

RNTPC Paper No. A/YL-ST/565
For Consideration by
the Rural and New Town
Planning Committee
on 17.1.2020

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/YL-ST/565

<u>Applicant</u>	: Mr. MAN Yuk Leung
<u>Site</u>	: Lots 127 (Part) and 214 (Part) in D.D. 102, San Tin, Yuen Long
<u>Site Area</u>	: About 32m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved San Tin Outline Zoning Plan (OZP) No. S/YL-ST/8
<u>Zoning</u>	: “Village Type Development” (“V”)
<u>Application</u>	: Renewal of Planning Approval for Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for renewal of planning approval for temporary eating place (outside seating accommodation (OSA) of a restaurant) for a period of 3 years. According to the Notes of the OZP, ‘Eating Place’ use within “V” zone is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The application site (the Site) is currently used for the applied use with valid planning permission under application No. A/YL-ST/499 (valid up to 3.2.2020). All approval conditions had been complied with.
- 1.2 The application is for the OSA of a restaurant located at ground floor of an existing village house adjoining the eastern boundary of the Site. The restaurant was subject of an application (No. A/YL-ST/492) approved by the Rural and New Town Planning Committee (the Committee) of the Board with conditions on 12.8.2016 (**Plan A-1**).
- 1.3 According to the applicant, the major parameters, site layout and operation details of the OSA are the same as those of the last approved application No.

A/YL-ST/499 (**Appendix Ib**). The OSA involves an area of about 32m² and a temporary shelter of not exceeding 2.7m high (**Appendix Id**) providing 12 seats. The operation hours are from 7:00 a.m. to 10:00 p.m. daily from Mondays to Sundays. The Site is accessible from Castle Peak Road – San Tin and is connected to the restaurant through its side entrance. A minimum width of 4.5m is maintained for the footpath to the immediate west of the Site for public passage (site photos on **Plans A-4a** and **A-4b**). The site plan and layout plan submitted by the applicant are at **Drawings A-1** and **A-2**.

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

- (a) Application form received on 2.12.2019 (Appendix I)
- (b) Supplementary planning statement received on 2.12.2019 (Appendix Ia)
- (c) Letter received on 5.12.2019 (Appendix Ib)
- (d) Further information (FI) received on 20.12.2019 providing layout plan showing fire service installations (FSIs) at the Site (*exempted from publication*) (Appendix Ic)
- (e) FI received on 8.1.2020 clarifying the height of the temporary shelter (*exempted from publication*) (Appendix Id)
- (f) FI received on 10.1.2020 clarifying the site area (*exempted from publication*) (Appendix Ie)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in section 3 of the supplementary planning statement at **Appendix Ia**, letter at **Appendix Ib** and FIs at **Appendices Ic** to **Ie**. They can be summarized as follows:

- (a) The applied use is a commercial use which meets the dining needs of local villagers. There is no Small House application at the Site. Approval of the application on a temporary basis for 3 years would neither frustrate the long-term planning intention of the “V” zone nor adversely affect the land available for village type developments.
- (b) The applied use is in line with the TPB PG-No. 15A in that the Site is a suitable place for the applied use; significant adverse impacts on traffic, drainage, sewage disposal, fire safety and environmental aspects from the applied use are not anticipated; and the applied use is located to the east of Tung Shan Temple which is a tourist attraction in the area and could serve as a catering facility for visitors and tourists.

- (c) The Site is situated in an established village environment where street shops and eating places are found. The applied use is compatible with the surrounding land uses.
- (d) The applied use would not reduce the width of the existing footpath. The pedestrian environment currently enjoyed by the public in that location would not be adversely affected. The remaining clear width of the footpath would be not less than 4.5m (**Drawing A-2**). The Site is not within an area of high pedestrian flow. Therefore, it allows enough space along the footpath for use of the pedestrians and residents.
- (e) The temporary shelter currently used at the Site which is about 3.6m in height will be replaced by a temporary shelter of not exceeding 2.7m high.
- (f) All the approval conditions of the previous planning approval had been complied with.

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 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 posting site notice and sending notice to the San Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C)

- 4.1 According to TPB PG-No. 34C, the criteria for assessing applications for renewal of planning approval are as follows:
 - (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
 - (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
 - (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;

- (d) whether the approval period sought is reasonable;
- (e) any other relevant considerations; and
- (f) the approval period for renewal should not be longer than the original validity period of the temporary approval.

Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C)

4.2 According to TPB PG-No. 12C, the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarized as follows:

- (a) the intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
- (b) within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including temporary uses) are however exempted from the requirement of EcoIA.

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)

4.3 According to TPB PG-No. 15A, the planning criteria for assessing planning applications for eating place use in the “V” zone in the rural areas are as follows:

- (a) the eating place use should not create any 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 also be given to any application which 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 New Territories Exempted House (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 20m of public roads constructed/maintained by the Highways Department or 15m 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 subject to any planning enforcement action.

6. **Previous Application**

- 6.1 The Site is the subject of a previous application for temporary eating place (OSA of a restaurant) submitted by the same applicant, which was approved by the Committee on 3.2.2017 for a period of 3 years, mainly on grounds that approval of the applied temporary use would not frustrate the long term planning intention of the “V” zone, the development was considered not incompatible with the surrounding land uses and the rural character of the area, the development was generally in line with TPB PG-No.15A and significant adverse impacts arising from the proposed development was not anticipated. All approval conditions of the previous application had been complied with.
- 6.2 Details of the application are summarized at **Appendix II** and its location is shown on **Plan A-1**.

7. **Similar Applications**

- 7.1 There are two similar applications for eating place use within the same “V” zone on the OZP. Application No. A/YL-ST/439 for eating place was approved by the Committee on 11.10.2013, mainly on the consideration that the development was considered not incompatible with the surrounding land uses, the eating place could meet some of the demand for eating place in the vicinity, and the applied use is generally in line with the TPB PG-Nos. 15A and 12C.
- 7.2 To the adjoining east of the Site is an application No. A/YL-ST/492 for eating place submitted by the applicant of the current application, which was approved with conditions by the Committee on 12.8.2016, mainly on the same consideration as mentioned above. According to the applicant, the OSA under current application is ancillary to the eating place approved under application No. A/YL-ST/492 (**Plan A-1**).

8. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plans A-4a and 4b)

8.1 The Site is:

- (a) accessible to Castle Peak Road – San Tin via a footpath to the west of the Site;
- (b) paved and currently used for the applied use with valid planning permission under application No. A/YL-ST/499 until 3.2.2020;
- (c) the OSA of an adjoining restaurant on the ground floor of an existing 2-storey village house approved under application No. A/YL-ST/492; and
- (d) located within the WBA of the Deep Bay Area.

8.2 The surrounding areas are intermixed with village houses, car parks, storage yards, shops and restaurants:

- (a) to the east and further east are village houses with restaurants on the ground floor, the San Tin Post Office, a toilet, a refuse collection point and car parks;
- (b) to the north and further north are structures for storage use, car parks and village houses, some of which have shops/vehicle repair workshop on the ground floor;
- (c) to the west are Tung Shan Temple and a school;
- (d) to the immediate south is a sizable tree on a raised planter; and
- (e) to the south and southeast across Castle Peak Road – San Tin are car parks, domestic structures, a vehicle repair workshop and village houses, some of which have shops/office on the ground floor.

9. Planning Intention

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. 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 the 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 Old Schedule Agricultural Lots 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 private land of Lot No. 214 in D.D. 102 is covered by Short Term Waiver (STW) No. 497 to permit structures for the purpose of 'Shop'.
- (c) The Site is accessible through private land from Castle Peak Road – San Tin. His office does not guarantee any right-of-way.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) The Site falls within the Village Environs of San Tin Heung (**Plan A-1**). According to his records, there is no Small House application being processed at the Site.
- (f) Should planning approval be given, the STW holders will need to apply to his office for modification of the STW conditions where appropriate. The lot owner(s) of the lot without STW will need to apply to his office to permit the structures to be erected or regularize any irregularity 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 of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application 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 LandsD.

Traffic

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

He has no comment from traffic engineering point of view. It is noted that there would be no vehicular access proposed to the Site and it is considered that the traffic flow for the Site would be negligible under the application.

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

Based on the information submitted by the applicant, he has no comment on the application from highways maintenance point of view. Should the application be approved, the applicant should be reminded that the application is approved on the understanding that there is and will be no vehicular access to/from the Site.

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

As the Site falls outside any administrative route protection boundary, gazetted railway scheme boundary or existing railway protection boundary of any railway systems, he has no comment on the application from railway development point of view.

Environment

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

- (a) The applicant is advised to follow the environmental mitigation measures as recommended in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize the potential environmental impacts on the adjacent area.
- (b) There is no environmental complaint case related to the Site in the past three years.

Landscape

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

It is noted that the Site does not fall within landscape sensitive zonings and no significant landscape impact is envisaged. As the applied use is unlikely to cause any significant adverse landscape and visual impact, it is opined that the landscape condition in the planning permission is not recommended, should the application be approved by the Board.

Drainage

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

- (a) He has no objection in principle to the application from drainage operation and maintenance point of view.
- (b) It is noted that the applicant implemented the drainage facilities on site under previous planning application No. A/YL-ST/499. The relevant drainage proposal and implementation works were considered satisfactory at that time. The applicant is requested to provide DSD a set of latest record photographs showing the completed drainage works (including the internal condition of the drains) with the corresponding photograph locations marked clearly on the approved drainage plan (the photo included in the supplementary information by the applicant is considered insufficient for the purpose). DSD will inspect the completed drainage works jointly with the applicant with reference to a comprehensive set of photographs.
- (c) His advisory comments are at **Appendix IV**.

Building Matters

10.1.8 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). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).
- (b) If the existing structures (not being a NTEH) are erected on leased land without the approval of the BD, they are 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) 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.
- (e) 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.

Nature Conservation

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

He has no comment on the application from nature conservation point of view.

Fire Services

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

He has no objection in principle to the application subject to the existing FSIs on the Site being maintained in efficient working order at all times.

Others

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

- (a) 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 and the operation of any business should not cause any obstruction to the public. A restaurant licensee/licence applicant should take notice of the main licensing criteria for OSA, covering matters such as legal right to use the land concerned, planning, building safety, fire safety, and traffic requirements, etc. When the applicant wishes to use an OSA for alfresco dining, he is required to obtain approval, among others, from the DFEH before commencement.
- (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 his own/at his expenses.

District Officer's Comments

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

His office has no comment on the application and the local comments shall be submitted to the Board directly, if any.

- 10.2 The following Government departments have no comment on or no objection to the application:
- (a) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
 - (b) Project Manager (West) (PM(W)), CEDD;
 - (c) Director of Electrical and Mechanical Services (DEMS);
 - (d) Director of Leisure and Cultural Services (DLCS);
 - (e) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
 - (f) Commissioner of Police (C of P).

11. Public Comment Received During Statutory Publication Period

On 10.12.2019, the application was published for public inspection. During the first three weeks of the statutory publication period, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of planning approval for temporary eating place (OSA of a restaurant) for a period of 3 years at the Site zoned "V". The restaurant located at the G/F of the village house is covered by another planning approval (Application No. A/YL-ST/492). The planning intention of the "V" zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. 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 the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. Although the temporary eating place (OSA of a restaurant) is not entirely in line with the planning intention of the "V" zone, it is an extension of an approved restaurant and it could serve the adjacent villages and meet the local demand for eating place in the vicinity. DLO/YL of LandsD has no adverse comment on the application and advises that there is no Small House application being processed at the Site. The temporary OSA use would not adversely affect the land availability for village type development within the "V" zone. In this regard, it is considered that renewing the approval of the application on a temporary basis for 3 years would not jeopardize the long term planning intention of the "V" zone.
- 12.2 The development is considered not incompatible with the surrounding land uses which are rural in character intermixed with village houses, post office, school, car parks, storages, domestic structures, shops and restaurants (**Plan A-2**).
- 12.3 The current application is for renewal of the permission under application No. A/YL-ST/499 for the same use for a further period of 3 years. The application is

in line with the TPB PG-No. 34C in that since the last approval, there has been no major change in planning circumstances, all the approval conditions under the previous approval had been complied with, there is no local objection to the use and the 3-year approval period sought is the same as in the previous application.

- 12.4 The Site falls within the WBA of the TPB PG-No. 12C and the guidelines specify that planning applications for temporary uses are exempted from the requirement of EcoIA. DAFC has no comment on the application from nature conservation point of view.
- 12.5 The application is generally in line with TPB PG-No. 15A in that the applied use is located at the fringe of Wing Ping Tsuen and is accessible from Castle Peak Road – San Tin. In view of the scale of the eating place, it would unlikely generate significant adverse traffic, environmental and sewerage 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. To mitigate potential environmental impacts on the surrounding area and address technical concerns of the departments, approval conditions restricting the operation hours as proposed by the applicant and on technical requirements are recommended in paragraphs 13.2 (a) to (d) below. Non-compliance with any of the approval conditions would result in revocation of the planning permission and unauthorized development on-site would be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.
- 12.6 The Site is the subject of one approved previous application (No. A/YL-ST/499) for the same use at the same site and all approval conditions have been complied with. The Committee has approved 2 applications (Nos. A/YL-ST/439 and 492) for similar eating place uses within the same “V” zone based on similar considerations. Approval of the current application is in line with the previous decisions of the Committee.
- 12.7 There is no public comment received during the statutory publication period.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12, the Planning Department has no objection to the application.
- 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 3 years, and be renewed from 4.2.2020 until 3.2.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 10:00 p.m. and 7:00 a.m., as proposed by the

applicant, is allowed on the site during the planning approval period;

- (b) the maintenance of existing FSIs implemented on the Site in efficient working order at all times during the planning approval period;
- (c) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (d) the submission of an as-built drainage plan and photographic records of the existing drainage facilities within **3** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 4.5.2020;
- (e) if any of the above planning conditions (a), (b) or (c) 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 the above planning condition (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.

[Except for updating of requirements for FSIs and drainage facilities in conditions (b) to (d) to accord with latest circumstances and departmental comments, all the other conditions are the same as those imposed under the previously approved application No. A/YL-ST/499.]

Advisory clauses

The recommended advisory clauses are attached 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 applied use is not in line with the planning intention of the "V" zone which is primarily intended for development of NTEHs/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.

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 received on 2.12.2019
Appendix Ia	Supplementary Planning Statement received on 2.12.2019
Appendix Ib	Letter received on 5.12.2019
Appendix Ic	FI received on 20.12.2019
Appendix Id	FI received on 8.1.2020
Appendix Ie	FI received on 10.1.2020
Appendix II	Previous Application
Appendix III	Similar Applications
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Plan
Drawing A-2	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2020**