A)” zone is primarily for high-density residential developments. Commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building.

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

9.1 The Site is:

- (a) part of the 5.1m-wide footpath to the immediate northwest of a licensed restaurant (i.e. Tai Fat Restaurant) on the G/F of Blocks 4 and 5 of Treasure Court; and

- (b) currently occupied by the applied use with valid planning permission under application No. A/YL-TYST/1010 (**Plan A-2**).

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

- (a) comprise predominantly residential developments/structures intermixed with park, sitting-out areas, shops, footpath, store, car parks, property agency, refuse collection point, car servicing use, amenity and vacant land;
- (b) to its immediate west is the cul-de-sac of Ying Fuk Street;
- (c) to its north along the footpath are landscape planters along Castle Peak Road – Hung Shui Kiu; and to its further north across Castle Peak Road – Hung Shui Kiu are residential developments/structures, including Coronet Court and Beauty Court, Hung Tai Road Sitting-Out Area, as well as a car park and property agency which are suspected unauthorized developments (UD);
- (d) to its east are Hung Tak Road Sitting-out Areas; and
- (e) to its south are residential developments including Treasure Court, Symphony Garden and Lai Hung Garden, Tan Kwai Tsuen Road Garden, a car park, shops, footpath, store as well as car servicing use which is suspected UD.

10. 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 IV** and **V** respectively.

11. Public Comment Received During the Statutory Publication Period

On 16.5.2023, the application was published for public inspection. During the statutory public inspection period, no public comment was received.

12. Planning Considerations and Assessments

12.1 The application is for renewal of planning approval for temporary eating place (OSA of a licensed restaurant) at the Site zoned “R(A)” on the OZP. The planning intention of the “R(A)” zone is for high-density residential developments, and commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building. The subject OSA, which is ancillary to a permitted licensed restaurant at the purpose-designed commercial G/F of a residential development, is considered not in conflict with the planning intention of the “R(A)” zone.

12.2 The OSA with an area of about 17.26 m² is small in scale and is located at the fringe of the “R(A)” zone to the south of Castle Peak Road – Hung Shui Kiu which is predominated by residential developments. Shop and services and eating place uses are generally found on the G/F of the residential developments in the vicinity (**Plans**

A-2 and A-4). The applied use is considered not incompatible with the surrounding uses in the area.

- 12.3 The application is generally in line with TPB PG-No. 34D in that there has been no material change in planning circumstances since the granting of the previous approval under application No. A/YL-TYST/1010; all approval conditions under the previous approval had been complied with as of today; and the three-year approval period sought is reasonable and of the same timeframe as the previous approval.
- 12.4 After occupation of the Site by the OSA, the concerned footpath will still maintain a width of 3.9m (**Plan A-2**). Concerned government departments, including the Commissioner for Transport, Chief Highway Engineer/New Territories West, Highways Department, Director of Food and Environmental Hygiene, Director of Environmental Protection, Director of Fire Services and Chief Engineer/Mainland North, Drainage Services Department have no objection to/no adverse comment on the application. Adverse pedestrian traffic, environmental, fire safety and drainage impacts on the surrounding areas are not envisaged. There has been no environmental complaint concerning the Site received in the past three years. Furthermore, an approval condition restricting the operation hours of the OSA is recommended in paragraph 13.2 below to minimise any potential environmental nuisances on the surrounding areas. 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”.
- 12.5 Given that nine previous approvals for the same use have been granted to the Site since 2012, approval of the current application is in line with the Committee’s previous decisions.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 above, the Planning Department has no objection to the applied use for a further 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 and be renewed from 27.6.2023 to 26.6.2026. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 9:30 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period; and
- (b) 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.

[Approval conditions (a) and (b) are the same as those under the permission for application No. A/YL-TYST/1010.]

Advisory clauses

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

13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Member's reference:

- (a) the proposed development would reduce the width of the existing footpath and the applicant has not demonstrated that the pedestrian environment enjoyed by the public in that location would not be adversely affected; and
- (b) the continued occupation of the Site for the development would generate adverse environmental nuisance on the residential uses in the vicinity of the Site.

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 attachments received on 9.5.2023
Appendix Ia	SI received on 15.5.2023
Appendix II	Relevant Extracts of TPB PG-No. 34D
Appendix III	Previous Applications
Appendix IV	Government Departments' General Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan with Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JUNE 2023**