

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

APPLICATION NO. A/YL-KTS/830

- Applicant** : MF Café Limited represented by R-riches Property Consultants Limited
- Premises** : Unit B2, The Richfield, 236 Kat Hing Wai, Kam Tin, Yuen Long
- Premises Area** : About 46 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
- Zoning** : “Residential (Group C)” (“R(C)”)
[Maximum plot ratio of 0.8, maximum site coverage of 40% and maximum building height of 4 storeys (12 m)]
- Application** : Temporary Eating Place for a period of 3 years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for temporary eating place for a period of three years. According to the Notes of the OZP, ‘Eating Place’ is a Column 2 use in the “R(C)” zone, which requires planning permission from the Town Planning Board (the Board). The Premises is currently used for the applied use without valid planning permission (**Plans A-2 to A-4**).
- 1.2 The Premises is the subject of five previous applications (No. A/YL-KTS/607, 662, 711, 737 and 812). The first three applications for temporary public vehicle park were rejected by the Rural and New Town Planning Committee (the Committee) between 2013 and 2016. The remaining two applications (No. A/YL-KTS/737 and 812) for various temporary shop and services use were approved with conditions by the Committee in 2017 and 2019 for 3 and 5 years respectively. For the last application (No. A/YL-KTS/812 approved on 22.2.2019), the shop and

services development is in operation, i.e. the Richfield. The planning permission is valid until 22.2.2024.

- 1.3 The Premises is situated in a unit of a 2-storey structure in the Richfield (originally proposed for shop and services uses under approved application No. A/YL-KTS/812). According to the applicant, the structure is sub-divided into four units and the Premises is located on the ground floor with a floor area of 46m² and 3m in height. The estimated number of visitor and staff are 20 and 2 per day. The development uses the loading/unloading bays in the approved application No. A/YL-KTS/812. Visitors can access the Site from Kam Po Road via a local track on foot¹. The operation hours are between 7 a.m. and 9 p.m. daily. The location and layout plans submitted by the applicant are shown in **Drawings A-1 to A-2**.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with supplementary information (**Appendix I**) received on 24.7.2019
 - (b) Further Information (FI) received on 23.9.2019 (**Appendix Ia**) providing responses to departmental comments
[exempted from publication]
 - (c) FI received on 14.10.2019 providing responses to (**Appendix Ib**) departmental comments
[exempted from publication]
 - (d) FI received on 21.10.2019 providing clarifications (**Appendix Ic**)
[exempted from publication]
- 1.5 Another application (No. A/YL-KTS/829) for temporary place of entertainment (indoor children playground) for a period of 3 years also located at one of the structures in the Richfield is scheduled for consideration by the Committee in this meeting (**Plan A-2**).
- 1.6 Upon the request of the applicant, the Committee agreed to defer making a decision on the application on 20.9.2019 to allow more time for the applicant to address departmental comments. After the deferral request, the applicant submitted FIs providing responses to departmental comments. The application is scheduled for consideration by the Committee at this meeting.

¹ The subject temporary eating place will use the pedestrian access and loading/unloading bay in the approved application (No. A/YL-KTS/812). In case the approved application is revoked in future, the applicant has proposed an alternative pedestrian access (with consent obtained from the landowners) to the Premises. Also, loading/unloading activity for the applied use is minimal and goods could be hand-carried, no loading/unloading bay would be required even the approved application is revoked.

2. **Justifications from the Applicant**

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

- (a) The applied use is located at one of the structures in the approved application No. A/YL-KTS/812. It is temporary in nature and will not jeopardize the long-term planning intention of the “R(C)” zone.
- (b) The applied use will satisfy the demand for eating place in Kam Tin and surrounding area.
- (c) The site where the Premises is located is owned by Tso Tong and it is difficult to develop for residential use. The applied use will be able to better utilize the land resources.
- (d) The applicant will follow the relevant guidelines issued by the Environmental Protection Department to control oily fumes and cooking odour. Also, the lightings will be switched off outside operation hours to minimize nuisance to the surroundings.

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 and sending notification letter to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Premises is subject to planning enforcement action against Unauthorized Development (UD) involving use of place for eating place. Enforcement Notice (EN) was issued on 3.9.2019 requiring discontinuation of the UD. The Site is being monitored by the Planning Authority.

5. **Previous Applications**

- 5.1 The Premises is the subject of five previous applications (No. A/YL-KTS/607, 662, 711, 737 and 812) for temporary public vehicle park and various shop and services uses, all covering a larger site area. Details of the previous applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.

- 5.2 Applications No. A/YL-KTS/607, 662 and 711 for temporary public vehicle park (private cars and light goods vehicles/excluding container vehicles) were rejected by the Committee on 22.11.2013, 27.3.2015 and 29.7.2016 respectively on similar grounds that the proposed development was not in line with the planning intention of the “R(C)” zone; not compatible with the surrounding land uses which were predominated by residential developments; failed to demonstrate that the proposed development would not cause adverse environmental, landscape and/or traffic impacts on the surrounding areas; and the approval of the application would set an undesirable precedent.
- 5.3 The last two applications (No. A/YL-KTS/737 and 812) for temporary shop and services uses were approved with conditions for 3 and 5 years by the Committee on 9.6.2017 and 22.2.2019 respectively for the similar reasons that temporary approval would not frustrate the long-term planning intention of the “R(C)” zone; the proposed use was not incompatible with the surrounding land uses; the relevant government departments had no adverse comments; and departmental concern could be addressed by imposing approval conditions. However, application No. A/YL-KTS/737 was revoked due to non-compliance with approval conditions. For the last approved application (No. A/YL-KTS/812), the approval conditions in relation to the implementation of modification work proposal of existing footpath and street furniture and submission of fire installation proposal have been complied with. The remaining approval conditions including submission and implementation of drainage proposal; and implementation of fire service installations proposal are yet to be complied with. The planning permission is valid until 22.2.2024. The development approved under application No. A/YL-KTS/812 involved 11 one to two-storey (2m to 7.2m) structures, including the structures under the subject application, for shop and services and ancillary uses.

6. **Similar Application**

There is one similar application (No. A/YL-KTS/827) for proposed temporary shop and services and eating place with ancillary facilities for a period of 5 years in the same “R(C)” zone. Upon request of the applicant, the Committee agreed to defer in making a decision on the application on 6.9.2019. Details of the similar application are summarized in **Appendix III** and its location is shown on **Plan A-1a**.

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

7.1 The Premises is:

- (a) currently used for the applied use without valid planning permission;

- (b) situated at a structure within Richfield which is subject to planning permission for shop and services uses under application No. A/YL-KTS/812;
 - (c) located to the north of West Rail Kam Sheung Road Station and Kam Tin River; and
 - (d) accessible by foot via local track branching off Kam Po Road.
- 7.2 The surrounding areas are predominately low-rise residential structures/dwellings, shops and services, parking of vehicles and vacant/unused land:
- (a) to its south, east and west is the Richfield for various shop and services uses;
 - (b) to its further south, east and west are dwellings/residential structures (**Plan A-2**); and
 - (c) to its southwest and north are unused land and parking of vehicles.

8. Planning Intention

The planning intention of the “R(C)” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.

9. Comments from Relevant Government Departments

- 9.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Premises is located within Lot No. 341 in D.D. 109 which is an 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 Premises is accessible to Kam Po Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Premises.

- (c) The Premises falls within the Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within the SKAHRA.
- (d) Should the application be approved, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities 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 as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

- (a) He has no adverse comment on the application from the traffic engineering point of view.
- (b) No vehicle is allowed to queue back to or reverse onto / from the Premises at any time during the planning approval period.
- (c) The Premises is connected to the public road network via a section of a local access road which is not managed by Transport Department (TD). The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) His department does not and will not maintain any access connecting the Premises and Kam Sheung Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Premises to nearby public roads or road and drains.

9.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD2-2, RDO, HyD):

- (a) The Premises falls within the area of influence (“AOI”) for the proposed Northern Link (NOL), which is a recommended railway scheme under the Railway Development Strategy 2014 (RDS-2014). Although the programme and the alignment of the proposed NOL are still under review, those areas within the AOI may be required to be vacated at the time for the construction of the NOL and subject to nuisance, such as noise and vibration of the proposed NOL.
- (b) He has no in-principle objection to the application from the development point of view of the NOL, provided that the applicant is satisfied with the surrounding condition of nuisance taking into account the future construction, operation and maintenance of NOL.

9.1.5 Comments of Chief Estate Surveyor/Railway Development, LandsD (CES/RDS, LandsD):

The Site falls outside RDS 2014 Administrative Route Protection Boundary but within RDS 2014 NOL and Kwu Tung Station Limit of Area of Influence. As long as RDO, HyD has no adverse comment on the application, he has no further comment.

Environment

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

- (a) Provided that the applicant will provide necessary pollution control measures and ensure that the proposed use would not cause any environmental nuisances such as noise, oily fume and cooking odour to the public and people living nearby, he has no objection to the application from environmental planning perspective.
- (b) The applicant is advised to properly design and maintain adequate mechanical ventilation and necessary pollution control measures to avoid accumulation of aerial emissions and minimize potential noise and odour nuisance to the public and people living nearby. To minimize noise impact, oily fume and cooking odour emissions from the restaurant, the applicant should make reference to Environmental Protection Department (EPD)’s Pamphlet “Control of Oily Fume and Cooking Odour from Restaurant and Food Business” available from EPD’s website and prohibit use of

public announcement system, portable loudspeakers or any form of audio amplification system. The applicant is also advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any potential environmental nuisances.

- (c) All wastewater collected from kitchen, including that from basins, sinks and floor drains, should be discharged via a grease trap in accordance with the requirement of EPD’s Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by Environment Protection Department”. It is reminded that effluent discharges from the proposed use are subject to control under Water Pollution Control Ordinance (WPCO). A discharge license under the WPCO shall be obtained before a new discharge is commenced.

Drainage

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

- (a) He has no objection in-principle to the development from the public drainage point of view.
- (b) The applicant should be reminded to provide his own drainage facilities to collect the runoff generated from the Premises or passing through the Premises, and discharge the runoff collected to a proper discharge point. The development should not obstruct overland flow or cause any adverse drainage impact to the adjacent areas and existing drainage facilities. Also, the applicant should consult DLO/YL and seek consent from the relevant owners for any works to be carried out outside his lot boundary before commencement of the drainage works.

Building Matters

9.1.8 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, demolition and land filling) are to be carried out on the site, prior approval and consent of the BD should be obtained, otherwise, they are unauthorized

building works (UBW) under the Buildings Ordinance (BO). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

- (b) For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the site under the BO.
- (c) The site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (d) If the site does not abut on a specified street of not less than 4.5 m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.
- (e) If the proposed use under application is subject to issue of a license, the applicant should be reminded that any existing structures on the site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

Fire Safety

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

- (a) He has no objection in-principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the BO (Cap. 123) or application for

license for the eating place is required, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

Project Interface

9.1.10 Comments of the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD):

- (a) He has no objection to the application.
- (b) The Premises falls within one of the potential housing sites identified in the Land Use Review for Kam Tin South and Pat Heung.
- (c) The application should be considered in the context of the housing developments at Kam Tin South, the existing infrastructure, the current uses permitted under the existing OZP, the prevailing land administration policy and the BO.

Food and Environmental Hygiene

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

- (a) No Food and Environmental Hygiene Department (FEHD)'s facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) Proper licence/permit issued by FEHD is required if there is any catering service/ activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.
- (c) For any waste generated from such activity/operation, the applicant should arrange disposal properly at her own expenses.

District Officer's Comments

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

He has not received any local's comment on the application and he has no comment from departmental point of view.

9.2 The following departments have no objection to or no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Director of Electrical and Mechanical Services; and
- (c) Commissioner of Police.

10. Public Comments Received During Statutory Publication Period

On 2.8.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, 6 public comments were received from the Incorporated Owners of Noble Park, local resident, visitors of Richfield and individuals (**Appendices IV-1 to IV-6**). The Incorporated Owners of Noble Park objects to the application mainly on the grounds that the applied use will cause nuisance and disturbance to the people living nearby including noise, light and air problems. The remaining 5 comments support the application mainly for the reasons that there is a lack of restaurant in the area; the applied use can bring convenience to the locals and boost the local economy.

11. Planning Considerations and Assessments

11.1 The application is for temporary eating place for a period of three years in the "R(C)" zone. The planning intention of the "R(C)" zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. The applied use is not entirely in line with the planning intention of the "R(C)" zone. Nevertheless, there is no known programme for long-term development at the Premises. Approval of the application on a temporary basis would not frustrate the long-term planning intention of the "R(C)" zone.

11.2 The applied use is situated within one of the structures in the approved application No. A/YL-KTS/812 (originally for shop and services use). Given the small scale of the proposed eating place (46m² floor area), it is considered not incompatible with the surrounding land uses including the shop and services in the same structure and other structures of Richfield, low-rise residential developments and unused land. According to the applicant, the applied use is to serve the residents in Kam Tin and surrounding area.

- 11.3 Relevant Government departments consulted including C for T, CE/MN of DSD, DEP, D of FS and CHE/NTW, HyD have no adverse comment on the application. To minimize any potential nuisance to the nearby residents, approval condition restricting the operation hour is recommended in paragraph 12.2 (a). Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development at the Premises will be subject to enforcement action by the Planning Authority. The applicant will also be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. Technical concerns of C for T and D of FS can be addressed by imposing the approval conditions as recommended in paragraphs 12.2 (b) to (c) below.
- 11.4 The Site is the subject of five previous applications covering a larger area. The last two applications for shop and services uses were approved with conditions by the Committee in 2017 and 2019 for 3 and 5 years respectively for the reasons as stated in paragraph 5.3 above. The current application involves changing the use of part of a structure under the last approved application No. A/YL-KTS/812. The change of use from shop and services to eating place does not bring about major planning implications.
- 11.5 6 public comments were received during the statutory publication period. One objects to the application mainly on the grounds that the applied use causes nuisance to the residents nearby and environmental problems. The remaining 5 commenters support the application. In this regard, the departmental comments as well as the planning assessments and considerations above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above and having taken into account the public comments as mentioned in paragraph 10 above, the Planning Department has no objection to the temporary eating place for a period of 3 years.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 1.11.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 9:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from the Premises at any time during the planning approval period;

- (c) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 1.5.2020;
- (d) in relation to (c) above, the implementation of fire service installations proposal 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 1.8.2020;
- (e) if any of the above planning condition (a) or (b) 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 any of the above planning condition (c) or (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.

Advisory Clauses

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

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

the development is not in line with the planning intention of the "R(C)" zone which is intended for low-rise and low-density residential developments. No strong justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form with supplementary information received on 24.7.2019
Appendix Ia	FI received on 23.9.2019
Appendix Ib	FI received on 14.10.2019
Appendix Ic	FI received on 21.10.2019
Appendix II	Previous applications covering the Site
Appendix III	Similar application in the same “R(C)” zone
Appendices IV-1 to IV-6	Public comments received during public inspection period
Appendix V	Advisory Clauses
Drawing A-1	Location Plan with access route
Drawing A-2	Layout Plan
Plan A-1a	Location Plan with similar application
Plan A-1b	Previous Application Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2019**