

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/480

<u>Applicant</u>	Kam Tsin Village Ho Tung Transport Company Limited
<u>Site</u>	Shop No. 1, 8th Lane, Kam Tsin Village, Lot 2341 (Part) in D.D. 92 and Adjoining Government Land, Sheung Shui
<u>Site Area</u>	38.16 m ² (about) (including about 8.8 m ² of Government Land)
<u>Lease</u>	New Grant No. 8654 for building purpose
<u>Plan</u>	Approved Kwu Tung South Outline Zoning Plan No. S/NE-KTS/16
<u>Zoning</u>	“Government, Institution or Community” (“G/IC”)
<u>Application</u>	Shop and Services (Fast Food Shop)

1. The Proposal

- 1.1 The applicant seeks planning permission for shop and services (fast food shop) use at a single-storey village house at the application site (the Site). The Site falls within an area zoned “G/IC” on the approved Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/16 (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ use is a Column 2 use within the “G/IC” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission.
- 1.2 The Site is the subject of a previous planning application (No. A/NE-KTS/323) submitted by the same applicant for the same use. On 15.6.2012, the Rural and New Town Planning Committee (the Committee) approved the application on a temporary basis for a period of 5 years until 15.6.2017, instead of permanent approval sought. All approval conditions of the application have been complied with. The permission lapsed on 16.6.2017. The layout of the current application is the same as the previous application.
- 1.3 According to the applicant’s submission, the fast food shop at the Site is to serve the villagers of Kam Tsin village and nearby workers and no seating would be provided within the Site. The operation hours are from 7:00 a.m. to 4:00 p.m. from Monday to Saturday only. The Site is accessed via Kam Tsin

Road. The shop owner buys goods at Sheung Shui and returns to the shop by taxi, hence there is no need for loading/unloading arrangement. A floor plan is at **Drawing A-1**.

- 1.4 In support of the application, the applicant has submitted Application Form with attachments (**Appendix I**) which was received on 14.8.2019.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendix I** and are summarised as follows:

- (a) The fast food shop is for selling takeaway food such as siu mai, hot dogs, chicken wings etc. to the villagers in Kam Tsin Village and nearby workers.
- (b) There is no loading/unloading arrangement and the applied use will not affect the environment and 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 Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31) by sending a notice to the land owners by registered post on 23.7.2019. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines ‘Application for Development/Redevelopment within “G/IC” Zone for Uses other than Government, Institution or Community (GIC) uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 16) is relevant to this application. In general, sites zoned “G/IC” are intended to be developed or redeveloped solely for GIC uses unless it can be established that the provision of GIC facilities would not be jeopardised and the concerned government departments have no objection to releasing a particular “G/IC” site or a certain part of it for non-GIC uses. Other relevant extracts of TPB PG-No.16 are as follows:

- (a) the proposed development should not adversely affect the provision of GIC facilities in the district on a long-term basis;
- (b) the proposed development should be compatible in land-use terms with the GIC uses on the site and the surrounding areas;
- (c) the scale and intensity of the proposed development should be in keeping with that of the adjacent area;
- (d) the proposed development should be sustainable in terms of the capacities of

existing and planned infrastructure;

- (e) the proposed development should not cause or be susceptible to adverse environmental impacts; and
- (f) all other statutory or non-statutory requirements of relevant government departments should be met.

5. **Background**

- 5.1 The Site is not subject to any active enforcement action. Should there be sufficient evidence to form an opinion of unauthorized development under the Town Planning Ordinance at the Site, enforcement action would be instigated as appropriate.
- 5.2 The Site falls within the south-eastern part of a large “G/IC” zone (**Plan A-1**). The “G/IC” zone was first designated on the draft Kwu Tung South Development Permission Area (DPA) Plan No. DPA/NE-KTS/1 gazetted on 12.7.1991 to reflect some existing GIC uses in the area including a kindergarten, a primary school, a secondary school and a house of prayer (**Plan A-2**). Four village houses (including the village house under the current application) encircled by the schools/kindergarten on three sides were included into the “G/IC” zone. In other words, the village house was in existence before the Site was first zoned “G/IC” on the DPA Plan in 1991. There has not been any planned GIC use for the Site.

6. **Previous Application**

A previous application (No. A/NE-KTS/323) for the same use (for permanent approval) by the same applicant was approved with conditions by the Committee on 15.6.2012 for a period of 5 years until 15.6.2017. While noting that the proposed use was not incompatible with the surrounding land uses, small in scale and would not cause adverse environmental, drainage, traffic and landscape impact, the Committee decided to approve the application on a temporary basis so as not to frustrate the long-term planning intention of “G/IC” zone. All the approval conditions were complied with. The permission lapsed on 16.6.2017. Details of the application are at **Appendix II** and its location is shown on **Plan A-1**.

7. **Similar Application**

There is no similar application in the subject “G/IC” zone.

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

- 8.1 The Site is:

- (a) occupied by an single-storey village house and accessible from Kam Tsin Road; and
- (b) currently used for the applied use without valid planning permission.

8.2 The surrounding areas have the following characteristics:

- (a) to its east is Kam Tsin Village Ho Tung Kindergarten;
- (b) to its North is Kam Tsin Village Ho Tung School (a primary school);
- (c) to its south is the village cluster of Kam Tsin; and
- (d) to its immediate west is an enclosed shelter and Kam Tsin Road, and to the further west is De La Salle Secondary School, New Territories.

9. Planning Intention

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, organizations providing social services to meet community needs, and other institutional establishments.

10. Comments from Relevant Government Departments

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

Land Administration

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

- (a) the lot under application is held under New Grant No. 8654 (“the NG”) for building purpose. The NG is subject to General Conditions of Sale published in Government Notification No. 364 of 1934 as amended by Government Notification 50 of 1940 and further subject to Additional Special Conditions (collectively referred to as “the Conditions”). The Lot has an area of 675 sq.ft (lot boundary shown on **Plan A-2**). According to the Conditions, not more nor less than two traditional Chinese village-type houses (i.e. New Territories Exempted House (NTEH)) shall be erected on the lot and open space at least equal to half the roofed-over area of the building shall be provided at the rear of the building. The applied use as shop and services (fast food shop) is not in contravention with lease condition;

- (b) the Site is found encroached upon government land. If the planning application is approved, the owner(s) of the lot/occupier concerned shall apply to his Office for a Short Term Tenancy (STT) to cover any structure on the government land if the concerned structure(s) is not covered by any squatter control survey record; and
- (c) the application for STT will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STT is approved, its commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of rent and administrative fee as considered appropriate by his Office.

Environment

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

- (a) in view of the small scale of the development, the application alone is unlikely to cause major pollution; and
- (b) there is no environmental complaint case related to the Site in the past 3 years.

Drainage

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

he has no objection to the application from drainage point of view, given that the sewage discharge arrangement, if any, is agreeable by Environmental Protection Department (EPD).

Building Matters

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

noting that the building erected on the Site is a New Territories Exempted House (NTEH) under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap 121), DLO/N, LandsD should be in a better position to comment on the application.

Fire Safety

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

- (a) he has no objection in principle to the application subject to fire service installations being provided to the satisfaction of D of FS; and

- (b) his advisory comments are at **Appendix IV**.

Food Licensing

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

- (a) he has no comment on the application; and
- (b) according to his record, Shop No.1, G/F, 8th lane, Lot 2341 in D.D. 92, Kam Tsin Village is a licensed light refreshment restaurant.

District Officer's Comments

10.1.7 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals from 9.9.2019 to 17.9.2019. The North District Council (NDC) member of the subject Constituency and the two Indigenous Inhabitant Representatives of Kam Tsin and the Resident Representative of Kam Tsin supported the proposal. The Chairman of Sheung Shui District Rural Committee had no comment.

10.2 The following Government department(s) have no objection/no comment on the application:

- (a) Commissioner for Transport (C for T);
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Commissioner of Police (C of P); and
- (e) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD).

11. Public Comment

On 27.8.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment (**Appendix III**) submitted by an individual indicating no comment was received.

12. Planning Considerations and Assessments

12.1 The application is for shop and services (fast food shop) use at a single-storey village house at the Site falling within a "G/IC" zone on the approved Kwu Tung South OZP (**Plan A-1**). The planning intention of the "G/IC" zone is

primarily for the provision of GIC facilities serving the needs of the local residents and/or a wider district, region or the territory.

- 12.2 The Site is situated at the south-eastern part of the “G/IC” zone and to the immediate north of the “V” zone of Kam Tsin village. The village house was in existence before the Site was first zoned “G/IC” on DPA Plan on 12.7.1991, and is allowed for building purpose under the lease. There is no planned “G/IC” use for the Site. On the basis of the above and that temporary approval for the same use was granted in 2012 as stated in paragraph 6, although the applied use is not in line with the planning intention of the “G/IC” zone, temporary approval of 5 years for fast food shop use would not frustrate the long-term planning intention.
- 12.3 The Site abuts the school and kindergarten on its north and east, and existing village houses of Kam Tsin village in its south (**Plan A-2**). According to the submission, the applied fast food shop mainly serves the local residents and workers nearby. The use is considered not incompatible with the surrounding uses comprising village houses and GIC facilities. Given its small scale with a floor area of 38.16m², adverse traffic, environmental, drainage, fire safety and landscape impacts are not anticipated. C for T, DEP, CE/MN, DSD, D of FS, CTP/UD&L, PlanD and DFEH have no adverse comment on or no objection to the application. There is no environmental complaint in respect of the Site received in the past 3 years. In addition, the operation of the fast food shop will be subject to licensing control under the Food Business Regulation. Approval conditions and advisory clauses as suggested by concerned departments are set out in paragraph 13.2 and **Appendix IV** respectively.
- 12.4 Regarding TPB PG-No.16, as mentioned above, the Site occupied by a village house which existed before the Site was covered by statutory plan and there has been no planned GIC use for the Site. The temporary approval of the application would not adversely affect the provision of GIC facilities in the district. The applied use would not bring about adverse impacts on the surrounding areas, and all concerned departments have no objection to the application.
- 12.5 A temporary approval of 5 years up to 15.6.2017 was granted to the previous application for the same use (A/NE-KTS/323) by the Committee so as not to frustrate the long-term planning intention of “G/IC” zone. Approving the application on a temporary basis of 5 years is in line with the previous decision of the Committee.
- 12.6 There are five local views conveyed by DO(N) of which four show support and one indicate no comment on the application, and there is one public comment, received during the inspection period, indicating no comment on the application (as stated in paragraphs 10.1.7 and 11).

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the local views and public comment mentioned in paragraphs 10.1.7 and 11, the Planning Department considers that the shop and services (fast food shop) could be tolerated for a period of 5 years.
- 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 5 years until 4.10.2024 instead of a permanent approval sought. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 4:00 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 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 4.4.2020;
- (c) in relation to (b) above, the implementation of proposal for fire service installations within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 4.7.2020;
- (d) if the above planning condition (a) 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
- (e) if any of the above planning conditions (b) or (c) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

The recommended advisory clauses are at **Appendix IV**.

- 13.3 Should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (a) the applied use is not in line with the planning intention of the "Government, Institution or Community" ("G/IC") zone which 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. There is no strong planning justification in the submission for a departure from such planning intention; and
 - (b) the approval of the application would set an undesirable precedent for other similar applications for shop and services use in the "G/IC" zone.

The cumulative approval of such applications would result in a loss of land available for GIC uses in the area.

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 with attachments received on 14.8.2019
Appendix II	Previous Application
Appendix III	Public Comment
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2019**