

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-SSH/136

- Applicant** : Mr. CHUNG Poon Kwong, Peter
- Site** : Lots 1046, 1047, 1051 (Part) in D.D. 165 and adjoining Government land, Tseng Tau Village, Shap Sz Heung, New Territories
- Site Area** : About 172m² (including 22m² Government land)
- Lease** : (a) Block Government Lease (demised for agricultural use) (about 87.2%)
(b) Government land (about 12.8%)
- Plan** : Approved Shap Sz Heung Outline Zoning Plan (OZP) No. S/NE-SSH/11
- Zoning** : “Village Type Development” (“V”)
- Application** : Renewal of Planning Approval for Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for temporary outside seating accommodation (OSA) of a restaurant on the ground floor of two village houses (No. 83 and 85) at Tseng Tau village for a further period of three years. According to the Notes of OZP, while ‘Eating Place’ on the ground floor of an New Territories Exempted House (NTEH) within the “V” zone is permitted as of right, such use on open ground (i.e. OSA) as an extension to a ground floor eating place in an NTEH within the “V” zone requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use (with previous planning permission lapsed on 29.7.2020).
- 1.2 According to the information submitted by the applicant, the OSA with an area of 172m² could accommodate a maximum number of 80 persons and the opening hours are 7:00 a.m. to 9:30 p.m. daily. The Site is located at the western fringe of Tseng Tau village and abuts a local track leading to Sai Sha Road (**Drawing A-2**).
- 1.3 The Site is the subject of two previous applications (No. A/NE-SSH/89 and 107) submitted by the same applicant for the same use. The last previous application

No. A/NE-SSH/107 was approved by the Rural and New Town Planning Committee (the Committee) on 28.7.2017 for a period of 3 years. The approved scheme is the same as that under the current application in terms of the site area, number of seats provided and access arrangement. The operation hours are shortened from previously 7:00am to 11:00pm to currently 7:00am to 9:30pm. All the approval conditions of the last application have been complied with.

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) application form and attachments received on 27.5.2020 (**Appendix I**); and
 - (b) supplementary information received on 1.6.2020 (**Appendix Ia**).
- 1.5 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 24.7.2020 (the previous planning permission was valid up to 28.7.2020) for consideration of the application has been rescheduled, and the Town Planning Board has agreed to defer consideration of the application and the application is now scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the attachments of the application form at **Appendices I and Ia**. They can be summarized as follows:

- (a) the applicant is one of the current land owners of the Site and the licensee of the two restaurants on the ground floor of two Small Houses adjoining the Site;
- (b) the restaurant has been operating for many years and is well supported by local residents;
- (c) the Site is the subject of two previous applications No. A/NE-SSH/89 and A/NE-SSH/107 for the same use approved by the Committee in 2014 and 2017 with validity of the latest approval up to 28.7.2020. All approval conditions under the planning permissions have been complied with; and
- (d) the Tseng Tau Tsuen (Sai Kung) Management Committee has no objection to the application as the applied use does not affect the traffic circulation in the village.

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

The applicant is one of the “current land owners”. In respect of the other “current land owner(s)”, the applicant 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 notices and giving notifications to the other “current land owner(s)” by registered post. Detailed information would be deposited at the meeting

for Members' inspection. As for the Government land, the "owner's consent/notification" requirements are not applicable to the application.

4. Town Planning Board Guidelines

Town Planning Board Guidelines for 'Application for Eating Place within "Village Type Development" zone in Rural Areas under section 16 of the Town Planning Ordinance' (TPB PG-No. 15A) and '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 planning criteria are summarized in **Appendices II** and **III**.

5. Previous Applications

5.1 The Site was the subject of two previous applications (No. A/NE-SSH/89 and A/NE-SSH/107) submitted by the same applicant for the same use under the current application. The applications were approved with conditions for a temporary period of three years by the Committee on 13.6.2014 and 28.7.2017 respectively mainly on the considerations that the applied use on a temporary basis would not frustrate the long-term planning intention of "V" zone; was generally in line with the TPB PG-No. 15A and would unlikely create any nuisance to the local residents and cause any adverse impacts on the surrounding areas. All approval conditions imposed for the previous applications have been complied with. The approval of the last application No. A/NE-SSH/107 will be valid until 28.7.2020.

5.2 The details of the above applications are summarized at **Appendix IV** and the location is shown on **Plans A-1** and **A-2**.

6. Similar Application

There is no similar application for OSA within the same "V" zone.

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

7.1 The Site is:

- (a) hard-paved, fenced off and currently used as outside seating accommodation of a restaurant on the ground floor of two adjoining Small Houses;
- (b) situated within the villager proper of Tseng Tau Village; and
- (c) abutting a local track leading to Sai Sha Road.

7.2 The surrounding areas are predominantly rural in character with a mix of village houses, fallow agricultural land and tree groups.

8. Planning Intention

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 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 consists of three private lots, namely Lot No. 1046, 1047 and 1051 (Part) all in D.D. 165 and two small pieces of unallocated Government land. The private lots are held under Block Government Lease demised for agricultural purpose. No structure is allowed to be erected on the Site without prior approval from LandsD. For the Government land, neither occupation nor works of any kind thereon is allowed without prior approval from LandsD;
- (c) applications for Short Term Waiver (STW) and Short Term Tenancy (STT) concerning existing structures have been submitted to LandsD. Should the Board approve this planning application, LandsD will continue to process the STW and STT applications. However, there is no guarantee that such approval for the STW and STT will eventually be given by LandsD. If the STW and STT applications are approved, it will be subject to relevant conditions to be imposed and the relevant charges of fees/deposit/etc. Alternatively, the owners are required to purge the irregularity. Otherwise, lease enforcement action would be taken by LandsD; and
- (d) there is no guarantee of right of way to the Site or approval of the emergency vehicular access thereto; and
- (e) no application for Small House has been received in respect of the Site.

Environment

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

- (a) no in-principle objection to the application;
- (b) he has previously expressed his concern on noise nuisance from the crowd noise and use of machine/equipment on the previous application No. A/NE-SSH/107. In order to minimise the environmental impacts arising from the applied use, the approval condition on the limitation of operation hours should be imposed;
- (c) the applicant is reminded to observe and adopt the pollution abatement measures outlined in the General Environmental Guidelines for Outside Seating Accommodation; and
- (d) applicant should have a proper planning and good house-keeping for noisy machines/equipment (such as locating the machine/equipment away from Noise Sensitive Receives (NSRs), use of quiet machine, adopting noise mitigation/silencing measures) to avoid noise nuisances to nearby residents;

Drainage

9.1.3 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) the applicant should be reminded to maintain the drainage facilities in good condition without causing adverse drainage impact to the adjacent area at all times; and
- (c) there is no existing public sewerage in the vicinity of the Site.

Landscape

9.1.4 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) it is noted that there is no change in the major development parameters of this renewal application compared with the previous application. Landscape impact arising from the continuous use within the Site is not anticipated; and
- (b) the applicant is advised that approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. Tree removal applications should be submitted direct to LandsD for approval.

Buildings Matters

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

- (a) there is no record of approval by the Building Authority for any building at the Site. Should any NTEH be involved, LandsD should be consulted; and
- (b) should there be any existing structures not being NTEH, the applicant's attention should be drawn to the detailed advisory comments at **Appendix V**.

Water Supply

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

- (a) no objection to the application; and
- (b) the applicant is required to either divert or protect the water mains found on the Site in accordance with the relevant advisory comments at **Appendix V**.

Fire Safety

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

he has no in-principle objection to the renewal application subject to the existing fire service installations (FSIs) implemented on the Site being maintained in efficient working order at all times.

Food and Environmental Hygiene

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

- (a) no objection to the application subject to the compliance of licensing requirements or conditions to be imposed in the relevant restaurant license;
- (b) the applicant /licensee of OSA should be reminded that the operation of the OSA of a restaurant must not cause any environmental nuisance or obstruction to the surrounding, and should continue to observe the licensing conditions of OSA at all times; and
- (c) the refuse generated by the proposed OSA are regarded as trade refuse. The applicant /licensee of the OSA is responsible for its

removal and disposal at their expenses.

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

- (a) Chief Engineer/ Consultants Management Division, Drainage Services Department;
- (b) Commissioner for Transport;
- (c) Chief Highway Engineer/New Territories East, Highways Department;
- (d) Director of Agriculture, Fisheries and Conservation;
- (e) Director of Electrical and Mechanical Services;
- (f) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (g) Project Manager/New Territories East, Civil Engineering and Development Department; and
- (h) District Officer/Tai Po, Home Affairs Department.

10. Public Comment Received During Statutory Publication Period

On 5.6.2020, the application was published for public inspection. During the statutory public inspection period, no public comment was received.

11. Planning Considerations and Assessments

11.1 The application is for renewal of a planning permission (No. A/NE-SSH/107) for temporary OSA of a restaurant for a further period of three years in the “V” zone of Tseng Tau Village. The OSA is not totally in line with the planning intention of the “V” zone which is primarily intended for development of NTEH/Small House by indigenous villagers. However, as advised by the DLO/TP of LandsD, there is at present no Small House application received in respect of the Site. The temporary OSA for a further period of three years would not frustrate the long-term planning intention of the “V” zone for village type development. DLO/TP, LandsD has no objection to the application.

11.2 The current scheme is the same as that under the previously approved scheme (No. A/NE-SSH/107) in terms of the site area, number of seats provided and access arrangement. All approval conditions of the previous application have been complied with and there has been no material change in planning circumstances since the last approval. According to DEP, no environmental complaint relating to the Site has been received in the past 3 years.

11.3 The Site is located at the western fringe of the “V” zone of Tseng Tau and abuts a local access road to the village. It is currently paved, fenced off and used for the applied use with valid planning permission. The applied use is considered not incompatible with the surrounding areas which mainly comprise village houses, fallow agricultural land and tree clusters. Concerned Government departments, including DEP, C for T, CE/MN of DSD, CE/C of WSD, DFEH, D of FS, H(GEO) of CEDD, CHE/NTE of HyD, DEMS, CBS/NTE of BD and DO/TP of HAD have no objection to nor adverse comment on the application.

In view of the above, the OSA under application is generally in line with the TPB PG-No. 15A for application for eating place within the “V” zone.

- 11.4 The application generally complies with the TPB PG-No. 34C on ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ in that there has been no material change in planning circumstances since the approval of the previous application; there are no major adverse departmental and local comments against the renewal application; all the approval conditions for the previous application have been complied with; and the approval period sought which is the same as the last approval granted by the Board is not unreasonable.
- 11.5 No public comment on the application is received.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11, 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 three years **until 31.8.2023**. The following approval conditions and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 9:30 pm and 7:00 am, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the existing drainage facilities on the application site shall be maintained in efficient working order at all times during the planning approval period;
- (c) the existing fire service installations implemented on the application site shall be maintained in efficient working order at all times during the planning approval period; and
- (d) if any of the above planning conditions (a), (b) or (c) 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.

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 “V” 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 the 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. There is no strong planning justification in the submission to justify 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 conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.
- 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 Attachments received on 27.5.2020
- Appendix Ia** Supplementary Information received on 1.6.2020
- 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** Relevant Extract of TPB Guidelines No. 34C on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
- Appendix IV** Previous s.16 Applications
- Appendix V** Recommended advisory clauses

- Drawing A-1** Location plan submitted by the applicant
- Drawing A-2** Site 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