

TOWN PLANNING BOARD

TPB Paper No. 10791

**For Consideration by
the Town Planning Board on 17.12.2021**

**REVIEW OF APPLICATION NO. A/TM-SKW/112
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Eating Place for a Period of 3 Years in “Green Belt” Zone
G/F, No. 305 So Kwun Wat, 18.5 Miles, Castle Peak Road, Tuen Mun**

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G/F, No. 305 So Kwun Wat, 18.5 Miles, Castle Peak Road, Tuen Mun**

1. Background

- 1.1 On 24.5.2021, the applicant, Ms. CHUNG Yuk Ying represented by Mr. WAN Kai Leung, sought planning permission to use the application premises (the Premises) for proposed temporary eating place for a period of 3 years under section 16 of the Town Planning Ordinance (the Ordinance). The Premises falls within an area zoned “Green Belt” (“GB”) on the approved So Kwun Wat Outline Zoning Plan (OZP) No. S/TM-SKW/13 (**Plan R-1**).
- 1.2 On 23.7.2021, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
 - (a) the proposed use was not in line with the planning intention of the “GB” zone, which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets and there was a general presumption against development within this zone. There was no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
 - (b) the proposed use was not in line with the Town Planning Board Guidelines No.10 for Application for Development within the “GB” zone in that the applicant failed to demonstrate that the proposed use would not generate adverse environmental and drainage impacts on the surrounding areas; and
 - (c) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area.
- 1.3 According to the applicant, the proposed temporary eating place with a total floor area of about 40m² would be located on the ground floor of an existing two-storey structure (**Drawing R-1**). The Premises is largely vacant at the time of site visit. The Site which the Premises is located falls entirely within Government Land and is currently not subject to active enforcement action. However, the use for eating place in the building to the immediate east and area to the south of the Premises was the subject of a planning enforcement case (No. E/TM-SKW/83) against unauthorized development (UD)(**Plan R-2**). Enforcement Notice (EN) was issued on 9.5.2018 requiring the discontinuance of the UD. Since the UD has not been

discontinued upon expiry of the EN, the EN recipients were prosecuted and convicted on 26.6.2019. Compliance Notice (CN) was issued on 29.10.2020. Reinstatement Notice (RN) was issued on 1.3.2021. Subsequent site inspections revealed that the area to the south of the Premises had been reinstated. CN was issued on 15.11.2021 for compliance with the RN. Complaints regarding operation of suspected unlicensed food business at the Premises and in the adjoining areas were also received by relevant Government departments.

1.4 For Members' reference, the following documents are attached:

- (a) RNTPC Paper No. A/TM-SKW/112 (Annex A)
- (b) Extract of minutes of the RNTPC meeting held on 23.7.2021 (Annex B)
- (c) Secretary of the Board's letter dated 13.8.2021 (Annex C)

2. **Application for Review**

On 1.9.2021, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D-1**). In support of the review, the applicant submitted written justifications on 6.10.2021 (**Annex D-2**).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in the applicant's submission at **Annex D-2** and summarised as follows:

The So Kwun Wat Farming Association (the Association) has been operating since 1970. The Association had previously operated kindergarten, convenience store, clinic and private club for its members. The Association has also provided food and beverage to its members.

4. **The Section 16 Application**

The Premises and Its Surrounding Areas (Plans R-1 to R-4)

4.1 The situation of the Premises and its surrounding areas at the time of the consideration of the section 16 application by the RNTPC was described in paragraphs 8.1 and 8.2 of **Annex A**. There has been no change in the situation since then.

4.2 The Premises is:

- (a) situated on the ground floor of an existing 2-storey structure; and
- (b) accessible from So Kwun Wat Road via a local track.

4.3 The surrounding area have the following characteristics:

- (a) predominately rural in character with scattered agricultural activities

intermixed with residential dwellings, fallow/cultivated agricultural land and vacant land set against green and vegetated land/ hillslopes; and

(b) about 450m to the north of the Premises is Tai Lam Country Park.

Planning Intention

4.4 There has been no change in the planning intention of the “GB” zone as mentioned in paragraph 9 of **Annex A**. The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

Town Planning Board Guidelines

4.5 The Town Planning Board Guidelines for ‘Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) are relevant to the application. The relevant assessment criteria are summarised in paragraph 4 of **Annex A**.

Previous Application

4.6 There is no previous application covering the Premises.

Similar Application

4.7 There is no similar application for the same applied use within the same “GB” zone.

5. Comments from Relevant Government Departments

5.1 Comments on the section 16 application made by relevant Government departments are stated in paragraph 10 of **Annex A**.

5.2 For the review application, the following Government departments have been further consulted and their updated comments are summarised as follows:

Land Administration

5.2.1 Comments of the District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD):

With regards to the applicant’s written justifications (**Annex D-2**), his office has no information regarding the content mentioned nor approval has been given to permit the said uses. His previous comments on the section 16 application remain valid, which are recapitulated as follows:

(a) The Site is the G/F of a temporary structure (T/S) on Government Land. The T/S is partly covered by Government Land Licence (GLL) and partly on Government land and the structure is restricted to the use as latrine/storage. The size of the structure also exceeds that

permitted under the GLL. Other temporary structures including fence and gate are found on the adjoining Government Land.

- (b) No permission has been given for the change of use of the structure concerned nor for the erection of the structure mentioned in paragraph 5.2.1(a) above. The licence is not transferrable and the applicant has not provided any information on the relationship with the licensee.
- (c) The Site is accessible from So Kwun Wat Road via an unnamed road. His office does not carry out maintenance works for the access nor guarantee that right-of-way will be given to the Site.
- (d) The licensee is required to submit a formal application to his office for change of use from latrine/storage under the GLL to temporary eating place after planning permission is given by the Board. However, there is no guarantee that the application will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of administration fee and licence fee etc.
- (e) His office reserves the right to take enforcement actions as considered appropriate against any unauthorised erection/extension/alternations of structures on the Site or any unauthorised occupation of Government land irrespective of whether planning permission will be given or not.

Environment

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

No information provided in the applicant's submission (**Annex D-2**) is related to environmental aspect. The applicant has not properly addressed the treatment and disposal method of sewage and wastewater generated from the proposed eating place. As such, her previous comments on the section 16 application are still valid, which are recapitulated as follows:

- (a) She is unable to support the application at this stage.
- (b) Further Information (FI) dated 2.7.2021 (Appendix Ib of **Annex A**) has not properly addressed the potential environmental impact arising from the proposed use, in particular water quality and wastewater impacts. She also opines that the eating place may cause odour and noise impacts to nearby residents.

Water Quality and Wastewater

- (c) In the above FI, the applicant did not indicate whether grease trap following requirements of ProPECC PN 5/93 would be installed.

The applicant fails to demonstrate technical feasibility of proposed tanker away and thus no adverse water quality impact. There is no estimation of the amount of wastewater generated daily from the proposed eating place. The applicant should advise how the proposed storage tank has adequate capacity and weekly frequency of tanker away is adequate.

- (d) Treatment and disposal facility with adequate capacity should be proposed and implemented to demonstrate no adverse water quality impact. The applicant should install the grease trap for the kitchen and follow the requirements of ProPECC PN 5/93 and/or EPD's Guideline on Grease Trap for Restaurant and Food Processors for the design and maintenance of grease trap.

Odour and Noise

- (e) Mitigation measures should be proposed to avoid any nuisance. The applicant is reminded to strictly observe and comply with relevant environmental pollution control ordinances.

- 5.3 The following Government department maintains his previous comments on the section 16 application in paragraph 10.1 of **Annex A**, which are recapitulated below:

Drainage

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

- (a) There is insufficient information in the submission to demonstrate the proposed use will not cause adverse drainage impact on the surrounding area.
- (b) Notwithstanding the above, should the application be approved, a condition should be included to require the applicant to submit and implement the drainage proposal as well as maintain the drainage facilities for the Site to ensure that it will not cause adverse drainage impact to the adjacent area.

- 5.4 The following Government departments maintain their previous comments on the section 16 application as stated in paragraph 10.1 of **Annex A**:

- (a) Commissioner for Transport (C for T);
- (b) Director of Agricultural, Fisheries and Conservation (DAFC);
- (c) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (d) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (e) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (f) Director of Fire Services (D of FS); and
- (g) District Officer/Tuen Mun, Home Affairs Department (DO/TM, HAD).

5.5 The following Government departments maintain their previous views of having no objection to or no comment on the review application:

- (a) Commissioner of Police (C of P);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (e) Director of Food and Environmental Hygiene (DFEH); and
- (f) Executive Secretary (Antiquities & Monuments), Antiquities and Monuments Office (ES(A&M), AMO).

6. Public Comments Received During Statutory Publication Periods

- 6.1 On 10.9.2021 and 6.10.2021, the review application and written justifications were published for public inspection. During the statutory public inspection periods, 4 public comments were received from a member of the Area Committee of Tuen Mun South East and 3 individuals. They raised objection to the review application mainly on the grounds that the proposed use would cause adverse traffic, environmental and fire safety impacts, no mitigation measures for sewage, refuse and hygiene management are proposed, the right to use the government land was questionable, and the applicant's proposal is unclear (**Annexes E-1 to E-4**)
- 6.2 A total of four public comments (1 supporting and 3 objecting to the application) were received at the section 16 application stage as set out in paragraph 11 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of the RNTPC's decision on 23.7.2021 to reject the section 16 application for proposed temporary eating place for a period of 3 years at the Premises which falls within an area zoned "GB" on the OZP (**Plan R-1**). The application was rejected for the reasons that it was not in line with the planning intention of the "GB" zone and there was no strong justification in the submission for a departure from the planning intention; the proposed use was not in line with the Town Planning Board Guidelines No.10 for Application for Development within the "GB" zone (TPB-PG No. 10) in that the applicant failed to demonstrate that the proposed use would not generate adverse environmental and drainage impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar application within the "GB" zone.
- 7.2 In the section 17 application, the applicant has provided written justifications and information to illustrate the Association had operated other uses such as kindergarten before, and has provided food and beverage to its members. DLO/TM, LandsD advises that his office has no information on this nor approval has been given to permit the said uses. No planning permission has been granted for such uses also. Since the consideration of the subject application by the RNTPC on 23.7.2021, there has been no major change in planning circumstances. Planning considerations and assessments on the review application are appended below.

Planning Intention

- 7.3 The Premises falls within an area zoned “GB” on the OZP. The proposed use is not in line with the planning intention of the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. No strong planning justifications have been provided in the applicant’s submission for a departure from the planning intention, even on a temporary basis.

Land Use Compatibility

- 7.4 The proposed use is not entirely incompatible with the surrounding areas which is predominantly rural in nature with scattered agricultural activities intermixed with residential dwellings, fallow/cultivated agricultural land, vacant land and vegetated land/hillslopes linking to Tai Lam Country Park (**Plan R-2**).

Adverse Environmental and Drainage Impacts

- 7.5 No information provided in the applicant’s submission for the review application is related to the environmental and drainage concerns raised by DEP and DSD under the section 16 application. As such, DEP remains her previous stance of unable to support the application as the applicant fails to address the potential environmental impact, in particular water quality and wastewater impacts, arising from the proposed use. Besides, the eating place may cause odour and noise impacts to the nearby residents. CE/MN, DSD also maintains his views that there is insufficient information in the submission to demonstrate the proposed use will not cause adverse drainage impact on the surrounding area. Taking into account the comments of DEP and CE/MN, DSD, the proposed use is not in line with TPB-PG No. 10 in that the applicant fails to demonstrate that the proposed use would not have adverse environmental and drainage impacts on the surrounding areas.

Setting Undesirable Precedent

- 7.6 There are no previous or similar applications within the subject “GB” zone on the OZP. Approval of the application would set an undesirable precedent for similar uses to proliferate into the “GB” zone. The cumulative effect of approving such similar applications, even on a temporary basis, would result in a general degradation of the rural environment of the area.

Other Departmental Comments

- 7.7 Other relevant Government departments, including C for T and CTP/UD&L, PlanD, have no objection to or no adverse comment on the application.

Public Comments

- 7.8 Regarding the public comments objecting to the review application as mentioned in

paragraph 6.1 above, the planning considerations and assessments in paragraphs 7.1 to 7.7 are relevant.

8. Planning Department's Views

8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6 and given that there has been no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 23.7.2021, the Planning Department maintains its previous view of not supporting the review application for the following reasons:

- (a) the proposed use is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the proposed use is not in line with the Town Planning Board Guidelines No.10 for Application for Development within the “GB” zone in that the applicant fails to demonstrate that the proposed use would not generate adverse environmental and drainage impacts on the surrounding areas; and
- (c) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area.

8.2 Alternatively, should the Board 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 **17.12.2024**. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the submission of drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 17.6.2022;
- (c) in relation to (b) above, the implementation of drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 17.9.2022;
- (d) the submission of 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 17.6.2022;

- (e) in relation to (d) 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 17.9.2022;
- (f) the submission of sewage and wastewater treatment/disposal proposal within **6** months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 17.6.2022;
- (g) in relation to (f) above, the implementation of sewage and wastewater treatment/disposal proposal within **9** months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 17.9.2022;
- (h) in relation to (c) and (g) above, the implemented drainage, sewage and wastewater treatment/disposal facilities shall be maintained at all times during the planning approval period;
- (i) if any of the above planning condition (a) or (h) 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
- (j) if any of the above condition (b), (c), (d), (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 attached at **Annex F**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review 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.

10. Attachments

Drawing R-1
Plan R-1

Proposed floor plan submitted by the applicant
Location Plan

| | |
|---------------------------|---|
| Plan R-2 | Site Plan |
| Plan R-3 | Aerial Photo |
| Plans R-4a to R-4b | Site Photos |
| Annex A | RNTPC Paper No. A/TM-SKW/112 |
| Annex B | Extract of minutes of the RNTPC Meeting held on 23.7.2021 |
| Annex C | Secretary of the Board's letter dated 13.8.2021 |
| Annex D-1 | Email received on 1.9.2021 from the applicant applying for review |
| Annex D-2 | Written justification received on 6.10.2021 |
| Annexes E-1 to E-4 | Public comments |
| Annex F | Recommended advisory clauses |

**PLANNING DEPARTMENT
DECEMBER 2021**