

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/815

- Applicant** : Mr. Tang Sai Yu represented by Mr. Tang Chi Wing
- Site** : Lot 41RP in D.D.106, Kam Tin, Yuen Long
- Site Area** : About 324.82 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
- Zoning** : “Residential (Group A)” (“R(A)”)
[Maximum plot ratio of 3 and maximum building height of 69mPD]
- Application** : Proposed Temporary Shop and Services (Convenience Store with Ancillary Office) for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services (convenience store with ancillary office) for a period of 5 years. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use in the “R(A)” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant and covered by vegetation (**Plans A-2 to A-4**). The Site is not involved in any previous application.
- 1.2 According to the applicant, the proposed development involves a single storey structure with a building height of 3.048m and a total floor area of 37.17m² for convenience store, ancillary office and resting room. The proposed development will operate from 9am to 5pm on Mondays to Fridays and 11am to 4pm on Saturdays and Sundays (no operation on public holidays). The Site is accessible from Kam Ho Road via a local track. No parking space and loading/unloading bay will be provided on-site. The

location and site layout plan submitted by the applicant are at **Drawings A-1** and **A-2**.

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

- (a) Application form received on 16.1.2019 **(Appendix I)**
- (b) Further information (FI) received on 19.2.2019 in **(Appendix Ia)** response to departmental comments
- (c) FI received on 22.2.2019 in response to department **(Appendix Ib)** comments

2. Justifications from the Applicant

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

- (a) The Site is an undeveloped flat land. The area is served by one mini-bus route which is inconvenient for the residents to go out for shopping. The proposed development will serve the local residents daily necessities including drinks and snacks.
- (b) Loading/unloading of goods will be carried out at nearby layby/public car park and transport to the Site by trolley.

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 notice at the Site and sending notification to Kam Tin Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not the subject of any active enforcement case.

5. Previous Application

The Site is not subject to any previous application.

6. Similar Application

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

7. The Site and its Surrounding Areas (Plans A-1 to A-4)

7.1 The Site is:

- (a) currently vacant and covered with vegetation;
- (b) accessible to Kam Ho Road via a local track; and
- (c) within a “R(A)” zone for planned public housing development, which is targeted for completion in 2025.

7.2 The surrounding areas are rural in character predominated by cultivated agricultural land, residential structures/dwellings, open storage yard, parking of vehicles and West Rail Kam Sheung Road Station. The open storage yard and parking of vehicles are suspected unauthorized developments subject to enforcement action by the Planning Authority:

- (a) to its immediate east, south and further south is cultivated agricultural land, residential structures/dwellings and parking of vehicles;
- (b) to its west is an open storage yard and to its further west is the Tsing Long Highway; and
- (c) to its north across Kam Ho Road is the West Rail Kam Sheung Road Station.

8. Planning Intention

The planning intention of the “R(A)” zone is primarily for medium-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. According to the Explanatory Statement (ES) of the OZP, the “R(A)” zone is intended for public housing developments.

9. Comments from Relevant Government Departments

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

Land Administration

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

- (a) The Site comprises an Old Schedule 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) The Site is accessible from Kam Ho Road via Government Land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) 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.
- (d) Should the application be approved, the lot(s) owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. 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.

9.1.2 Comments of the Chief Estate Surveyor/ Railway Development, Lands Department (CES/Railway Development, LandsD):

The Site falls within Railway Development Strategy 2014 (RDS 2014) Northern Link (NOL) Area of Influence (AOI). He has no comment on the application provided that Railway Development Office, Highways Department has no objection against the application and the proposed development would not pose obstacles to the acquisition of land for the implementation of the NOL project.

Traffic

9.1.3 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 temporary traffic arrangement may be implemented at Kam Ho Road during the applied approval period due to works by Civil Engineering and Development Department (CEDD) on “Site Formation and Infrastructure Works for Development at Kam Tin South – Advance Works”.

9.1.4 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) It is noted from the application that no run-in/out and direct vehicular access to the Site are proposed.
- (b) His department does not and will not maintain any access connecting the Site and Kam Ho Road. The applicant should be responsible for his own access arrangement.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

9.1.5 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

The Site falls within the AOI of the proposed NOL which is a recommended railway scheme under the RDS 2014. Although the programme and the alignment of the proposed NOL are still under review, those areas within the AOI might be subject to nuisance, e.g. noise and vibration of the proposed NOL. He has no objection in principle to the planning application from the development point of view of the NOL, provided that the applicant is satisfied with the surrounding condition in respect of nuisance taking into account the future construction, operation and maintenance of NOL.

Project Interface

9.1.6 Comments of the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD):

Noting that the applied approval period would be in conflict with the implementation programme of the site formation works for the planned public housing development, which is tentatively planned for commencement in mid 2021, at the subject “R(A)” zone, the planning application is not supported.

9.1.7 Comments of the Director of Housing (D of Housing):

- (a) The Site falls within a site for planned public housing development, which is reflected in the ES of the OZP.
- (b) Since the applicant intends to seek planning permission for the proposed use at the Site for a period of 5 years, he has strong reservation as the approval of the application may delay CEDD’s handover of the concerned public housing site to Housing Department (HD) and the flat completion in 2025.

Environment

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

The applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the DEP.

Drainage

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

- (a) He has no in-principle objection to the proposed development from the public drainage point of view.
- (b) Should the application be approved, the conditions requiring the submission, implementation and maintenance of a drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.

Building Matters

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

- (a) Before any new building works (including container/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) 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 works or UBW on the Site under the BO.
- (c) 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) Regulations (B(P)R) respectively.
- (d) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Fire Safety

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

- (a) He has no in-principle objection to the application 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 BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

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

He has not received any local's comment on the application and he has no comment on the application.

9.2 The following departments have no objection to or no comment on the application:

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (c) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 25.1.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 15.2.2019, no public comment was received.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services (convenience store with ancillary office) for a period of five years within "R(A)" zone. The planning intention of the "R(A)" zone is primarily for medium-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. According to the ES of the OZP, the "R(A)" zone is intended for public housing developments. The proposal involving a single storey building solely for shop and services use is not entirely in line with the planning intention of the "R(A)" zone. The "R(A)" zone covering the Site is planned for public housing development with target completion in 2025 according to HD. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

11.2 PM(W) of CEDD does not support the application as the applied approval period would be in conflict with the implementation programme of the site

formation works for the public housing development at the subject “R(A)” zone, which is tentatively planned for commencement in mid 2021. D of Housing also has strong reservation as approval of the application may delay CEDD’s handover of the concerned site to HD for public housing development. Approval of the application for a period of 5 years would be in conflict with the implementation of the planned public housing development at the subject “R(A)” zone for completion in 2025.

- 11.3 No public comment on the application was received during the statutory publication period.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed development is not in line with the planning intention of the “R(A)” zone which is primarily for medium-density residential developments. No strong planning justification has been given in the submission for departure from the planning intention, even on a temporary basis; and
- (b) the Site is located within an area planned for public housing development with target completion in 2025. Approval of the application for a period of 5 years would be in conflict with the implementation of the public housing development.

- 12.2 Alternatively, 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 5:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation between 9:00 a.m. and 11:00 a.m. and between 4:00 p.m. and 5:00 p.m. on Saturdays and Sundays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no operation on public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (d) 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 8.9.2019;

- (e) in relation to (d) 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 8.12.2019;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) 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;
- (h) in relation to (g) 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;
- (i) if any of the above planning conditions (a), (b), (c) or (f) 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 planning conditions (d), (e), (g) or (h) 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 II**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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. Attachments

Appendix I	Application form received on 16.1.2019
Appendix Ia	FI received on 19.2.2019
Appendix Ib	FI received on 22.2.2019
Appendix II	Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2019**