

RNTPC Paper No. A/YL-PH/788  
For Consideration by  
the Rural and New Town  
Planning Committee  
on 7.9.2018

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

**APPLICATION NO. A/YL-PH/788**

- Applicant** : Mr. TANG Kwai Wing represented by Mr. KWOK Chi Man
- Site** : Lot 2926 (Part) in D.D.111 and Adjoining Government Land, Pat Heung, Yuen Long
- Site Area** : About 320 m<sup>2</sup> (including Government Land of about 151 m<sup>2</sup>)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
- Zoning** : “Village Type Development” (“V”)  
[maximum building height of 3 storeys (8.23m)]
- Application** : Temporary Shop and Services (Daily Supplies and Food Retail Shop) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services (daily supplies and food retail shop) for a period of 3 years. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use under “V” zone which requires planning permission from the Town Planning Board (the Board). The Site is partly occupied by some temporary structures for retail use without valid planning permission (**Plan A-4**).
- 1.2 The Site is the subject of one previous application No. A/YL-PH/708 submitted by a different applicant as the current application for temporary shop and services use (convenience store and storage use) which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 16.1.2015. The planning permission was revoked on 16.4.2017 due to non-compliance with approval conditions in relation to drainage and fire safety aspects.
- 1.3 According to the applicant, a total of three 1- to 2-storey structures (building height ranging from 2.6m to 5.2m) with a total floor area of 110m<sup>2</sup> will be erected

on site for shop, storage, office and toilet uses. One loading/unloading space will be provided for 5.5 tonnes vehicle and no vehicles exceeding 5.5 tonnes will enter/exit the Site. The operation hours are from 9:00 a.m. to 7:00 p.m. daily. There will be two to three staffs on site with one staff stay overnight at the Site for security. The layout plan, landscape and drainage proposals submitted by the applicant are shown at **Drawings A-1 to A-3**.

- 1.4 Compared with the previous approved application No. A/YL-KTN/708, the current application is for similar applied use, same site area, similar layout but larger floor area.
- 1.5 In support of the application, the applicant has submitted the following documents:
  - (a) Application form with planning statement and plan **(Appendix I)** received on 19.7.2018
  - (b) FI received on 16.8.2018 in responses to department **(Appendix Ia)** comments  
*(accepted and exempted from publication and recounting requirement)*
  - (c) FI received on 24.8.2018 in responses to public **(Appendix Ib)** comments  
*(accepted and exempted from publication and recounting requirement)*

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the planning statement in **Appendix I**. They can be summarized as follows:

- (a) Given the development is in small scale and temporary in nature, the development is considered not incompatible with the surrounding land uses and the Site would be readily reinstated. Approval of the application on a temporary basis will not jeopardize the long-term planning intention of the “V” zone.
- (b) The proposed shop will be mainly for sale of South Asian daily goods and food to serve the South Asian residents in the vicinity. There is a lack of such facility to serve the demand of the South Asian residents living in Wang Toi Shan. It is anticipated that nearby customer will visit the shop on foot or by bicycle. The induced traffic would be low and traffic impact on local access road would be minimal.
- (c) The applicant would adopt appropriate mitigation measures in the “Code of Practice on Handling the Environmental Aspects of Temporary uses and Open Storage Sites” to minimize any potential environmental nuisances or the surrounding environment.

- (d) No tree felling, ponding filling, excavation of land and blockage of stream will be carried out. The development would not generate toxic waste or pollutant. The existing trees and drainage facilities on site will be maintained. Therefore, adverse ecological and environmental impact is not anticipated.
- (e) The application is for Shop and Services use and does not involve subdivided residential units. There is also a previous application approved at the Site. Prior to the application, relevant stakeholders have been consulted and no objection has been received.

### **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. 31) by posting site notice and sending notice to the Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

### **4. Background**

The Site is not the subject to any active enforcement case and there is currently no enforcement action against it. The Site was granted with planning permission on 16.1.2015 for similar temporary use for a period of 3 years but was subsequently revoked on 16.4.2017. The use of the Site for shop and services use without a valid planning approval constitute an unauthorised development under the Town Planning Ordinance. Should there be sufficient evidence to prove that the use on site is an authorised development under the Town Planning Ordinance, appropriate enforcement action will be taken.

### **5. Previous Application**

- 5.1 The Site is the subject of a previous application No. A/YL-PH/708 for temporary shop and services (convenience store and storage use) submitted by a different applicant as the current application. The application was approved with conditions by the Committee on 16.1.2015 mainly for the reasons that temporary approval would not frustrate the long-term intention of the “V” zone; the applied use was considered not incompatible with surrounding land uses and unlikely to generate significant environmental nuisance; relevant departments consulted had no adverse comment on the application; and technical concerns could be addressed by appropriate approval conditions. However, the application was revoked on 16.4.2017 due to non-compliance with approval conditions on implementation of drainage proposal and submission/implementation of fire services installation proposal. Detail of the application is at **Appendix II** and the location is shown on **Plan A-1**.

- 5.2 Compared with the previous approved application No. A/YL-KTN/708, the current application is for similar applied use, same site area, similar layout but larger floor area.

## **6. Similar Applications**

- 6.1 There are two similar applications (No. A/YL-PH/672 and 744) for various shop and services uses within the same “V” zone on the OZP. Details of the applications are summarized in **Appendix III** and the locations of the sites are shown on **Plan A-1**.
- 6.2 Application No. A/YL-PH/672 for temporary Shop and Services (Real Estate Agency) and Application No. A/YL-PH744 for temporary Shop and Services (Provision Store) (the latter located to the immediate north of the Site and currently used for storage) were approved with conditions by the Committee on 6.9.2013 and 23.6.2017 respectively for similar reasons that approval of the application on a temporary basis would not jeopardize the planning intention of the “V” zone; the development was not incompatible with the surrounding land uses; relevant departments had no adverse comment; and the technical concerns could be addressed by appropriate approval conditions.

## **7. The Site and Its Surrounding Areas (Plans A-1 to A-4)**

- 7.1 The Site is:
- (a) currently occupied by some temporary structures for retail use without valid planning permission; and
  - (b) accessible via a local track branching off Kam Tin Road.
- 7.2 The surrounding areas are predominately rural in character with residential dwellings/structures, open storage/ storage yards, warehouses, workshops and vacant/unused land. Some of the open storage/storage yard and warehouses are suspected unauthorised development subject to enforcement action by the Planning Authority.
- (a) to its east and south are open storage yards and vacant/unused land;
  - (b) to its west are warehouse, open storage yards and workshops; and
  - (c) to its north are open storage/storage yards and warehouses. Residential dwellings/structures and parking of vehicles are located to its further north.

## 8. **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 New Territories Exempted House (NTEH). Other commercial, community and recreational uses may be permitted on application to the Board.

## 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 Government Land (GL) and 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) Lot No. 2926 in D.D. 111 is covered by Short Term Waiver (STW) No. 4042 to permit structures erected thereon for the purpose of “temporary shop and services”.
- (c) The GL within the Site is covered by Short Term Tenancy (STT) No. 2827 for the purpose of “temporary shop and services”.
- (d) The Site is accessible from Kam Tin Road via 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.
- (e) 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.
- (f) Should the application be approved, the STW and STT holder(s) will need to apply to his office for modification of the STW/STT 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(s) 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.

- (g) There is no Small House application approved or under processing within the Site.

### **Traffic**

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

- (a) He has no comment on the application from the traffic engineering point of view.
- (b) The applicant is reminded that sufficient space within the Site should be provided for manoeuvring of vehicles.
- (c) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.
- (d) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the access road/path/track leading to the Site from Kam Tin Road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the access road/path/track should be clarified with the relevant lands and maintenance authorities.

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

- (a) HyD is not and shall not be responsible for the maintenance of any existing access connecting the Site and Kam Tin Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

### **Environment**

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

There was no environmental complaint received in the past three years. 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 DEP.

### **Landscape**

9.1.5 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) She has no objection to the applications from the landscape planning point of view.
- (b) The Site is connected to a paved driveway leading to Kam Tin Road to the south. The Site is the subject of an approved planning application (No. A/YL-PH/708) by different applicant for the same use, to which she had no objection from the landscape planning perspective.
- (c) Based on the aerial photo taken in January 2018, the Site is situated in an area of rural landscape character comprising of scattered tree groups and open storages. Although the proposed use is not in line with the planning intention of "V" zone, it is not incompatible to the surrounding environment.
- (d) According to our site visit in August 2018, the Site is hard paved while part of the Site is occupied with temporary structure. No existing tree is recorded within the Site. Adverse impact on landscape resources within the Site is not anticipated.
- (e) Should the application be approved, approval condition on submission and implementation of landscape proposal is not recommended due to limitation in available space for landscaping.
- (f) Detailed comments are at **Appendix IV**.

### **Nature Conservation**

9.1.6 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

He has no comment on the application from nature conservation point of view as the Site is a disturbed area within “V” zone and is located adjacent to a village road.

### **Drainage**

9.1.7 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.
- (b) Should the application be approved, approval conditions on submission of a revised drainage proposal, and implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.
- (c) His detailed comments on the submitted drainage proposal are at **Appendix IV**.

### **Fire Safety**

9.1.8 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 FSI 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 (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.



### **Building Matters**

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

- (a) Before any new building works (including containers/ 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 building 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.

### **Food and Environmental Hygiene**

#### 9.1.10 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) If any FEHD's facility is affected by the development, Food and Environmental Hygiene Department (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.
- (b) Proper licence / permit issued by his department is required if there is any food business / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Details are at **Appendix IV**.

- (c) If the proposal involves any commercial/trading activities, no environmental nuisance should be generated to the surroundings. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expense.

### **Electricity**

#### 9.1.11 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) In the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the ‘Code of Practice on Working near Electricity Supply Lines’ established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

### **District Officers Comments**

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

- (a) He has no particular comment on the application.
- (b) His office received 7 objecting comments from the residents representative of Wang Toi Shan Ho Lik Pui Tsuen and villagers of Wang Toi Shan. All of these comments were also received by the Board during the statutory inspection period (**Appendices V-1 to V-7**).

#### 9.2 The following Government departments have no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);

- (b) Project Manager/ West, Civil Engineering and Development Department (PM/ W, CEDD); and
- (c) Commissioner of Police (C of P).

## **10. Public Comments Received During Statutory Publication Period**

On 27.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 17.8.2018, 20 objecting comments were received from the residents representative of Wang Toi Shan Ho Lik Pui Tsuen, villagers of Wang Toi Shan and general public (**Appendices V-1 to V-20**). The commenters object to the application mainly on the grounds that there is no local demand for an additional provision store for Wang Toi Shan villagers; the proposed development would generate adverse noise and safety impacts to the area; illegal occupation of Government Land; illegal structures and ‘destroy first, develop later’; the proposed development is likely to be developed for a gathering place and subdivided residential unit for South Asian people; is not in line with the planning intention of the “V” zone.

## **11. Planning Considerations and Assessments**

11.1 The application is for temporary shop and services (daily supplies and food retail shops) for a period of 3 years in area zoned “V”. The planning intention of “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 uses are always permitted on ground floor of a NTEH. Other commercial uses may be permitted on application to the Board. According to the applicant, the development intends to serve demands on South Asian products of the residents in the vicinity. In addition, DLO/YL, LandsD has no adverse comment on the application and advised that there is no Small House application approved or under processing at the Site. In this regards, it is considered that approval of the application on a temporary basis for a period of 3 years would not jeopardize the planning intention of the “V” zone.

11.2 The proposed development is considered not incompatible with the surrounding land uses which are predominately rural in character with residential dwellings/structures, open storage yards, warehouses, workshops and vacant/unused land. Given the nature and scale of the proposed development, it is unlikely that the proposed use would generate significant environmental nuisance and DEP has no adverse comment on the application. Relevant Government departments consulted, including C for T, DEP, CTP/UD&L of PlanD, CE/MN of DSD and D of FS, have no adverse comment on the application. To minimize any possible environmental nuisance, approval conditions restricting the operation hours and vehicle type are recommended in paragraph 12.2 (a) and (b) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be

advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Open Storage and Other Temporary Uses” to alleviate any potential environmental impact. In addition, the technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (h) below.

- 11.3 The Site is the subject of one previous application No. A/YL-PH/708 for temporary shop and services (convenience store and storage use) use submitted by a different applicant as the current application which was approved with conditions by the Committee on 16.1.2015 mainly for the reasons as stated in paragraph 5 above. In addition, there are two similar applications No. A/YL-PH/672 and 744 for shop and services use approved with conditions by the Committee in 2013 and 2017 mainly for the reasons as stated in paragraph 6.2 above. Approval of the current application is in line with the Committee’s previous decisions on similar applications.
- 11.4 Twenty objecting comments were received during the public inspection period. The applied use is for shop and services use. Relevant government departments have no objection to the application. The planning considerations and assessments above are also relevant.

## **12. Planning Department’s Views**

- 12.1 Based on the assessment made in paragraph 11, and having taken into account the public comments in paragraph 10, the Planning Department considers that the temporary shop and services (daily supplies and food retail shops) could be tolerated for a period of 3 years.
- 12.2 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 3 years until 7.9.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval Conditions

- (a) no operation between 7:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractor/trailer, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time 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 7.3.2019;
- (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 7.6.2019;
- (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 7.3.2019;
- (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 Director of the Fire Services or of the Town Planning Board by 7.6.2019;
- (i) if the above planning condition (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;
- (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; and
- (k) upon expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

#### Advisory Clauses

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

- 12.3 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 re-provisioning 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 to justify a departure from the planning intention, even on a temporary basis.

**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, and the period of which the permission should be valid on a temporary basis.
- 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 with planning statement and plans received on 19.7.2018
- Appendix Ia** FI received on 16.8.2018 in responses to departmental comments
- Appendix Ib** FI received on 27.8.2018 in response to public comments
- Appendix II** Previous s.16 Applications covering the Application Site
- Appendix III** Similar applications within the same “V” zone on the Kam Tin North OZP
- Appendix IV** Detailed comments from CTP/UD&L of PlanD, CE/MN of DSD and DFEH
- Appendices V-1 to V-20** Public comments received during the statutory publication period
- Appendix VI** Advisory Clauses
- Drawing A-1** Layout Plan
- Drawing A-2** Drainage Plan
- Drawing A-3** Vehicular Access Plan
- Plan A-1** Location Plan with Similar Applications
- Plan A-2** Site Plan
- Plan A-3** Aerial Photo

**Plans A-4a      Site Photos**  
**and A-4b**

**PLANNING DEPARTMENT**  
**SEPTEMBER 2018**