

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/684

<u>Applicant</u>	Ms. LEUNG Shuk Kuen, Sylvia represented by Eddie Consultancy Limited
<u>Site</u>	Government land adjoining Lot 2471 in D.D. 19, 4C Fong Ma Po, Lam Tsuen, Tai Po, New Territories
<u>Site Area</u>	About 18.4m ²
<u>Land Status</u>	Government land
<u>Plan</u>	Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
<u>Zoning</u>	“Village Type Development” (“V”)
<u>Application</u>	Eating Place (Outside Seating Accommodation of a Restaurant)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for outside seating accommodation (OSA) of an existing restaurant which is located on ground floor of a village house at No. 4C Fong Ma Po (**Plans A-1 and A-2**). According to the Notes of the OZP, while ‘Eating Place’ use on the ground floor of a New Territories Exempted House (NTEH) within the “V” zone does not require planning permission, such use on open ground (i.e. OSA) as an extension to a ground floor eating place in an NTEH requires planning permission from the Town Planning Board (the Board).
- 1.2 The OSA, with an area of about 18.4m², will accommodate a maximum of 24 persons (**Drawing A-1**) and the opening hours are 11:00 a.m. to 11:00 p.m. from Mondays to Sundays. The Site is hard paved and abutting Lam Tsuen Heung Kung Sho Road. It is currently used as OSA for the adjoining restaurant without planning permission. According to the applicant, the OSA under application will be open-air and hence the existing movable canopy will be removed.
- 1.3 In support of the application, the applicant has submitted the following documents:
 - (a) application form with attachments received on (**Appendix I**) 20.5.2020

- (b) further information (FI) received on 3.9.2020 (**Appendix Ia**) providing responses to departmental comments with a sewerage connection plan (*accepted and exempted from publication requirement*)

1.4 On 10.7.2020, the Rural and New Town Planning Committee (the Committee) agreed to the applicant's request to defer making a decision on the application for two months so as to allow time for preparation of FI to support the application. The application is scheduled for consideration by the Committee on 9.10.2020.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application as stated in Part 10 of the application form at **Appendix I** and the FI at **Appendix Ia** are summarized as follows:

- (a) the OSA is to provide additional seating for the use of customers of the adjoining restaurant;
- (b) the applicant will apply for an OSA Licence from the Food and Environmental Hygiene Department (FEHD) and will comply with the requirements of other Government departments;
- (c) in response to Water Supplies Department (WSD)'s comments, the applicant confirms that no discharge of effluent of foul water into adjoining land, stormwater drain, channel stream or river course is allowed at the Site. Such foul water or effluent shall be discharged to the proper drainage inside the restaurant, and connection of the restaurant to the public sewerage has been completed. No chemical including detergent would be used for washing the tables and chairs in the open area and the applicant will timely collect and fully contain solid wastes including general refuses and food wastes generated during the operation before disposal to outside of the water gathering ground (WGG);
- (d) in response to Drainage Services Department (DSD)'s comments, the applicant advises that the Site is already paved and hence it will not result in a change of the flow pattern and increase of the surface runoff; and
- (e) the applied use will not generate any noise, odour and dust, and there will be no significant adverse impacts on environmental, traffic, water supply, drainage and landscape aspects to the surrounding area.

3. **Compliance with the "Owner's Consent/Notification" Requirements**

As the Site involves Government land only, 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. 31A) is not applicable to the application.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 15A (TPB PG-No. 15A) for ‘Application for Eating Place within “Village Type Development” zone in Rural Areas under section 16 of the Town Planning Ordinance’ is relevant to the application. The relevant planning criteria are summarized in **Appendix II**.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

There are three similar applications (No. A/NE-LT/332, 581 and 608) for temporary OSA within the same “V” zone, which were all approved with conditions by the Committee for a period of three years between 2005 and 2017 mainly for the reasons that the applied use was in line with the TPB PG-No. 15A in that it was located at the fringe of the village proper and would unlikely create environmental nuisance and inconvenience to the local residents; there were no adverse comments from concerned departments; and temporary approval would not frustrate the long-term planning intention of the “V” zone or adversely affect the land available for village type development. However, two applications (No. A/NE-LT/581 and 608) covering the same site were revoked in 2017 and 2019 respectively due to non-compliance with approval conditions on sewerage connection and drainage proposals. Details of the applications are at **Appendix III** and their locations are shown on **Plans A-1 and A-2**.

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

7.1 The Site is:

- (a) currently used as OSA without planning permission for the adjoining restaurant on the ground floor of village house No. 4C at Fong Ma Po. There is a movable canopy covering the Site;
- (b) located at the north-eastern fringe of the “V” zone in Fong Ma Po; and
- (c) abutting Lam Tsuen Heung Kung Sho Road.

7.2 The surrounding areas are mainly occupied by village houses of Fong Ma Po and the Lam Tsuen Wishing Square, which is a popular tourist attraction, is located at about 20m to the northeast of the Site. There are some restaurants located on the ground floor of village houses in the vicinity.

8. Planning Intention

The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. 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 infrastructures and services.

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/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site is on unallocated and unleased Government land. It is not covered by any Government Land Lease/Modification of Tenancy/Building Licence and there is no Small House application received for the Site; and
- (c) should approval be given by the Board, the applicant is required to obtain relevant approval from FEHD for an OSA. LandsD would exercise its discretion acting in the landlord’s capacity in dealing with the OSA Land Licence (OSALL) concerned. There is no guarantee that the application for OSALL will ultimately be approved. If OSALL approval is given, it will be subject to such terms and conditions as imposed by LandsD and the applicant will have to pay the necessary fee(s) as required.

Traffic

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

- no in-principle objection to the application from traffic engineering point of view.

9.1.3 Comments of the Commissioner of Police (C of P):

- (a) no objection to the application; and
- (b) the applicant should be advised to avoid obstruction to the area concerned caused by visitors’ vehicles.

Food and Environmental Hygiene

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

- (a) no comment on the application;
- (b) the operation of any eating place with seating accommodation providing meals or snacks to public should obtain a general restaurant/light refreshment restaurant licence from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). The operation of the eating place must not cause any environmental nuisance to the surrounding. The refuse generated by the eating place is regarded as trade refuse. The management or owner of the Site is responsible for its removal and disposal at his expense; and
- (c) if a restaurant licensee wishes to include an OSA into the licensed premises, he is required to submit an application to FEHD. Should the OSA application be acceptable for further processing, FEHD will refer it to relevant departments for clearance. A Letter of Requirements would be issued if no objection was raised by the departments concerned.

Environment

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

- (a) the Site is within Water Gathering Ground (WGG). The OSA under application will provide seating for 24 customers. Wastewater flow (e.g. from kitchen and toilet of the restaurant) is anticipated to increase as a result of the additional customers;
- (b) sewerage connection to existing public sewer is technically feasible with available capacity. He has no objection to the application on condition that:
 - (i) the restaurant will be connected to the public sewerage before operating the OSA;
 - (ii) adequate land space within the Site will be reserved by the applicant for connection to and maintenance of the public sewer; and
 - (iii) full ownership, cost and responsibility of connection and maintenance of the sewerage connection system will be borne by the applicant;
- (c) in view of the proximity of the Site to nearby domestic premises, the applicant is reminded to strictly observe and comply with relevant environmental pollution control ordinances (including

Noise Control Ordinance and Air Pollution Control Ordinance). The applicant is also reminded to carry out pollution abatement measures in relevant guidelines, including *General Environmental Guidelines for Outside Seating Accommodation and Control of Oily Fume and Cooking Odour from Restaurants and Food Business*, to avoid creating any nuisance;

- (d) as the OSA in open areas would be subject to substantial amount of wind-blown rain, the applicant is reminded to follow ProPECC PN 5/93, including connection of drainage outlets in open areas to stormwater drains and those in covered areas to foul sewers in accordance with paras. 5(i) and (ii); and
- (e) the Site was not involved in any environmental complaint in the past three years.

Drainage

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

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, a condition should be included to request the applicant to submit and implement the drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area;
- (c) there is no public drain maintained by DSD in the vicinity of the Site. The applied use should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from other areas surrounding the Site;
- (d) the applicant should design the drainage proposal based on actual site condition for DSD's comment/agreement. In the design, the applicant should consider the workability, the impact to the surrounding environment and seek comments from other concerned parties/departments if necessary. The applicant should make sure no adverse impact will be caused to the area due to the proposed works. The existing natural streams, village drains, ditches and the adjacent areas should not be adversely affected;
- (e) the applicant is required to provide the sewerage connection proposal for DSD's agreement. In addition, to ensure the sustainability of the public sewerage network, the applicant/owner is required to demonstrate that the runoff within the Site will be served by a designated stormwater collection and discharge system and shall not be drained to the public sewerage network; and

- (f) the applicant is required to rectify/modify the existing drainage/sewerage systems if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify Government against claims and demands arising out of damage or nuisance caused by failure of the system.

Building Matters

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

- (a) noting that the OSA under application is located on government land and no proposed building works on the Site, he has no comment on the application under the Buildings Ordinance; and
- (b) if the OSA is subject to the issue of a licence, the applicant should be reminded that any existing structures on the Site intended to be used for such purpose are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

Fire Safety

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

- (a) no in-principle objection to the application 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 for his approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy, and the location of the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (c) however, if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Water Supply

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

- (a) the Site is located within the upper indirect WGG; and
- (b) noting that the applicant has submitted FI (**Appendix Ia**) to address WSD's concerns on the risks of contamination to the

WGG resulting from the applied use, he has no comment on the application.

Town Gas Safety

9.1.10 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) no objection to the application;
- (b) there is a high pressure underground town gas transmission pipeline (running along Lam Kam Road) in the vicinity of the Site. The applicant shall therefore liaise with the Hong Kong and China Gas Company Limited in respect of the exact locations of existing or planned gas pipes/gas installations in the vicinity of the Site and any required minimum set back distance away from them during the design and construction stages of development; and
- (c) the applicant is required to observe Electrical and Mechanical Services Department's requirements on the "Avoidance of Damage to Gas Pipes 2nd Edition" for reference.

9.2 The following Government departments have no comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager (North), Civil Engineering and Development Department;
- (c) Chief Engineer/Construction, Water Supplies Department; and
- (d) District Officer/Tai Po, Home Affairs Department.

10. Public Comments Received During Statutory Publication Period (Appendix IV)

On 2.6.2020, the application was published for public inspection. During the statutory public inspection period, four public comments were received from individuals objecting to the application mainly on the grounds of creating nuisance to the residents nearby; and causing adverse environmental (i.e. noise and odour) and traffic impacts.

11. Planning Considerations and Assessments

11.1 The application is for an outside seating accommodation (OSA) at the Site zoned "V" on the OZP, which is adjoining an existing restaurant on the ground floor of a village house at No. 4C Fong Ma Po. The OSA is not in line with the planning intention of the "V" zone which is primarily intended for development of NTEH/Small House by indigenous villagers. Nevertheless, the size (only about 18.4m²) and location of the Site render it not feasible for village type development. As advised by DLO/TP of LandsD, there is at present no NTEH/Small House application received for the Site, and he has no

objection to the application. In order to keep the applied use under monitoring, a temporary approval for a period of three years is recommended. It is considered that approval of the application on a temporary basis for three years would neither frustrate the long-term planning intention of the subject “V” zone nor adversely affect the land available for village type development.

- 11.2 The Site, abutting Lam Tsuen Heung Kung Sho Road, is located at the north-eastern fringe of the “V” zone in Fong Ma Po. The Lam Tsuen Wishing Square, which is a popular tourist attraction, is located just about 20m to the northeast of the Site. The OSA is considered not incompatible with its immediate surrounding uses which mainly comprise village houses and some of their ground floors have been used as restaurants. The OSA would not block pedestrian flow as there is existing footpath on the opposite side of Lam Tsuen Heung Kung Sho Road.
- 11.3 The Site is located within the upper indirect WGG. DEP has no objection to the application provided that the restaurant will be connected to the public sewerage system before operating the OSA. CE/C of WSD has no comment on the application as the applicant has addressed WSD’s concerns on the risks of contamination to the WGG resulting from the applied use (**Appendix Ia**). According to DEP, there was no environmental complaint received related to the Site in the past three years. DEP also advises that, to avoid creating any nuisance to nearby domestic premises, the applicant should be advised to comply with relevant environmental pollution control ordinances and to follow ProPECC PN 5/93. Other government departments concerned, including C for T, CE/MN of DSD and D of FS, have no objection to/adverse comment on the application. It is anticipated that the applied use would not cause significant adverse traffic, drainage, sewerage and fire safety impacts on the surrounding areas. In view of the above, the OSA is considered generally in line with the TPB PG-No. 15A for eating place within the “V” zone.
- 11.4 As shown on **Plan A-2**, there are three similar applications (No. A/NE-LT/332, 581 and 608) for temporary OSA in the same “V” zone which were approved on a temporary basis for a period of three years between 2005 and 2017 mainly for the reasons that the applied use was in line with the TPB PG-No. 15A in that it was located at the fringe of the village proper and would unlikely create environmental nuisance and inconvenience to the local residents; there were no adverse comments from concerned departments; and temporary approval would not frustrate the long-term planning intention of the “V” zone or adversely affect the land available for village type development. There is no change in planning circumstances since the approval of the similar applications.
- 11.5 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10, Government departments’ comments and the planning assessments 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 comments mentioned 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 9.10.2023. 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 11:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no permanent structure or support for any structure shall be erected within the Site;
- (c) the submission of a 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 9.4.2021;
- (d) in relation to (c) above, the implementation of a drainage proposal within 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 9.7.2021;
- (e) the submission of a sewerage connection proposal within 6 months from the date of planning approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 9.4.2021;
- (f) in relation to (e) above, the implementation of a sewerage connection proposal within 9 months from the date of planning approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 9.7.2021;
- (g) the submission of a fire service installations and water supplies for fire fighting 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 9.4.2021;
- (h) in relation to condition (g) above, the implementation of a fire service installations and water supplies for fire fighting 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 9.7.2021;
- (i) if any of the above planning conditions (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

- (j) if any of the above planning conditions (c), (d), (e), (f), (g) or (h) 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 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 "Village Type Development" ("V") zone which is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the "V" zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission for a departure from the planning intention.

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 conditions and advisory clauses, 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 and attachment received on 20.5.2020
Appendix Ia	FI received on 3.9.2020
Appendix II	Relevant Extract of TPB Guidelines No. 15A for Application for Eating Place within "Village Type Development" zone in Rural Areas under section 16 of the Town Planning Ordinance
Appendix III	Similar applications
Appendix IV	Public comments
Appendix V	Recommended advisory clauses

Drawing A-1	Layout plan and sewerage connection plan submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
OCTOBER 2020**