

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/46

<u>Applicant</u>	Mr. Ng Sze Kwan represented by R-riches Property Consultants Limited
<u>Site</u>	Lot 1391 RP (Part) in D.D. 95, Ho Sheung Heung, Sheung Shui, New Territories
<u>Site Area</u>	53.6m ²
<u>Lease</u>	Old Schedule lot held under the Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2
<u>Zoning</u>	“Village Type Development” (“V”)
<u>Application</u>	Proposed Temporary Shop and Services for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services at the application site (the Site) for a period of 3 years. The Site falls within an area zoned “V” on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ use is a Column 2 use¹ within the “V” zone which requires permission from the Town Planning Board (the Board).
- 1.2 The Site is in U-shape encircling an existing New Territories Exempted House (NTEH) on three sides. It is mainly the front gate outdoor area and backyard of the existing house. There is an existing structure of one storey extended from the house covering the western and southern parts of the Site and the eastern part is covered by a canopy (**Plan A-4b**). The Site is separated from the house by only 100mm. It is not the subject of any previous planning application.
- 1.3 According to the applicant, the Site would be used for store selling dry goods and convenience goods. The existing structure and canopy extending from the house would be demolished, and a new stand-alone 1-storey (2.7m) enclosed structure

¹ According to the Notes of the OZP for “V” zone, ‘Shop and Services’ use on the ground floor of a NTEH is always permitted.

covering the southern and western part of the Site with a GFA of 32.4m² and a canopy of 21.2m² at the eastern part of the Site are proposed (**Drawings A-1 and A-2**). Food and beverages will not be sold. No toilet and kitchen will be provided and the operator of the store will use the toilet of the adjoining house. The Site is accessible by foot from a local vehicular track leading to Ho Sheung Heung Pai Fung Road (**Plan A-2a**). No vehicular traffic will be generated by the proposed store. There would be no parking provision within the development. There is a local footway/vehicular access in front of the NTEH to nearby houses and part of it is within the eastern part of the Site (**Plan A-4b**). To avoid blocking the local access, the structure on that part of the Site is proposed to be a canopy. The proposed operation hours are from 7:00 a.m. to 6:00 p.m. daily. There will be 2 staffs on site and in maximum 5 visitors per hour.

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

- (a) Application form with attachments received on 23.5.2018 (**Appendix I**)
- (b) Further Information (FI) dated 15.6.2018 (**Appendix Ia**)
- (c) FI dated 21.6.2018 (**Appendix Ib**)
- (d) FI dated 12.7.2018 (**Appendix Ic**)

1.5 The application was originally scheduled for consideration by the Committee on 20.7.2018. On 20.7.2018 and 5.10.2018, the Committee agreed to defer a decision on the application as requested by the applicant to allow time for the applicant to prepare FI to address departmental comments. Since the last deferment on 5.10.2018, no further information has been submitted by the applicant. The application is therefore scheduled for consideration at this meeting.

2. Justifications from the Applicant

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

- (a) The proposed store will provide daily goods to serve nearby residents.
- (b) The G/F of the adjoining house is for residential use and will remain for the same use. Consent has been obtained for staff of the store to use the toilet in the G/F of the adjoining house, if needed. The proposed store selling dry goods and convenience goods is compatible with surrounding land uses. There would be no filling or excavation of land in order to reduce the adverse environmental impact on the surrounding areas. There would be no parking provision within the development in order to reduce the adverse traffic impact on the surrounding areas. Goods will be hand carried by the applicant by taking public light bus from Sheung Shui to Ho Sheung Heung and subsequently walking to the Site. Extra vehicular traffic will not be anticipated.
- (c) Access to ground and the above floors of the adjoining house can be made at the eastern and northern² part of the said house respectively. The operation of the

² During site inspection, it is found that access to the above floors of the adjoining house is within the western part of the Site (**Plan A-4b**).

proposed development will not block the access to the aforesaid floors. With regard to the existing passage/lane to the nearby houses (**Drawing A-2**), the operation of the proposed store will not block the access.

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 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 at the Site and sending notice to the Sheung Shui District Rural Committee (SSDRC) by local registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not a subject of any active enforcement case. Should there be sufficient evidence to prove that the current use on the Site constitutes an unauthorized development under the Town Planning Ordinance, enforcement action would be taken.

5. Previous Application

There is no previous application involving the Site.

6. Similar Application

There is no similar application for ‘shop and services’ use within the same “V” zone.

7. The Site and Its Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3, A-4a and A-4b)

7.1 The Site is:

- (a) in U-shape surrounding an existing NTEH with separation of 100mm;
- (b) the entrance to the G/F of the NTEH is at the eastern part of the Site (Photos 2 and 3 on **Plan A-4a**), while the access to the 1/F and 2/F of the NTEH is at the western part of the Site (**Plan A-2b** and Photo 5 on **Plan A-4b**);
- (c) currently hard paved, western and southern part covered by a structure and eastern part covered by a canopy extended from the NTEH; and
- (d) accessible by foot from a local vehicular track leading to Ho Sheung Heung Pai Fung Road.

7.2 The surrounding areas have the following characteristics:

- (a) the Site is closely surrounded by village houses for domestic use;
- (b) to the further west, south-west and north-west are Residential Care Homes for the Disabilities (RCHDs), vacant land and car parks; and
- (c) to the further east, south-east and south are mainly warehouse and open storage uses.

8. Planning Intentions

The planning intention of the “V” zone is to designate both existing recognised 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 infrastructure 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.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application and/or the public comment received are summarized as follows:

Land Administration

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

- (a) the application is not supported by his office from land management point of view;
- (b) the Site comprises a private lot, namely Lot No. 1391 RP (Part) in D.D. 95. The lot is an Old Schedule lot under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The existing house on Lot No. 1391 RP is covered by a Building Licence granted under the New Territories Small House Policy for erection of a NTEH for non-industrial purposes;
- (c) it is noted that:
 - (i) unauthorized structures carrying no status were extended from the said NTEH on Lots No. 1391 RP, 1386 RP and 1413 RP in D.D. 95 within/adjoining the Site;
 - (ii) the dimensions of the aforesaid structures extending from the NTEH has exceeded the ones prescribed under the Buildings Ordinance (Application to the New Territories), Chapter 121, and the case has been referred to the Buildings Department

(BD);

- (iii) the aforesaid structures are not acceptable under the Leases concerned. His office reserves the right to take lease enforcement and land control actions against the aforesaid structures;
- (iv) unauthorized occupation of the adjoining Government land was also detected; and
- (d) the applicant should demolish the aforesaid unauthorised structures at his own cost, and stop occupying the Government land concerned.

Traffic

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

- (a) he considers that the application can be tolerated from traffic engineering viewpoint based on the applicant's FI dated 4.7.2018 (**Appendix Ic**) confirming that no vehicular traffic will be generated or attracted to the Site; and
- (b) the above-mentioned village track and the local access in front of the subject NTEH are not under TD's management. The applicant should check the land status of the access with the lands authority, and clarify its management and maintenance responsibilities with the relevant lands and maintenance authorities accordingly.

9.1.3 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

he has no comment on the application. The vehicular access leading from Ho Sheung Heung Road to the Site is not maintained by his department.

Environment

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

- (a) it is noted that there will be no toilet and kitchen facilities on site and the operator of the proposed shop and services has obtained consent to use the toilet of the adjoining NTEH if needed. As there will be no sewage generation from the proposed use, hence, there is no need for the Site to connect to the existing septic tank of the adjoining NTEH for sewage treatment; and
- (b) should the application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites'.

Drainage

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

- (a) he has no objection in principle to the application from the public drainage point of view; and
- (b) should the application be approved, a condition requiring the submission and implementation of drainage proposal for the Site should be included to ensure that it will not cause adverse drainage impact to the adjacent areas. The general requirements in the drainage submission are at **Appendix III**.

Building Matters

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

- (a) Before any new building works are to be carried out on the site, the prior approval and consent of BD should be obtained, otherwise they are Unauthorized Building Works (UBW);
- (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; and
- (c) the applicant should be reminded that the granting of any planning approval should not be construed as an acceptance of any existing building works or Unauthorized Building Works on the Site under the Building Ordinance and his detailed comments are at **Appendix III**.

Fire Safety

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

he has no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to the satisfaction of his department. Emergency Vehicular Access (EVA) arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by BD. Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans. He has no specific comment on the public comment regarding the lane/passage to the nearby houses.

Water Supply

9.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

he has no objection to the application. For provision of water supply to the

proposed development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

District Officer's Comments

9.1.9 Comment of the District Officer/North, Home Affairs Department (DO/N, HAD):

he has consulted the locals from 13.6.2018 to 26.6.2018. One of the Indigenous Inhabitant Representatives (IIRs) of Ho Sheung Heung supports the application. The Chairman of SSDRC cum the IIR of Ho Sheung Heung, the North District Council (NDC) member of the subject Constituency and the Resident Representative (RR) of Ho Sheung Heung have no comment on the application.

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

- (a) Commissioner of Police (C of P); and
- (b) Director of Electrical and Mechanical Services (DEMS).

10. Public Comments Received During Statutory Publication Period

On 5.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 26.6.2018, a total of 3 public comments were received (**Appendices IIa to IIc**). One comment from a general public has no comment on the application. The remaining 2 comments from a general public and a group of nearby villagers with 14 signatures raise concerns/objection to the application mainly on the grounds that:

- (a) Ho Sheung Heung is a village and residential area. Commercial uses will adversely affect the existing environment of the village;
- (b) the area where the Site sits at is a quiet neighbourhood with 10-minute walking distance away from the village centre. Should the application be approved, there will be increasing strangers and vehicles entering the neighbourhood causing traffic, parking and road safety problems;
- (c) the proposed development will block the narrow lane/passage which is the major pedestrian pathway for the houses nearby and cars can no longer enter. It will create fire safety and security concerns and inconvenience to nearby residents;
- (d) there will be noise pollution in this densely clustered area especially the opening time of the proposed development is 7:00 a.m. to 6:00 p.m. daily; and

- (e) the canopies covering the Site are newly constructed. It should be considered as unauthorized building works (UBW), of which BD should take enforcement actions for clearance. It is unreasonable and unacceptable for an application involving illegal structure to be approved.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary shop and services for a period of 3 years at the Site, which is zoned “V” on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). The planning intention of “V” zone is to designate both existing recognised 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. Selected commercial (including ‘shop and services’) and community uses serving the needs of the villagers and in support of the village development are always permitted on the G/F of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. While the proposed store may serve the needs of the villagers, the Site is considered not suitable for such use by nature of its configuration and location, as elaborated in the following paragraphs.
- 11.2 The Site in U-shape encloses the adjoining NTEH by 3 sides (**Plan A-2a**). Closely surrounded by the adjacent houses, the Site is actually the narrow vacant spaces among the houses serving as the passageway and breathing space for the house cluster. According to the applicant, the existing structure/canopy on the Site (**Plans A-4a** and **A-4b**) will be demolished, but similar new structures (1 storey and 2.7m height) would be erected for the proposed store use including an enclosed structure covering the western and southern parts of the Site and a canopy covering the eastern part of the Site (**Drawing A-2**). The store will use the toilet of the adjoining house.
- 11.3 The Site has a small area of 53.6m², comprising three parts with a narrow width of about 0.5 m to 3 m. Given its small size and configuration, the Site is considered not a suitable location for provision of shop and service use. If there is proven demand for such use, such use should be preferably provided at the ground floor of NTEHs, particularly the adjoining NTEH, which is always permitted under the “V” zone of the OZP. For the surrounding environment, the proposed development would result in the G/F of the adjoining NTEH being enclosed by the new structures by three sides, with the remaining side facing the back of another house, and take up part of existing passageway and breathing space in the house cluster. Given its close proximity to the concerned NTEH and shared use of toilet with the residential units, the proposed store may adversely affect the living environment of the house and surrounding areas and cause nuisance to the residents. Moreover, the eastern part of the Site is being used by residents of nearby houses as pedestrian/vehicular access (**Plan A-4a**), and the access to 1/F and 2/F of the adjoining NTEH is within the proposed enclosed structure at the western part of the Site. The applicant has not addressed how the existing accesses to the adjoining NTEH and other houses will not be adversely affected by the proposed development or operation of the store.
- 11.4 Although TD, EPD, DSD and FSD have no adverse comment on the application from traffic, environmental, drainage and fire safety points of view, DLO/N, LandsD, advises that the existing structures extended from the NTEH has exceeded the ones

prescribed under the Buildings Ordinance (Application to New Territories), and are not acceptable under the leases concerned, and therefore does not support the application from land management point of view.

- 11.5 Land in “V” zone is mainly intended for development of Small Houses. The proposed development of one-storey structure for store use at the existing vacant space among the village cluster is considered undesirable for the reasons as mentioned above and should not be encouraged. Approval of the application would set an undesirable precedent for similar applications, the cumulative effect of approving such similar applications would result in a general degradation of the living environment of the village area.
- 11.6 There are 2 public comments raising concerns/objection to the application mainly on the grounds of adverse traffic, local access, road safety and noise impacts. Relevant Government departments’ comments and planning considerations set out in paragraphs 11.1 to 11.4 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 and public comments in paragraphs 9.1.9 and 10, 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 “Village Type Development” zone which is to designate both existing recognised 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. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis; and
 - (b) approval of the application would set an undesirable precedent for similar applications within the “V” zone. The cumulative effect of approving such applications would result in a general degradation of the living environment of the area.
- 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 3 years until **4.1.2022**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 6:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the 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 **4.7.2019**;

- (c) in relation to (b) 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 4.10.2019;
- (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 4.7.2019;
- (e) in relation to (d) 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 4.10.2019;
- (f) if the above planning condition (a) is not complied with during the planning approval period, the approved hereby given shall cease to have effect and shall be revoked without further notice; and
- (g) if any of the above planning conditions (b), (c), (d) or (e) 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**.

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 received on 23.5.2018
Appendix Ia	FI dated 15.6.2018
Appendix Ib	FI dated 21.6.2018
Appendix Ic	FI dated 12.7.2018
Appendices IIa to IIc	Public Comments
Appendix III	Advisory Clauses
Drawing A-1	Location Plan

Drawing A-2	Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Lot Index Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2019**