

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KC/453

<u>Applicant</u>	Ms. Mak Siu Ying
<u>Premises</u>	G/F, 64D1, Kau Wa Keng, Kwai Chung
<u>Total Floor Area</u>	About 36m ²
<u>Lease</u>	Building Lot No. 3084 in Survey District 4 under Block Government Lease
<u>Plan</u>	Draft Kwai Chung Outline Zoning Plan No. S/KC/29
<u>Zoning</u>	“Comprehensive Development Area” (“CDA”) [Subject to a maximum total plot ratio (PR) of 5.0 and a maximum building height (BH) of 120mPD, or the PR/BH of the existing building, whichever is the greater]
<u>Application</u>	Shop and Services (retail shop)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) located at G/F, 64D1 Kau Wa Keng in Kwai Chung for ‘Shop and Services (retail shop)’ use (**Plans A-1 to A-2**). According to the Notes of the OZP for “CDA” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board).
- 1.2 The applicant proposes to operate a store as retail shop selling daily necessities, drinks and food to serve the neighbourhood. As clarified in the further information, the proposed opening hours of the shop is 11:00am to 11:30pm from Monday to Sunday (**Appendix Ia**). According to the applicant, the Premises are vacant.
- 1.3 The floor plans and section plans of the Premises submitted by the applicant are indicated on **Drawings A-1 to A-4**. In support of the application, the applicant has submitted the following documents:
 - (a) Application Form received on 17.5.2018 enclosing a floor plan (**Appendix I**)
 - (b) Further information (FI) received on 21.6.2018 providing responses to departmental comments and (**Appendix Ia**)

public comments with site photos, section plans and floor plan

- (c) FI received on 29.6.2018 providing responses to departmental comments and public comments with site photos, floor plans and revised section plans (Appendix Ib)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendices I, Ia and Ib**, which are summarised as follows:

- (a) There is no supermarket, convenience shop and fast food shop in the vicinity of the Premises.
- (b) The applicant proposes to operate a store as retail shop selling daily necessities, drinks and food to serve the neighbourhood where the customers would mainly patronize the shop on foot since no road is connected to the site.
- (c) The shop would be operated only between 11:00am to 11:30pm on Monday to Sunday with a limited mode of operation.
- (d) The usable area of the retail shop is about 28m² with a capacity of 4 to 6 persons only. Therefore, the provision of only one exit door is required according to Chapter 5.1 of “Code of Practice for The Provision of Means of Escape in Case of Fire”.
- (e) The building was built and occupied over 30 years ago well before 2004 and should therefore be exempted from the Emergency Vehicular Access requirement under the Means of Escape Code. A fire hydrant is located within 10m from the shop and evacuation from the shop to the nearest main road is less than 1 minute.
- (f) Sections drawings are provided in the submissions which indicate that there are openable windows and ventilation fans for both toilets to address the ventilation issues.
- (g) The shop will only sell non-alcoholic drinks, daily necessities and water but will not sell meat and vegetables. Hence, it is not associated with the nearby BBQ spots and will not create pollution, nuisances, traffic impact or parking problem.
- (h) The applicant clarifies that the goods delivery to the proposed shop and services will be located inside Kau Wa Keng San Tsuen with maximum twice a week and not exceed 5 minutes duration for each delivery.

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

The applicant is not the “current land owner” but has complied with the requirements as set out in the TPB Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No.

31A) by fulfilling the ‘reasonable steps’ requirement to give notification to the ‘current land owner’. Detailed information would be deposited at the meeting for Members’ inspection.

4. Previous Applications (Plan A-1 and Appendix II)

4.1 A planning application (No. A/KC/200) for a comprehensive residential development for the entire “CDA” zone within Kau Wah Keng Village which included the site of application premises was approved with conditions by the Committee on 12.4.1996 and by the Board on 16.8.1996 upon review of an approval condition. Applications for extension of time limit of planning approval were subsequently approved. However, the approved development scheme was not implemented and the planning permission was lapsed in April 2004.

4.2 There is a previous application (No. A/KC/391) for the proposed ‘Shop and Services (retail shop)’ use which covers the application premises. Nevertheless, the application was withdrawn by the previous applicant on 30.5.2012.

5. Similar Application

There is no similar application for ‘Shop and Services (retail shop)’ use at a premises within the “CDA” zones in the Kwai Chung area.

6. Town Planning Board Guidelines

The Town Planning Board Guidelines for Use/Development within “CDA” Zone (TPB PG-No. 18A) for “Submission of Master Layout Plan (MLP) under section 4A(2) of the Town Planning Ordinance” is not applicable to this application as according to the Guidelines, submission of MLP and supporting information including various detailed assessments is not required for an application for change of use in an existing building within a “CDA” zone (irrespective of whether building works are undertaken) before completion of comprehensive development in the “CDA” zone, unless it is considered necessary by relevant Government departments.

7. The Site and Its Surrounding Areas (Plans A-1 to A-2 and photos on Plans A-3 to A-4)

7.1 The Premises are:

- (a) located on the G/F of a 2-storey building located to the north of Lai King Hill Road and upper floor of the building is for residential use; and
- (b) not served by road and only accessible by a footpath leading to Lai King Hill Road.

7.2 The surrounding areas have the following characteristics:

- (a) to its east is a low density residential area, Chung Shan Terrace;
- (b) to its south across Lai King Hill Road is a high density residential cluster including Lai Yan Court, Happy Villa, Wah Lai Estate and Nob Hill;
- (c) to its west across a footpath is a fenced open air area used as barbeque (BBQ) ground (**Plan A-4**); and
- (d) to its northwest is a village houses cluster, Kau Wa Keng San Tsuen.

8. Planning Intention

The planning intention of the “CDA” zone is for comprehensive development/redevelopment of the area for residential and/or commercial uses with the provision of open space and other supporting facilities. The zoning is to facilitate appropriate planning control over the development mix, scale, design and layout of development, taking account of various environmental, traffic, infrastructure and other constraints.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/Tsuen Wan & Kwai Tsing, Lands Department (DLO/TW&KT, LandsD):

- (a) According to the current land search records, the applicant is not the lot owners of the Lot. The Premises is on the ground floor of 64D1, Kau Wa Keng which is one of the three buildings on Lot No. 3084 in Survey District 4. The Building Lot is held under the Block Government Lease. His office has no records of Certificate of Exemptions as the construction works of the building erected were commenced before the enactment of the Building Ordinance (Application to the New Territories) Ordinance (Cap. 121) in 1987;
- (b) the proposal submitted by the applicant does not conflict with the lease conditions governing the Site and so if the proposal is approved by the Board, the applicant is not required to seek a lease modification from LandsD to implement it. Therefore, any planning conditions, if imposed by the Board, cannot be written into the lease through lease modification; and
- (c) there is an existing temporary structure extended from the east side of the Premises which has partly encroached into adjoining Government Land (“GL”). The encroachment has constituted

unlawful occupation of GL. The occupier should cease such occupation. Failing which, LandsD will take appropriate actions when necessary.

Traffic

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

it is noted that the proposed shop and services is located within the village area and away from the public road. The applicant, in the FI (**Appendix Ib**), clarified that the goods delivery to the proposed shop and services will be located inside Kau Wa Keng San Tsuen with maximum twice a week and not exceed 5 minutes duration for each delivery. In view of that the frequency of goods delivery to the proposed shop and services is minimal and would not cause traffic impact to the public road, therefore she has no objection to the application from traffic point of view.

9.1.3 Comments of the Commissioner of Police (C of P);

he has no comment on the application from policing point of view provided that there is no adverse traffic impact.

Building Matters

9.1.4 Comments of Chief Architect/Central Management Division 2, Architectural Services Department (CA/CMD2, ArchSD):

- (a) The 'shop and services' area with 36m² and capacity of 108 persons will require at least two numbers of exit doors with minimum total doors width not less than 1750mm and minimum width of each door not less than 850mm. The applicant is advised to provide doors complying with the "Code of Practice for The Provision of Means of Escape in Case of Fire";
- (b) openable window with natural lighting and ventilation complying Buildings (Planning) Regulations (B(P)R) Section 36 shall be provided for both toilets; and
- (c) emergency vehicular access serving the site shall be provided in accordance with B(P)R Section 41D and Practice Notes for Authorised Persons No. APP-136.

9.1.5 Comments of Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) he has no comment on the application as the Premises were constructed before the enactment of the Building Ordinance (Application to the New Territories) Ordinance (Cap. 121) in 1987; and

- (b) the applicant's attention is drawn to that enforcement action by the Buildings Department under the Building Ordinance may be carried out against any unauthorised building works if any.

Environment

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

- (a) she has no objection to the application; and
- (b) Environmental Protection Department has received many environmental complaints lodged against the BBQ sites in Kau Wa Keng. The applicant is advised to avoid noise disturbance/annoyance to the village houses nearby. Operation hours of the proposed shop is preferably at 30 minutes shorter than the operation period proposed by the applicant, i.e. closing before 11pm. The applicant shall ensure that all wastewater discharged from the shop, including the effluent from its toilet, be properly treated and disposed.

Fire Safety

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

- (a) he has no in-principle objection to the application subject to water supplies for fire fighting and fire service installations (FSIs) being provided to his satisfaction; and
- (b) detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.

Water Supplies

9.1.8 Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.

Hygiene Aspect

9.1.9 Director of Food and Environmental Hygiene (DFEH) has no comment on the application since the Premises does not fall within the area of enforcement action against unlicensed fresh provision shops and the two illegal BBQ spots.

District Officer's Comments

9.1.10 Comments of the District Officer (Kwai Tsing), Home Affairs Department (DO(K&T), HAD):

- (a) no comment on the application from community point of view; and
- (b) his office has posted the application on the notice boards of

their office, the Kwai Fong Community Hall and the Lai King Community Hall respectively from 25.5.2018 to 15.6.2018. No comment has been received.

- 9.2 The following Government departments have no comment on the application:
- (a) Chief Highway Engineer/NT East, Highways Department (CHE/NTE, HyD);
 - (b) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
 - (c) Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD);
 - (d) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
 - (e) Project Manager/New Territories West, Civil Engineering and Development Department (PM/NTW, CEDD).

10. Public Comments Received During Statutory Publication Period

- 10.1 On 25.5.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 15.6.2018, a total of 61 public comments were received.
- 10.2 Among the 61 public comments, 2 support the application, 47 objecting while 11 mainly offer comments on the proposal. One commenter does not indicate support, objection or any details in his comment. These public comments are submitted by the following parties and individual members of public (**Appendix III**):
- (a) 2 comments submitted by Kwai Tsing District Council (K&TDC) members;
 - (b) 11 comments submitted residents of nearby residential developments;
 - (c) 7 comments submitted by Mutual Aid Committees/Incorporated Owners /estate management companies of nearby residential developments; and
 - (d) 41 individual members of public.
- 10.3 For the 2 supporting comments, one comments that the proposal can make good use of the area and the other has not given any reason to support the proposal.
- 10.4 47 comments objected to the application and the objection grounds are mainly summarised as follows:
- (a) it is suspected/alleged that the proposed store is associated with the adjacent illegal BBQ spots and would serve liquors to the customers and generate noise nuisances;
 - (b) problems and impacts on the aspects of public order, traffic, air quality, glare, environment and hygiene to the surrounding residential developments would be created and aggravated;

- (c) it would have adverse traffic impact on the village area (such as illegal parking on main road) and impact on the local pedestrian circulations;
- (d) it would attract patrons/people to the area and overload the facilities of the local area; and
- (e) approval of this application would legalise the BBQ spots and worsen the problems while residents nearby would suffer from nuisances and adverse impacts.

11. Planning Considerations and Assessments

- 11.1 The Premises fall within an area zoned “CDA” which is intended for comprehensive development/redevelopment of the area for residential and/or commercial uses with the provision of open space and other supporting facilities. The proposed ‘Shop and Services’ use is located on the ground floor of the existing 2-storeys building and the upper floor is for residential use. The proposed use is generally considered not incompatible with the surrounding area which is mainly village houses. The proposed shop is located within an existing building and would not jeopardise the long term planning intention of the “CDA” zone for comprehensive development/redevelopment of the area for residential and/or commercial uses. Meanwhile, according to the TPB Guidelines, submission of MLP and supporting information including various detailed assessments is not required for an application for change of use in an existing building within a “CDA” zone. Given the above, there is no objection to the proposed change of use at the existing building as currently there is no valid development proposal covering the Premises/building.
- 11.2 The proposed ‘Shop and Services’ use would not create adverse traffic, environmental, sewerage and drainage impacts on the surrounding area according to the comments of C for T, DEP and CE/MS, DSD. Other concerned departments consulted, including FSD and WSD have no objection to/adverse comments on the application.
- 11.3 Regarding the public comments, the planning assessments above and departmental comments in paragraph 9 are relevant. Regarding the public comment that the proposed shop is likely associated with the illegal BBQ spot nearby, DFEH advises that the Premises do not fall within the area of enforcement action against unlicensed fresh provision shops and the illegal BBQ spots.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, 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 until 6.7.2022, and after the said date, the permission

shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) the submission and implementation of fire service installations and water supplies for fire-fighting proposals in the application premises before operation of the proposed use to the satisfaction of the Director of Fire Services or of the Town Planning Board; and
- (b) if the above planning condition (a) is not complied with, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix IV**.

12.3 There is no strong reason to recommend rejection of the application.

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.
- 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

Appendix I	Application Form received on 17.5.2018
Appendix Ia	FI received on 21.6.2018 providing responses to departmental comments and public comments with site photos, section plans and floor plan
Appendix Ib	FI received on 29.6.2018 providing responses to departmental comments and public comments with site photos, floor plans and revised section plans
Appendix II	Previous Applications
Appendix III	Public Comments received
Appendix IV	Advisory Clauses
Drawings A-1 to A-2	Floor Plans
Drawings A-3 to A-4	Section Plans
Plan A-1	Location Plan

Plan A-2
Plans A-3 to A-4

Site Plan
Site Photos

**PLANNING DEPARTMENT
JULY 2018**