

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

APPLICATION NO. A/YL-KTS/813

<u>Applicant</u>	: Ms. LAU Jirawan
<u>Premises</u>	: Ground Floor, 175 Shek Wu Tong Tsuen, Lot 351 S.A (Part) in D.D. 106, Pat Heung, Yuen Long
<u>Floor Area</u>	: 30.1m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
<u>Zoning</u>	: “Village Type Development” (“V”) [maximum building height of 3 storeys (8.23m)]
<u>Application</u>	: Temporary Eating Place for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for proposed temporary eating place for a period of 5 years. According to the Notes of the OZP, ‘Eating Place’ use within “V” zone¹ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Premises is currently used for a restaurant without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Premises occupies the ground floor of an existing 2-storey house, which is not a New Territories Exempted House (NTEH). According to the applicant, the Premises for eating place use involves a floor area of 30.1m². The operation hours are between 11 a.m. and 10 p.m. from Mondays to Tuesdays and Thursdays to Sundays, with no operations on Wednesdays. The Site is accessible via a local track and Shek Tin Road leading to Kam Sheung Road. No parking spaces will be provided. The location plan and site layout plan submitted by the applicant are at **Drawings A-1 and A-2**.

¹ ‘Eating Place’ is always permitted on the ground floor of a New Territories Exempted House.

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

- (a) Application form with supplementary information received on 8.1.2019 and 11.1.2019 **(Appendix I)**
- (b) Further Information (FI) received on 28.1.2019 in response to departmental comment **(Appendix Ia)**
- (c) FI received on 21.2.2019 in response to departmental comment **(Appendix Ib)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 9 of the application form and FIs in **Appendices I to Ib**. They can be summarized as follows:

- (a) The applicant states that she rented the Premises since 2016 but cannot obtain relevant license from the Food and Environmental Hygiene Department since approval from Lands Department and Planning Department is not yet obtained.
- (b) The eating place is located at the village centre and near bus stop, which could conveniently serve the local neighbourhood.
- (c) The eating place is operated with electric cooking equipment to minimize the noise and oily fume emissions. Also, wastewater is discharged via a grease trap to minimize pollution.

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 obtaining the land owner’s consent. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 15A for ‘Application for Eating Place within “Village Type Development” zone in Rural Areas under section 16 of the Town Planning Ordinance’ (TPB PG-No.15A) is relevant to the application. Extract of the Guidelines is attached at **Appendix II**. The relevant planning criteria are summarised as follows:

- (a) the eating place use should not create environmental nuisance or cause inconvenience to the residents nearby. Such use should preferably be located at the fringe of a village area, e.g. area abutting the main road. For any eating place use that is situated amidst the existing village houses, sympathetic consideration may only be given if there are no objections from local residents;
- (b) the eating place use should not have any adverse traffic impact on its surrounding areas nor should it affect any pedestrian circulation in the area;
- (c) sympathetic consideration may be given if the eating place use would not have adverse impacts on drainage, sewage disposal facilities or fire safety aspects;
- (d) for any application on open ground as an extension to ground floor eating place in a NTEH or as a free-standing development, the eating place use should not adversely affect the land availability for village type development. Application sites with configurations/dimensions which are not suitable to be delineated separately for village type development or which are considered not suitable for village type development (e.g. within 20 m of public roads constructed/maintained by the Highways Department or 15 m of other local public roads), sympathetic consideration may be given by the Board on individual merits; and
- (e) all other statutory or non-statutory requirements of relevant Government departments should be met.

5. Background

The Site is not involved in any active enforcement cases.

6. Previous Application

There is no previous application at the Site.

7. Similar Application

There is one similar application to the east of the Premises (No. A/YL-KTS/165) for a proposed permanent restaurant use in a one-storey structure within the same “V” zone on the OZP. Details of the application is summarized in **Appendix III** and the location of the application site is shown on **Plan A-1**. It was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 30.4.1999 for the reasons that the proposed development was not incompatible with the surrounding village type developments; it would help provide catering services to serve local residents in the area without adversely affecting the character of the surrounding villages; generally complied with TPB PG-No.15A; and no adverse departmental comment or local objection was received.

8. The Premises and Its Surrounding Areas (Plans A-1 to A-4)

8.1 The Premises is:

- (a) located on the ground floor of an existing 2-storey house and the upper floor is used for residential purpose, with access separated from the Premises;
- (b) currently used for restaurant without valid planning permission; and
- (c) accessible via a local track and Shek Tin Road leading to Kam Sheung Road.

8.2 The Premises falls within the village cluster of Shek Wu Tong and surrounded by residential structures/dwellings, some of which with shop and services uses on the ground floor, intermixed with scattered parking of vehicles, open storage/storage yards and workshops. The open storage/storage yards, workshops and parking of vehicles are suspected unauthorized development subject to enforcement action by the Planning Authority (**Plan A-2**).

9. Planning Intention

The planning intention of the “V” is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

10. Comments from Relevant Government Departments

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

Land Administration

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The site comprises an Old Scheduled 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) Lot No. 351 S.A (Part) in D.D.106 is covered by Short Term Waiver (STW) No. 463 which permits the structure(s) erected thereon for the purpose of “Grocery Shop”.
- (c) The site is accessible from Shek Tin Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the site.
- (d) The site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (e) Should planning approval be given to the application, the STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.
- (f) According to his record, there is no Small House application approved or under processing within the subject lot.

Traffic

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

- (a) Considering that there is neither parking provision nor vehicular access to the lot and the induced traffic impact is minimal, he has no comment on the application.
- (b) The applicant should note that the local access between Kam Sheung Road and the development is not managed by his department.

10.1.3 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD):

- (a) His department does not and will not maintain any access connecting the Premises and Kam Sheung Road. The applicant should be responsible for his own access arrangement.
- (b) Adequate measures should be provided to prevent surface water running from the Premises to the nearby public roads and drains.

Environment

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

- (a) Provided that the applicant will provide necessary pollution control measures and ensure that the proposed use would not cause any environmental nuisances such as noise, oily fume and cooking odour to the public and people living nearby, he has no objection to the application from environmental planning perspective.
- (b) The applicant is advised to properly design and maintain adequate mechanical ventilation and necessary pollution control measures to avoid accumulation of aerial emissions and minimize potential noise and odour nuisances to the public and people living nearby. To minimize noise impact, oily fume and cooking odour emissions from the restaurant, the applicant should make reference to Environmental Protection Department (EPD)'s Pamphlet "Control of Oily Fume and Cooking Odour from Restaurant and Food Business" available from EPD's website. The applicant is also advised to follow the relevant mitigation measures and requirements in the revised "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" to minimize any potential environmental nuisances.
- (c) All wastewater collected from kitchen, including that from basins, sinks and floor drains, should be discharged via a grease trap in accordance with the requirements of EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department". Effluent discharges from the applied use are subject to control under the Water Pollution Control Ordinance (WPCO). A discharge license under the WPCO shall be obtained before a new discharge is commenced.

Food and Environmental Hygiene

10.1.5 Comments of the Director of Food and Environmental Hygiene (DEFH):

- (a) Proper licence and/or permit issued by Food and Environmental Hygiene Department (FEHD) is required if food business or related place of entertainment is involved:
 - (i) The operation of any types of food business, relevant food licence(s) and/or permit(s) should also be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). If the operator/tenant intends to operate any food business at the premises, relevant food licence/restricted food permit should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). The application for restaurant licence, if acceptable by FEHD, will be referred to relevant government departments, such as Buildings Department, Fire Services Department, Planning Department for comment. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicant for compliance and the licence will be issued upon compliance of all the requirements.
 - (ii) In accordance with Section 4 of the Food Business Regulation, Cap. 132, a food licence is not required for the operation of any canteen in any work place (other than a factory canteen) for the use exclusively of the persons employed in the work place. However, a restricted food permit(s) granted by FEHD is/are still required for the sale of any restricted foods as specified in Schedule 2 of the said regulation.
 - (iii) Any person who desires to keep or use any place of public entertainment for example a theatre and cinema or a place, building, erection or structure, whether temporary or permanent, on one occasion or more, capable of accommodating the public presenting or carrying on public entertainment within Places of Public entertainment (PPE) Ordinance (Cap. 172) and its subsidiary legislation, such as a concert, opera, ballet, stage performance or other musical, dramatic or theatrical entertainment, cinematograph or laser projection display or an amusement ride and mechanical device which is designed for amusement. A Place of Public Entertainment Licence (or Temporary Place of Public

Entertainment Licence) should be obtained from FEHD whatever the general public is admitted with or without payment.

- (b) If the proposal involves any commercial/trading activities, its state should not as to be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.
- (c) If any FEHD's facility is affected by the development, FEHD's prior consent must be obtained. Re provisioning of the affected facilities by the project proponent up to the satisfaction of FEHD may be required. Besides, the project proponent should provide sufficient amount of additional recurrent cost for management and maintenance of the re provisioned facilities to FEHD.

Drainage

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

- (a) He has no objection in-principle to the development from the public drainage point of view given the area of the Premises is of only 30.1m².
- (b) The applicant should provide his own drainage facilities to collect the runoff generated from the Premises or passing through the Premises, and discharge the runoff collected to a proper discharge point. The development should not obstruct overland flow or cause any adverse drainage impact to the adjacent areas and existing drainage facilities.
- (c) The applicant should consult DLO/YL and seek consent from the relevant owners for any works to be carried out outside his lot boundary before commencement of the drainage works.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to

submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.

- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap.123) or application for licence for the eating place is required, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

Building Matters

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

- (a) As there is no record of approval by the Building Authority for the existing structures at the site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a NTEH) are erected on leased land without approval of the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the site under the BO.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) The site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulation respectively.

- (f) If the proposed use under application is subject to issue of license, please be reminded that any existing structures on the site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.
- (g) If the Site does not abut on a specified street of not less than 4.5 m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

District Officer's Comments

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

He has not received any comments from locals upon close of consultation and he has no particular comments on the application.

10.2 The following Government departments have no comment on the application:

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (d) Commissioner of Police (C of P).

11. Public Comment Received During Statutory Publication Period

On 15.1.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 8.2.2019, no public comment was received.

12. Planning Considerations and Assessments

12.1 The application is for a temporary eating place for a period of 5 years at the Premises falling within the "V" zone. The planning intention of the "V" zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to

the Board. The Premises is located at the ground floor of an existing 2-storey house which is not a NTEH. The applied use of temporary eating place is not entirely in line with the planning intention of the “V” zone. Nevertheless, DLO/YL, LandsD advises that there is no small house application approved or under processing within subject lot. It is considered that approval of the application on a temporary basis would not jeopardize the long-term planning intention of the “V” zone.

- 12.2 The Site falls within the village cluster of Shek Wu Tong. The temporary eating place is considered not incompatible with the surrounding areas which are predominated by residential developments/dwellings, some of them with shop and services uses on the ground floor, intermixed with some other uses. According to the applicant, the temporary eating place can help serve the needs of the villagers.
- 12.3 The application is generally in line with TPB PG-No.15A in that the applied use is located at the fringe of the “V” zone and is readily accessible from Kam Sheung Road. Besides, in view of the scale of the eating place, it would unlikely generate significant adverse environmental, traffic and drainage impacts on the surrounding areas. Relevant Government departments consulted including DEP, DFEH, C for T and CE/MN of DSD have no objection to or adverse comment on the application and no local objection was received.
- 12.4 To minimize any possible nuisance generated by the development, approval conditions restricting operation hour are recommended in paragraph 13.2 (a) and (b) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development at the Premises will be subject to enforcement action by the Planning Authority. In addition, the applicant will be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Open Storage and Other Temporary Uses”. The technical requirements of D of FS could be addressed by approval conditions in paragraph 13.2 (c) and (d) below.
- 12.5 As stated in paragraph 7.2 above, there is one approved similar application (No. A/YL-KTS/165) for a permanent restaurant use in a one-storey structure within the same “V” zone to the east of the Premises. Approval of the application is in line with the Committee’s previous decision.
- 12.6 There is no public comment received during the public inspection period.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12, the Planning Department has no objection to the temporary eating place for a period of 5 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 5 years until

8.3.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 10:00p.m. and 11:00a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Wednesdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) 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 8.9.2019;
- (d) in relation to (c) above, the provision of fire service installations 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 8.12.2019;
- (e) if any of the above planning conditions (a) or (b) 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 (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**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the development is not in line with the planning intention of the "V" zone which is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission for a departure from the planning intentions, even on a temporary basis.

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 supplementary information received on 8.1.2019 and 11.1.2019
- Appendix Ia** FI received on 28.1.2019 in response to departmental comment
- Appendix Ib** FI received on 21.2.2019 in response to departmental comment
- Appendix II** Relevant Extracts of Town Planning Board Guidelines for “Application for Eating Place within “Village Type Development” Zone in Rural Areas under Section 16 of the Town Planning Ordinance” (TPB PG-No. 15A)
- Appendix III** Similar application within the same “V” zone on the Kam Tin South OZP
- Appendix IV** Advisory clauses
- Drawing A-1** Location Plan
- Drawing A-2** Site Layout Plan
- Plan A-1** Location plan with similar application
- Plan A-2** Site plan
- Plan A-3** Aerial photo
- Plan A-4** Site photos

**PLANNING DEPARTMENT
MARCH 2019**