

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

**APPLICATION NO. A/FLN/20**

<b><u>Applicant</u></b>	Ho Lam Enterprise Investment Limited represented by Land Supreme Surveyors Limited
<b><u>Sites</u></b>	Lots 539 (Part), 541 (Part) and 542 (Part) in D.D. 51, Sheung Shui, New Territories
<b><u>Site Area</u></b>	About 279.05 m <sup>2</sup> (Site A: about 144.14 m <sup>2</sup> ; Site B: about 134.91 m <sup>2</sup> )
<b><u>Lease</u></b>	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	Approved Fanling North (FLN) Outline Zoning Plan (OZP) No. S/FLN/2
<b><u>Zonings</u></b>	Site A: “Government, Institution or Community” (“G/IC”) ( <i>Restricted to a maximum building height of 5 storeys</i> )  Site B: “Open Space” (“O”) (about 78%) and “G/IC” (about 22%) ( <i>Restricted to a maximum building height of 8 storeys</i> )
<b><u>Application</u></b>	Proposed Temporary Shop and Services (Fast Food Shop) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (fast food shop) at the application sites (the Sites) (i.e. Sites A and B) (**Plans A-1**) for a period of 3 years. Whilst Site A entirely falls within the “G/IC” zone on the approved FLN OZP No. S/FLN/2, Site B mainly falls within “O” zone (about 78%), with a portion in the “G/IC” zone (about 22%) on the same OZP (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use within both “G/IC” and “O” zones, which requires planning permission from the Town Planning Board (the Board). The Sites are

hard-paved with two existing temporary structures currently under retrofitting works.

- 1.2 According to the applicant, the Sites involve a total area of about 279.05 m<sup>2</sup> (i.e. about 144.14 m<sup>2</sup> for Site A and about 134.91 m<sup>2</sup> for Site B). The applicant will make use of two existing single-storey temporary structures (of about 3.3m-3.7m high) with a total floor area of about 164.3 m<sup>2</sup> at the Sites for the proposed fast food shops, which are intended to provide take-away food to the local residents in the area. The layout plans of the proposed fast food shops at Sites A and B are shown in **Drawings A-1** and **A-2** respectively. The Sites are accessible from Lung Sum Avenue via an existing pedestrian access branching from an unnamed local track (**Plan A-1**). The proposed operation hours will be from 6:30am to 11:00pm daily, including public holidays.
- 1.3 In support of the application, the applicant has submitted the following documents:
  - (a) Application Form with attachments received on **(Appendix I)**  
16.10.2019
  - (b) Further Information (FI) dated 27.11.2019 **(Appendix Ia)**  
(*exempted from publication*)
  - (c) FI dated 6.12.2019 **(Appendix Ib)**  
(*exempted from publication*)

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

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

- (a) There are numerous squatters and temporary structures occupied by factories and local residence in the southern and northern banks of Ng Tung River. The proposed fast food shops would serve the need of local people (including local residents and workers) in the area by providing take-away food.
- (b) The two structures for the proposed use at the Sites are existing structures of only one storey. They are compatible with the surrounding environment, and would not generate any adverse noise, dust or drainage impacts.
- (c) The applicant is committed to installing sewage tanks (with total capacity of 7.5 m<sup>3</sup>) for the proposed fast food shops such that sewage and wastewater generated will be collected in these tanks and pumped away regularly from the Sites by pump truck.
- (d) The Sites fall within the boundary of Remaining Works Phase of the Kwu Tung North (KTN)/FLN New Development Area (NDA) development, which is not likely to be developed until around 2023/2024. The proposed use is considered the best use of the Sites, otherwise the premises would remain vacant and cannot serve the local residents.

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

The applicant is not the current land owner but has complied with the requirements as set out in the Town Planning Board (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 notice at the Sites and the noticeboard of Sheung Shui District Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

**4. Background**

4.1 The Sites fall within the boundary of Remaining Works Phase of the KTN/FLN NDA development. According to Civil Engineering and Development Department (CEDD), the land resumption and clearance as well as site formation and infrastructural works for the Remaining Works Phase will commence in 2024 the earliest. The Sites and their adjoining areas would be developed into the future ‘Civic and Recreation Area’, comprising the Central Park within the “O” zone, linking up with social welfare and recreational facilities zoned “G/IC” by green spine from the Central Park towards the riverside promenade (**Plan A-1**).

4.2 The Sites are not subject to any active planning enforcement case.

**5. Previous Application**

There is no previous application in respect of the Sites.

**6. Similar Application**

There is no similar application for temporary shop and services within the same “G/IC” and “O” zones on the OZP.

**7. The Sites and Their Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3, and site photos on Plans A-4a to A-4c)**

7.1 The Sites:

- (a) are hard-paved with two existing single-storey temporary structures currently under retrofitting works;
- (b) are located amidst an area with works in progress, where a few pavilions and temporary structures (which have not been occupied for any specific uses at the time of site inspection) are erected. Some promotional banners in relation to carnival use (including shops, flea market, local food street, canteen/outdoor dining area, game booths,

children's amusement area, etc.) are found on site; and

- (c) are accessible from Lung Sum Avenue via an existing pedestrian access branching from an unnamed local track.

7.2 The surrounding areas have the following characteristics:

- (a) to its north are drainage maintenance access and Ng Tung River, and to its northwest are an open storage yard and container-converted site offices and storages;
- (b) to its east are a few domestic dwellings/structures and vacant land;
- (c) to its south are vacant land; and
- (d) to its west are an area for parking of vehicles, some domestic dwellings/structures and vacant land.

7.3 A site to the immediate north of Site B was subject to planning enforcement action (No. E/NE-FLN/006) against unauthorized development (UD) involving use for barbecue area (**Plan A-2**). An Enforcement Notice (EN) was issued on 6.12.2018 requiring discontinuation of the UD by 6.3.2019. Subsequent site inspection revealed that the UD was discontinued and the Compliance Notice (CN) was issued on 30.9.2019. Recent site inspection also revealed that the barbecue area had ceased operation.

## **8. Planning Intentions**

8.1 The planning intention of the "G/IC" zone is primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organisations providing social services to meet community needs, and other institutional establishments.

8.2 The planning intention of the "O" zone is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public.

## **9. Comments from Relevant Government Departments**

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

## **Land Administration**

### 9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N of LandsD):

- (a) the Sites comprise Lots 539 (Part), 541 (Part) and 542 (Part) in D.D. 51. The lots are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make its own arrangement for acquiring access. The Government shall accept no responsibility in such arrangement, and there is no guarantee that any adjoining Government land will be allowed for the vehicle access of the proposed use;
- (b) the applicant should note that:
  - (i) the existing two structures on the Sites were erected without approval from LandsD;
  - (ii) apart from the said two structures erected on the Sites, there are more than 40 structures erected on the application lots (Lots 539, 541 and 542 all in D.D. 51) as well as their adjoining lots (Lots 533 RP, 534 RP, 540, 543 and 544 all in D.D. 51);
  - (iii) some of the other existing structures in Lot 542 are occupied by various families/individuals for domestic purpose. According to the Squatter Control Unit of LandsD, some of them are squatter control surveyed structures. It is also found that two of the said domestic structures have extended on the adjoining Government land; and
  - (iv) the structures mentioned in para. (i) to (iii) above are not acceptable under the Lease concerned. LandsD reserves the right to take enforcement actions against them; and
- (c) if the planning application is approved, the owner(s) of the lots concerned shall apply to LandsD for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fees as considered appropriate by LandsD.

## **Traffic**

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

- (a) he has no comment on the application from traffic engineering perspective, having regard to the applicant's FI on the estimated vehicular trip rate from/to the Sites, the dimension of the vehicle to be deployed for delivering foodstuff and the width of the local track leading to the Sites (**Appendix Ia**); and
- (b) the local track leading to the Sites is not managed by Transport Department (TD). The land status, management and maintenance responsibilities of the local track should be clarified with the relevant lands and maintenance authorities accordingly.

## **Environment**

### 9.1.3 Comments of the Director of Environmental Protection (DEP):

- (a) he has no objection to the application;
- (b) there is no existing public sewer available for connection, while the Sites are not within water gathering ground (WGG). The applicant is reminded to properly handle any sewage and wastewater generated from the operation of fast food shops. Drainage outlets provided in covered areas, such as office, storage room, eating place, etc. should be discharged to the sewage treatment facility. All wastewater collected from a kitchen, including that from basins, sinks and floor drains, should be discharged via a grease trap capable of providing at least 20 minutes retention during peak flow. Details of a typical grease trap are given at Appendix C of Practice Note for Professional Persons ProPECC PN 5/93 "Drainage Plans Subject to Comment by the Environmental Protection Department (EPD)" for reference;
- (c) it is noted from Agriculture, Fisheries and Conservation Department (AFCD) that Ng Tung River is located to the north of the Sites. The applicant is advised to put in place necessary precautionary/pollution control measures to prevent any pollution of nearby natural stream/water courses during the construction and operation stage of the proposed use;
- (d) regarding the operation of the fast food shops, the applicant is also reminded that oily fume and cooking odour emissions from cooking processes are one of the air pollutants which come under the control of the Air Pollution Control Ordinance (APCO). It is necessary for owners and operators of the fast food shop to

observe the APCO and to minimize the oily fume and cooking odour emissions and prevent causing any objectionable odour noticeable at any sensitive receptor in the vicinity or creating other forms of pollution. Details could be referred to the EPD's pamphlet "Pamphlet on Control of Oil Fume and Cooking Odour from Restaurants and Food Business"; and

- (e) in the past three years, DEP has received two substantiated complaints (one related to waste in 2016 and one related to noise in 2018) in relation to the barbeque area to the immediate north of Site B (**Plan A-2**) which had ceased operation.

### **Nature Conservation**

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

- (a) he has no comment on the application from nature conservation point of view; and
- (b) should the application be approved, the applicant should be reminded to perform good site practice so as not to pollute the Ng Tung River to the north of the Sites.

### **Future Development**

9.1.5 Comments of the Project Manager/North, Civil Engineering and Development Department (PM/N of CEDD):

he has no comment on the application from KTN/FLN NDA project interface point of view.

### **Food and Environmental Hygiene**

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

- (a) he has no objection to the application provided that relevant food licence/restricted food permit should be obtained from Food and Environmental Hygiene Department (FEHD) in accordance with the Public Health and Municipal Services Ordinance (Cap. 132) if food business/sale of restricted food is involved on the Sites;
- (b) no environmental nuisance should be generated to the surroundings in connection with the operation of any commercial/trading activities. Furthermore, the operation of any business should not cause any obstruction or environment nuisance in the vicinity; and
- (c) any waste generated from the commercial/trading activities is regarded as trade waste, and the operator/tenant should handle on

their own/at their expenses.

### **Drainage**

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

- (a) he has no objection in-principle to the application;
- (b) should the application be approved, the conditions requiring the submission of a drainage proposal and the 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 in the planning approval, in order to ensure the proposed development would not cause adverse drainage impact to the adjacent area;
- (c) the Sites are within an area where no public sewerage connection is available; and
- (d) the existing vehicular track at the southern bank of Ng Tung River (**Plan A-1**) will be taken over by DSD for exclusive use as drainage maintenance access, and the applicant shall note that no public vehicular access shall be allowed on the said track.

### **Water Supply**

9.1.8 Comments of the Chief Engineer/New Territories East, Water Supplies Department (CE/NTE of WSD):

he has no objection to the application. His detailed comments are at **Appendix III**.

### **Landscape**

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

- (a) he has no objection to the application from the landscape planning perspective;
- (b) with reference to the aerial photo taken in 2018, the Sites are situated in the area of rural landscape character. The surrounding area of the Sites comprises vacant land and scattered tree groups. The proposed development is considered not incompatible with existing landscape setting in the proximity; and
- (c) according to his site visit conducted on 3.10.2019, existing buildings were found at the Sites and no existing tree was found within the Sites. Further significant adverse landscape impact arising from the development is not anticipated.



### **Building Matters**

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

- (a) if the existing structures are erected on leased land without approval of the Building Authority (BA) (not being a New Territories Exempted House), they are unauthorized under the BO and should not be designated for any approved use under the application;
- (b) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Sites, prior approval and consent of the BA should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
- (c) for UBW erected on leased land, enforcement action may be taken by BA 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 Sites under the BO;
- (d) the Sites do not abut on a specified street of not less than 4.5m wide, and its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulations at the building plan submission stage; and
- (e) the Sites 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 respectively.

### **Fire Safety**

#### 9.1.11 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 being provided to his satisfaction;
- (b) in consideration of the design/nature of the proposal, fire service installations are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed fire service installations 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 fire service installations to be installed should be clearly marked on the layout plans; and

- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the BO, 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/North, Home Affairs Department (DO/N of HAD):

he has consulted the locals from 1.11.2019 to 19.11.2019.

- (a) the incumbent North District Council (NDC) member of Tin Ping East Constituency, the representative of 石湖新村 (河北段) 街坊組, the Indigenous Inhabitant Representative (IIR) of Sheung Shui Heung objected to the application mainly on the grounds that:
  - (i) there is only one narrow road nearby serving as the access of the villagers. The proposed fast food shops would worsen the traffic congestion, creating dangers to the pedestrian safety and nuisance to the villagers by generating additional pedestrian and traffic flow;
  - (ii) the proposed development would cause adverse impact on the environment, including the water quality of Ng Tung River and the farm produce of the villagers; and
  - (iii) the Sites are not suitable for service industry;
- (b) the Chairman of Fanling District Rural Committee (RC), the Chairman of Sheung Shui District RC, the incumbent NDC member of Fung Tsui Constituency-cum-IIR of Sheung Shui Heung, the other IIR of Sheung Shui Heung, the Owners' Corporation (OC) Chairman of Noble Hill and the OC Chairman of On Kwok Villa had no comment on the application; and
- (c) 路德會石湖社區發展計劃中心, 馬屎埔環境關注組 and 石湖新村街坊組 did not reply to the consultation.

9.2 The following Government departments have no objection to/adverse comment on the application.

- (a) Chief Estate Surveyor/Acquisition, LandsD (CES/A of LandsD);
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE of HyD);
- (c) Director of Electrical and Mechanical Services (DEMS); and

(d) Commissioner of Police (C of P).

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

- 10.1 On 25.10.2019, the application was published for public inspection. During the three-week statutory public inspection period, a total of 444 comments were received.
- 10.2 Of which, 431 from the local residents and members of public in standard letters with similar format (**Appendix II-1**) supports the application mainly on the ground that the proposed development at the Sites would provide an extra option for purchasing food and beverage in the area which would benefit not only the local residents but also the visitors to the nearby tourist destinations.
- 10.3 11 from nearby residents and members of public object to the application (**Appendices II-2 to II-12**) as the proposed development would cause environmental nuisance (including air and noise pollution) to the surrounding area, and also bring about additional traffic flow to nearby roads of limited capacity and traffic congestion in the area. Pedestrian safety may also be adversely affected. There is also concern over placing a fast food shop amidst the vegetated green area planned for community use. Another two members of public indicate no comment on the application (**Appendices II-13 to II-14**). A full set of public comments would be deposited at the meeting for Members' inspection.

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

- 11.1 The application is for proposed temporary shop and services (fast food shop) at the Sites for a period of 3 years. According to the applicant, two existing single-storey temporary structures with a total floor area of about 164.3 m<sup>2</sup> at the Sites will be used for the proposed fast food shops, which are intended to provide take-away food to the local residents in the area. Whilst Site A entirely falls within the "G/IC" zone on the approved FLN OZP, Site B mainly falls within "O" zone (about 78%), with a portion in the "G/IC" zone (about 22%) on the same OZP (**Plan A-1**). The fast food shop use is not entirely in line with the planning intention of "G/IC" and "O" zones, which are respectively primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory, and for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public. Nevertheless, the Sites fall within the boundary of Remaining Works Phase of the KTN/FLN NDA development, with scheduled land resumption and site formation works commencing in 2024 the earliest. PM/N of CEDD has no comment on the application from KTN/FLN NDA project interface point of view. As such, approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the "G/IC" and "O" zones.
- 11.2 In view of its small scale, the proposed temporary fast food shops are not

incompatible with the surrounding land uses which are mainly an area for parking of vehicles, a few domestic dwellings/structures and vacant land (**Plan A-2**). There are also a few pavilions and temporary structures which have not been occupied for any specific uses at the time of site inspection. Relevant departments consulted including C for T, DEP, DAFC, CE/MN, DSD and CTP/UD&L of PlanD have no objection to/no adverse comment on the application from traffic, environmental, nature conservation, drainage and landscape aspects. It is anticipated that the proposed development would not have significant adverse traffic, environmental, drainage and landscape impacts on the surrounding areas. To mitigate potential environmental impacts on the surrounding areas, approval condition restricting the operation hours as proposed by the applicant is recommended in paragraph 12.2 (a) below. The technical requirements of CE/MN of DSD and D of FS could be addressed by approval conditions in paragraphs 12.2 (b) to (f) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Sites will be subject to enforcement action by the Planning Authority.

- 11.3 Regarding the the local views conveyed by DO/N of HAD in paragraph 9.1.12 and public comments in paragraph 10, the departmental comments, and planning considerations and assessments as stated in paragraphs 11.1 to 11.2 above are relevant.

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

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local views conveyed by DO/N of HAD in paragraph 9.1.12 and the public comments in paragraph 10, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 13.12.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### *Approval conditions*

- (a) no operation between 11:00 p.m. and 6:30 a.m., as proposed by the applicant, is allowed on the Sites during the planning approval period;
- (b) 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 **13.6.2020**;
- (c) in relation to (b) above, the implementation of drainage proposal with 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **13.9.2020**;

- (d) in relation to (c) above, the implemented drainage facilities on the Sites shall be maintained at all times during the planning approval period;
- (e) the submission of proposal for fire service installations and water supplies for fire-fighting 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 **13.6.2020**;
- (f) in relation to (e) above, the implementation of proposal for fire service installations and water supplies for fire-fighting 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 **13.9.2020**;
- (g) if any of the above planning conditions (a) or (d) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked without further notice; and
- (h) if any of the above planning conditions (b), (c), (e) or (f) 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 attached at **Appendix III**.

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

the proposed development is not in line with the planning intentions of the "G/IC" and "O" zones, which are respectively primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory, and for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public. No strong planning justification has been given in the submission to justify a departure from the planning intentions, 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 the 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**

<b>Appendix I</b>	Application Form with attachments received on 16.10.2019
<b>Appendix Ia</b>	Further Information (FI) dated 27.11.2019
<b>Appendix Ib</b>	FI dated 6.12.2019
<b>Appendices II-1 to II-14</b>	Public Comments
<b>Appendix III</b>	Advisory Clauses
<b>Drawing A-1</b>	Layout Plan of Site A
<b>Drawing A-2</b>	Layout Plan of Site B
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4c</b>	Site Photos

**PLANNING DEPARTMENT  
DECEMBER 2019**