

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-PK/250

- Applicant** : Ms. CHOW Wai Fong Forna
- Site** : Shop 10D and Open area in front of the Shop, G/F, Po Tung Road, Lot 1827 (Part) in D.D. 221 and adjoining government land, Sai Kung, New Territories
- Site Area** : About 89.8m²
- Lease** : (a) Private lot: (about 71.1m² or 79%)
New Grant No. 6720 restricts G/F for non-industrial purposes. The open area is designated as 'non-building area'.

(b) Government land: (about 18.7m² or 21%)
- Plan** : Approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11
- Zoning** : Area shown as 'Road'
- Application** : Renewal of Planning Approval for Temporary Eating Place (including Outside Seating Accommodation of Restaurant) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval to use the application site (the Site) including the ground floor of an existing 3-storey village house and its open area for temporary eating place and outside seating accommodation (OSA) of restaurant for a period of 3 years. The Site falls within an area shown as 'Road' on the approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11. According to the Notes of the OZP, the proposed temporary use of the Site requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site is the subject of a previously approved application No. A/SK-PK/230 submitted by the same applicant for the same temporary use. The application was approved by the Rural and New Town Planning Committee (the Committee) on 29.7.2016 for a period of 3 years until 29.7.2019. The Site is currently being used for

the applied use with a valid planning permission.

- 1.3 The proposed temporary eating place and the OSA is about 89.8m² which comprises the use of the ground floor of a 3-storey village house as a restaurant with an area of 57.2m² and the open area outside the restaurant with an area of 13.9m² as the OSA (**Drawing A-3**). The operation hours is 1:00 p.m. to 2:00 a.m. daily. No parking space is proposed and the Site is accessible via a footpath abutting Po Tung Road. Compared with the previously approved application No. A/SK-PK/230, no change has been proposed. The location plan, block plan and layout plan submitted by the applicant are shown in **Drawings A-1 to A-3**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form dated 30.5.2019 (Appendix I)
 - (b) Further Information (FI) dated 14.6.2019 providing response to departmental comments (accepted and exempted from publication and recounting requirements) (Appendix Ia)
 - (c) Further Information (FI) dated 24.6.2019 providing response to departmental comments and a revised layout plan (accepted and exempted from publication and recounting requirements) (Appendix Ib)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 8 of the application form at **Appendix I**. They are summarised as follows:

- (a) the proposed use provides a comfortable open seating area for patrons who would like to be close to natural environment and enjoy breeze of fresh air;
- (b) the operation hours would be from 1:00 p.m. to 2:00 a.m. daily; and
- (c) the application for renewal is the same as the previous application (i.e. application No. A/SK-PK/230).

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

(a) Private Land Portion

The applicant is not a “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 obtaining consent from the land owner. Detailed information would be deposited at the meeting for Members’ inspection.

(b) Government Land Portion

The “owner’s consent/notification” 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) are not applicable to the application.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C) are relevant to the application. The relevant assessment criteria are attached at **Appendix II**.

5. Previous Application (Plans A-1 and A-2)

The Site is the subject of a previous planning application No. A/SK-PK/230 submitted by the same applicant for the same temporary use (i.e. temporary eating place and OSA of restaurant for a period of 3 years). It was approved for a period of 3 years by the Committee on 29.7.2016 mainly on the grounds that the planning intention of area shown as 'Road' would not be jeopardised; compatible with existing commercial uses on the ground level of nearby houses; and no adverse impacts on the surrounding areas were anticipated. The planning permission is valid until 29.7.2019.

6. Similar Applications (Plans A-1 and A-2)

- 6.1 There are 21 similar applications (No. A/SK-PK/122, 129, 130, 151, 170, 172, 173, 174, 193, 194, 200, 202, 203, 205, 206, 226, 228, 229, 236, 237 and 238) for temporary eating place for a period of 3 years in area shown as 'Road' on the OZP.
- 6.2 Among the applications, 20 applications (No. A/SK-PK/122, 129, 130, 151, 170, 172, 173, 174, 193, 194, 200, 202, 203, 205, 206, 226, 228, 229, 236 and 238) were approved by the Committee mainly on the grounds that the planning intention of area shown as 'Road' would not be jeopardised; compatible with existing commercial uses on the ground level of nearby houses; and no adverse impacts on the surrounding areas were anticipated.
- 6.3 Application No. A/SK-PK/237 for temporary shop and services and eating place (restaurant) within a proposed 2-storey building for a period of 3 years was rejected by the Committee on 12.5.2017 on the grounds that the temporary nature of the application could not be established; adverse landscape impact on the surrounding areas was anticipated; and the proposed filling of the existing berm would have adverse impact on public safety.
- 6.4 Applications No. A/SK-PK/248 and A/SK-PK/249 for renewal of planning approval for proposed temporary eating place (outside seating accommodation of restaurant) for a period of 3 years will be considered at the same meeting.
- 6.5 Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plans A-1** and **A-2**.

7. **The Site and Its Surrounding Areas** (Plans A-1 and A-2, Aerial Photo on Plan A-3 and Site Photos on Plans A-4a and A-4b)

7.1 The Site :

- (a) comprises the ground floor of a 3-storey village house currently operating as a restaurant and the open area outside the village house being used as the OSA; and
- (b) is accessible via a footpath abutting Po Tung Road.

7.2 The surrounding areas have the following characteristics:

- (a) the existing developments in the vicinity of the Site are predominantly 2 to 3-storey village houses. For the houses fronting Po Tung Road, the ground floor are mostly occupied by shops and restaurants, while the upper floors are for domestic uses; and
- (b) two open metered car parks are located about 50m northwest and 20m southeast of the Site and are accessible via Po Tung Road and Hiram's Highway.

8. **Planning Intention**

The Site falls within an area shown as 'Road' on the approved Pak Kong and Sha Kok Mei OZP No. S/SK-PK/11 and forms part of an area reserved for future widening and junction improvement of Hiram's Highway.

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/Sai Kung (DLO/SK):

- (a) the Site falls partly on the non-building area (NBA) within Lot 1827 in D.D. 221 (the Lot) and partly on the adjoining public pavement. The Lot is held under the New Grant No. 6720 dated 21.7.1983, which restricts the ground floor of any building erected thereon to non-industrial use and no structure other than boundary walls and fences should be erected or constructed within the NBA except with the written approval of his office; and
- (b) if the application is approved by the Board, the owner of the Site will need to apply for a licence for the proposed OSA use on the government land to effect the proposal. However, there is no guarantee that such application would be approved by the government. Such application, if eventually approved, would be subject to such terms and conditions including payment of a fee as the government considers appropriate.

Traffic

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

- (a) no comment on the application; and
- (b) the application period is not interfacing with the Hiram's Highway Improvement Project Stage 2.

Environment

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

- (a) no comment on the application from chlorine risk perspective;
- (b) no substantiated environmental complaint on the concerned premises has been recorded in the past three years; and
- (c) regarding the public comment, the applicant is reminded to strictly comply with all the requirements under all relevant pollution control ordinances, including Water Pollution Control Ordinance, Air Pollution Control Ordinance and Noise Control Ordinance.

Drainage

9.1.4 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

no in-principle objection to the application from a drainage maintenance viewpoint provided that necessary stormwater drainage facilities would be provided in association with the proposed temporary eating place not causing adverse drainage impact to the areas in the vicinity.

Nature Conservation

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

- (a) no comment on the application from nature conservation perspective; and
- (b) the Site is located in urban area and concrete-paved.

Fire Safety

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

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

- (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 D of FS for approval. In addition, the applicant should also be advised on the following points:-
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSIs 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 Buildings Ordinance (Cap. 123) or application for licence for the subject 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.

Water Supply

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

- (a) no objection to the application; and
- (b) the Site is in close vicinity of existing water mains. The applicant is requested to observe the “Conditions of Working in the Vicinity of Waterworks Installations” and “Flow Chart on Procedures for Safe Working near Water Mains”.

Food and Environmental Hygiene

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

- (a) no comment on the application;
- (b) the premises are covered by a valid Light Refreshment Restaurant Licence without approved OSA;
- (c) application for OSA was submitted by the licensee and passed to Licensing Section for processing in June 2019; and
- (d) the proposed area specified in the OSA application is in line with the planning application.

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

- (a) Commissioner for Transport (C for T);
- (b) District Officer/Sai Kung, Home Affairs Department;
- (c) Chief Engineer (Works), Home Affairs Department;
- (d) Chief Building Surveyor/ New Territories East 2 and Rail, Buildings Department;
and
- (e) Commissioner for Police.

10. Public Comments Received During Statutory Publication Period

On 11.6.2019, the application was published for public inspection. During the first 3 weeks of the statutory public inspection period which ended on 2.7.2019, one public comment was received from an individual (**Appendix IV**). He objects to the application as the proposed development causes obstruction and creates noise nuisance to the nearby residents.

11. Planning Considerations and Assessments

- 11.1 The application is for renewal of planning approval under previous application No. A/SK-PK/230 to use the Site as a temporary eating place (including OSA of restaurant) for a further period of 3 years. The Site falls within an area designated as 'Road' on the OZP which is intended to be reserved as an area for the future widening and junction improvement of Hiram's Highway. Although the proposed use is not in line with the planning intention of the area shown as 'Road', given the temporary nature of the temporary eating place and OSA, the long-term planning intention of the area shown as 'Road' would not be frustrated. Both C for T and CHE/NTE of HyD have no comment on/ objection to the application.
- 11.2 The Site is located at the fringe of Sai Kung Town. It is considered not incompatible with the surrounding uses which are village houses with retail shops and restaurants on the ground floors, providing retail and catering services for the neighbourhood. There are also a number of approved similar applications for eating place in the vicinity of the Site (**Plans A-1 and A-2**). In view of the small scale development, the proposed eating place and OSA would unlikely cause adverse traffic, drainage and environmental impacts on the surrounding areas. Relevant government departments consulted including C for T, CE/MS of DSD and DEP have no adverse comment on/objection to the application.
- 11.3 The Site is the subject of a previously approved application No. A/SK-PK/230 for the same temporary use. The current application is the same as the previously approved scheme and there has been no material change in the planning circumstances in the area since the previous approval was granted. The application is generally in line with TPB PG-No. 34C in that since the last planning approval, there has been no major change in planning circumstances; no government departments consulted have adverse comments on/objection to the application; and the 3-year approval period sought is not longer than the original validity period of the previous approval and is reasonable.
- 11.4 Regarding the public comment objecting to the application, the assessment in paragraphs 11.1 to 11.3 above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, the Planning Department considers that the temporary eating place (including OSA of restaurant) could be tolerated for a further period of 3 years.
- 12.2 Should the Committee decide to approve the application, it is suggested that the planning permission shall be valid on a temporary basis for a further period of 3 years from 30.7.2019 until 29.7.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 2:00 a.m. to 1:00 p.m., as proposed by the applicant, is allowed on the application site during the planning approval period;
- (b) the provision of fire service installations within 6 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 30.1.2020;
- (c) if the above planning condition (a) is not complied with at any time during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (d) if the above planning condition (b) is not complied with by the specified date, the approval hereby given should cease to have effect and should on the same date be revoked without further notice.

Advisory Clauses

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

- 12.3 There is no strong reason to recommend rejection of the application.

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 reasons for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form dated 30.5.2019
Appendix Ia	FI dated 14.6.2019
Appendix Ib	FI dated 24.6.2019
Appendix II	Relevant extract of Town Planning Board Guidelines No. 34C on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
Appendix III	Similar Applications
Appendix IV	Public Comment
Appendix V	Advisory Clauses
Drawing A-1	Location Plan submitted by the applicant
Drawing A-2	Block Plan submitted by the applicant
Drawing A-3	Layout Plan submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JULY 2019**