

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/662

<u>Applicant</u>	Chings Enterprises Limited
<u>Site</u>	Lot 1092 S.B RP (Part) in D.D. 23, San Tau Kok, Ting Kok, Tai Po, New Territories
<u>Site Area</u>	About 21.85 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural purpose)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Village Type Development” (“V”)
<u>Application</u>	Temporary Shop and Services (Real Estate Agency) for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services (real estate agency) at the application site (the Site) (**Plan A-1**) for a period of three years. According to the Notes of the OZP, ‘Shop and Services’ use within “V” zone 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 forms part of two previous planning applications (No. A/NE-TK/409 and 603) for temporary shop and services (real estate agency and property management) submitted by the same applicant. The last application No. A/NE-TK/603 was approved with conditions by the Rural and New Town Planning Committee (the Committee) for a period of 3 years on 17.2.2017 and revoked on 18.5.2017 as the applicant had failed to comply with approval condition (a) that no operation between 8:00 p.m. and 9:00 a.m. is allowed on the Site during the planning approval period.

- 1.3 Compared with the last approved application (No. A/NE-TK/603) which comprises two single-storey structures for use as a real estate agency shop and a property management office with staff rest room, the current application only involves a single-storey structure (2.9m high) with a total floor area of about 15.13m² and a retractable canopy of about 6.72m² for real estate agency shop use. According to the applicant, the operation hours will be shorter under the current application, i.e. from 10:00 a.m. to 7:00 p.m. instead of from 9:00 a.m. to 8:00 p.m. under Application No. A/NE-TK/603.
- 1.4 The Site is accessible via Ting Kok Road. The site plan, floor plan and access plan of the applied use are at **Drawings A-1 to A-3** respectively.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) an application form and relevant attachments **(Appendix I)**
 - (b) further information received on 29.3.2019 providing responses to departmental and public comments, and clarifying on site layout and development parameters **(Appendix Ia)** *(accepted and exempted from the publication)*
 - (c) further information received on 2.5.2019 clarifying on site area and development parameters **(Appendix Ib)** *(accepted and exempted from the publication)*
- 1.6 At the request of the applicant, the Committee agreed on 1.2.2019 to defer the consideration of the application for two months to allow time for the applicant to prepare further information to support the application. The applicant submitted further information on 29.3.2019 and 2.5.2019. The application is scheduled for consideration on 17.5.2019.

2. **Justifications from the Applicant**

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

- (a) the applicant has been providing real estate agency and property management services to the local community in the area for many years;
- (b) the applied use and temporary structures are not incompatible with the surrounding village houses development. In view of the scale, nature of use and the locality of the temporary development, the applied use would not cause any adverse traffic, drainage, sewerage or environmental impacts in the area;
- (c) the Site forms part of two previous applications (No. A/NE-TK/409 and 603) submitted by the same applicant for temporary real estate agency and property management office (guard kiosk), which were approved on 19.10.2012 and 17.2.2017 respectively. However, due to communication problem between the management and the staff stationed in the site office, the operation hours

between 9:00 a.m. and 8:00 p.m. as required under approval condition (a) had not been strictly observed at night time resulting in revocation of the planning permission on 18.5.2017. The current application covers the real estate agency shop only whereas the property management office is now operated by a separate party;

- (d) the applicant has tightened the control on operation hours by displaying a notice inside the structure to remind all staff to observe the operation hours and have all lights turned off at 7:00 p.m. daily for the real estate agency shop. The applicant is also exploring the feasibility of using electronic timer device to shut off the electricity power automatically in the real estate agency shop at a fixed time;
- (e) regarding the public comments on generating light pollution, the applicant has committed to turn off all lights as well as the neon light for the real estate agency shop after the operation hours;
- (f) in response to the public comments on potential conflict of pedestrians/vehicles at the bottleneck of the private road, the applicant points out that the temporary structure is located at the side of the existing vehicular access which provides adequate width for vehicles; and
- (g) regarding the public comments on the unauthorized use of Government land, the applicant advises that the area concerned is open and accessible by public, and there is no sign or fence to indicate that the Government land is exclusively used by the applicant for parking purpose.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

- 4.1 According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is the subject of a previous and an active enforcement cases against unauthorised shops and services, and service provision respectively. With regard to the previous case, Enforcement Notice (EN) was issued on 17.8.2012 and Cancellation Notice was issued on 30.11.2012 as planning permission was granted by the Committee on 19.10.2012.
- 4.2 For the active enforcement case, an EN was issued on 4.10.2018 requiring the notice recipients to discontinue the unauthorized service provision by 4.1.2019.
- 4.3 Site inspection carried out on 26.4.2019 found that the unauthorised service provision was still in operation and not discontinued. CTP/CEP, PlanD will consider further enforcement actions on the case unless planning permission is granted by the Board.

5. Previous Applications

- 5.1 The Site forms part of two previous applications (No. A/NE-TK/409 and 603) for temporary shop and services (real estate agency and property management) submitted by the same applicant, which were approved by the Committee with conditions for a period of 3 years on 19.10.2012 and 17.2.2017 respectively. They were approved mainly on considerations that the proposed development on a temporary basis would not jeopardize the long-term planning intention of the “V” zone; was not incompatible with the surrounding environment; and would unlikely cause significant adverse impacts on the surrounding areas. The last application No. A/NE-TK/603 was revoked on 18.5.2017 as the applicant had failed to comply with approval condition (a) that no operation between 8:00 p.m. and 9:00 a.m. is allowed on the site during the planning approval period.
- 5.2 Compared with the last approved application (No. A/NE-TK/603), which comprises two single-storey structures for a real estate agency shop and a property management and staff rest room, the current application only covers a single-storey structure for a temporary real estate agency shop. Moreover, the operation hours are shorter under the current application, i.e. from 9:00 a.m. to 8:00 p.m. instead of from 10:00 a.m. to 7:00 p.m..
- 5.3 Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plans A-1** and **A-2**.

6. Similar Application

There is no similar application within the same “V” zone on the OZP.

7. The Site and Its Surrounding Areas (Plans A-1 to A-3 and photo on Plan A-4)

- 7.1 The Site is :
- (a) currently occupied by a single-storey structure with a retractable canopy being used for real estate agency; and
 - (b) abutting a local track leading to Po Sam Pai Village to its north and is accessible via Ting Kok Road.
- 7.2 The surrounding areas are predominantly rural in character. To the north and west are the village proper of Po Sam Pai and San Tau Kok. The area to the east of the Site on the opposite side of Ting Kok Road is zoned “Coastal Protection Area”.

8. **Planning Intention**

The planning intention of the “V” zone is to designate both existing recognized 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 District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site falls within a private lot No. 1092 S.B RP in D.D. 23 which is held under Block Government Lease demised for agricultural purpose and no structure is allowed to be erected without prior approval from LandsD;
- (c) a recent site inspection revealed that two unauthorised structures were found erected on the said lot without LandsD’s approval, i.e. an unauthorised structure for real estate agency shop under the current application with an area of 15.13m² with a retractable canopy of 6.72m². Another unauthorised structure for guard kiosk with an area of 4.19m² was found to the northeast of the Site. The guard kiosk will not be regularized by LandsD since no planning permission has been granted by the Board;
- (d) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access (EVA) thereto;
- (e) the applicant is required to clear any existing structures immediately unless they are covered by valid approval. Otherwise, appropriate lease enforcement action will be taken in due course;
- (f) the applicant should not occupy any Government land without prior approval from LandsD;
- (g) no Small House application has been received in respect of the Site; and
- (h) should the application be approved, the registered owner of the private lot with proposed structures erected/or to be erected are

required immediately to submit the Short Term Waiver (STW) application to LandsD. However, there is no guarantee at this stage that the STW would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at his discretion, such approval might be subject to such terms and conditions as may be imposed by LandsD including payment of waive fees and administrative fees as considered appropriate.

Environment

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

- (a) no objection to the application;
- (b) there was no environmental complaint related to the Site received in the past three years; and
- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements of “Revised Code of Practice on Handling Environmental Aspects of Open Storage and other Temporary Uses (the CoP)” to minimize any potential environmental nuisances.

Drainage

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

- (a) no in-principle objection to the temporary use from drainage maintenance viewpoint;
- (b) as the applicant has already provided drainage facilities on site under the previous applications (No. A/NE-TK/409 and 603) and the current application remains unchanged as compared with the previous applications, approval condition on ‘maintenance of the drainage facilities on site at all times during the planning approval period’ is recommended should the application be approved; and
- (c) DEP should be consulted on the sewage treatment/disposal aspect of the development.

Water Supply

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

- (a) no objection to the application; and
- (b) for the provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable government water mains for connection. The applicant

shall resolve any land matter (such as private lots) associated with provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Fire Safety

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

- (a) no in-principle objection to the application subject to fire service installations (FSIs) and water supplies for firefighting being provided to the satisfaction of Fire Services Department (FSD);
- (b) if covered structures (e.g. container-converted office, temporary warehouse and temporary shed used as workshop) are erected within the Site, FSIs will need to be installed;
- (c) in such circumstances, except where building plan is circulated to the Buildings Department, the applicant is required to send the relevant layout plans incorporated with the proposed FSIs to the FSD for approval. In doing so, the applicant should note that:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the locations of the proposed FSIs and the access for emergency vehicles should be clearly marked on the layout plans; and
- (d) detailed fire safety requirements will be formulated upon receipt of formal submission of the aforesaid plans. The applicant will need to subsequently provide such FSIs according to the approved proposal.

Landscape

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

- (a) no objection to the application from landscape planning point of view; and
- (b) the Site does not fall in "landscape sensitive zonings and areas" and the applied use is unlikely to create any adverse visual and landscape impact, it is considered not necessary to impose any landscape-related condition should the application be approved by the Board.

Building Matter

9.1.7 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 the proposed buildings/structures at the Site and BD is not in a position to offer comments on their suitability of the use related to the application; and
- (b) the applicant should note the followings:
 - (i) if the existing structures are erected on leased land without approval of the BD (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;
 - (ii) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the Building Authority (BA) should be obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
 - (iii) for UBW erected on leased land, enforcement action may be taken by the BA 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 application site under the BO;
 - (iv) in connection with (ii) above, the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation 5 and emergency vehicular access shall be provided under the Building (Planning) Regulation 41D; and
 - (v) if the Site is not abutting on a specified street having a width not less than 4.5m, the development intensity shall be determined by the BA under Building (Planning) Regulation 19(3) at building plan submission stage.

Environmental Hygiene

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

- the applicant should take measures to prevent the existence of nuisance such as pest nuisance and accumulation of refuse at the Site.

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

- (a) Commissioner of Police;
- (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 Comments Received During Statutory Publication Period (Appendix III)

On 28.12.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, 6 public comments were received from local villagers and an individual objecting to the application on the grounds of being the subject of unauthorized developments and structure; unauthorized use of Government land by the applicant; imposing safety risks to villagers in view of potential conflict of pedestrians/vehicles at the bottleneck of the private road as well as the unsafe condition of the structure; generating air and light pollution; and causing adverse visual, traffic and environmental impacts.

11. Planning Considerations and Assessments

11.1 The Site falls entirely within “V” zone and is being used for the applied use without a valid planning permission. The applied use is not in line with the planning intention of the “V” zone which is primarily intended for development of Small Houses by indigenous villagers. Nevertheless, DLO/TP of LandsD advises that there is at present no Small House application at the subject lot. According to the applicant, the temporary use under application is to provide real estate agency service to the local community in the area. Approval of the application on a temporary basis for 3 years would not frustrate the long-term planning intention of the subject “V” zone.

11.2 The Site is abutting a local track leading to Po Sam Pai Village to its north and is accessible via Ting Kok Road. The temporary use, which involves one single-storey structure (2.9m in height) with a total floor area of about 15.13m² and a retractable canopy of about 6.72m², is small in scale. The applied use is considered not incompatible with the surrounding environment which is rural in character predominantly occupied by abandoned agricultural land and village houses. According to the applicant, the opening hours of the real estate agency shop are from 10:00 a.m. to 7:00 p.m. daily and all the lights and neon lights for the agency shop will be turned off after business hours. DEP has no objection to the application and there was no environmental complaint related to the Site received in the past three years. Besides, the applicant will be advised to adopt the “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” to alleviate any potential

environmental impact. It is not anticipated that the applied use would cause significant adverse traffic, environmental, drainage, visual and landscape impacts on the surrounding areas. Concerned Government departments, including C for T, DAFC and CTP/UD&L of PlanD have no objection to or no adverse comment on the application. In view of the above, sympathetic consideration could be given to the application.

- 11.3 According to CTP/CEP of PlanD, the Site is part of the subject of an active enforcement case against unauthorised service provision. An EN was issued on 4.10.2018 requiring the notice recipients to discontinue the unauthorized development by 4.1.2019. Site inspection carried out on 26.4.2019 found that the unauthorised service provision was still in operation and not discontinued. CTP/CEP of PlanD will consider further enforcement actions on the case unless planning permission is granted by the Committee.
- 11.4 The Site forms part of two previous applications (No. A/NE-TK/409 and 603) for temporary shop and services (real estate agency and property management) submitted by the same applicant, which were approved by the Committee with conditions for a period of 3 years on 19.10.2012 and 17.2.2017 respectively. They were approved mainly on considerations that the proposed development on a temporary basis would not jeopardize the long-term planning intention of the “V” zone; was not incompatible with the surrounding environment; and would unlikely cause significant adverse impacts on the surrounding areas. The last application No. A/NE-TK/603 was revoked on 18.5.2017 as the applicant had failed to comply with approval condition (a) that no operation between 8:00 p.m. and 9:00 a.m. is allowed on the site during the planning approval period. Compared with the last approved application (No. A/NE-TK/603), only one structure used as a real estate agency shop is proposed and operation hours are shortened. There has been no material change in planning circumstances since the previous approval was granted. However, in order to closely monitor the operation of the real estate agency shop, an approval condition on the operation hours and no use of neon lights after the operation hours, as proposed by the applicant, as well as shorter compliance period of the approval conditions are recommended if the application is approved.
- 11.5 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10 above, Government departments’ comments and the planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments 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 17.5.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no night time operation and no use of neon lights between 7:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the site during the planning approval period;
- (b) the existing drainage facilities on the site shall be maintained at all times during the planning approval period;
- (c) the submission of fire service installations and water supplies for fire fighting proposal within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 17.8.2019;
- (d) in relation to (c) above, the implementation of 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 17.11.2019;
- (e) 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
- (f) if any of the above planning conditions (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 attached at **Appendix IV**.

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

- the proposed development is not in line with the planning intention of the "Village Type Development" zone which is to designate both existing recognized 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. No strong planning justification has been given 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 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 attachments dated 19.12.2018
Appendix Ia	Further information received on 29.3.2019
Appendix Ib	Further information received on 2.5.2019
Appendix II	Previous applications
Appendix III	Public comments
Appendix IV	Recommended advisory clauses
Drawings A-1	Site Plan submitted by the applicant
Drawings A-2	Floor Plan with Fire Service Installations submitted by the applicant
Drawings A-3	Access 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
MAY 2019**