

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

APPLICATION NO. A/NE-TK/695

- Applicant** : Miss LEE Tung Yee and Mr. MAN Kin Pong represented by Tang K.F. Associates Limited
- Site** : Lots No. 214 S.A ss.1 (Part), 214 S.B ss.1 (Part) and 214 S.A RP (Part) in D.D.28, Lung Mei, Tai Po, New Territories
- Site Area** : About 60.11m²
- Lease** : Block Government lease demised for agricultural purpose
- Plan** : Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
- Zoning** : “Village Type Development” (“V”)
- Application** : Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of Three Years

1. The Proposal

- 1.1 The applicants seek planning permission to use the application site (the Site) for temporary eating place with outside seating accommodation (OSA) as an extension of a restaurant at the ground floor of a village house (59A Lung Mei Village) for a period of three years. According to the Notes of the OZP, while ‘Eating Place’ on the ground floor of a New Territories Exempted House (NTEH) within the “V” zone is always permitted, such use elsewhere including those 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 Site is accessible via Tai Po Lung Mei Road and the cycle track along Ting Kok Road. The applied use will comprise a temporary structure with a covered area of about 27.6 m² and a height of about 2.4m. The remaining area will be uncovered (**Drawings A-1 and A-2**). It will provide not more than 39 seats and will operate from 10:30am to 10:30pm everyday. No neon signboard and spotlight will be installed, and no parking space is proposed.
- 1.3 The Site is the subject of two previously approved planning applications (No. A/NE-TK/534 and 630) submitted by the same applicants for temporary OSA for a period of three years. Application No. A/NE-TK/534 was approved with conditions and renewed under No. A/NE-TK/630 by the Rural and New Town Planning Committee (the Committee) on 27.2.2015 and 9.2.2018 respectively. The latest approved planning application (No. A/NE-TK/630) is valid until

27.2.2021 and all approval conditions have been complied with. The applied use under current application is largely the same as the latest approved one except that a temporary structure as mentioned in paragraph 1.2 is included.

1.4 In support of the application, the applicants has submitted the following documents:

- (a) application form and attachments received on **(Appendix I)** 23.11.2020
- (b) Further information (FI) received on 6.1.2021 **(Appendix Ia)** clarifying the structure to be erected[^]
- (c) FI received on 15.1.2021 clarifying the operation **(Appendix Ib)** details of the applied use with a revised layout plan[^]

[^]accepted and exempted from publication and recounting requirements

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the application are detailed in part 7 of the application form **(Appendix I)**. They can be summarised as follows:

- (a) the applied use is in line with the planning intention of “V” zone on the approved Ting Kok OZP No. S/NE-TK/19;
- (b) the Site is the subject of two previous applications which were approved with conditions and all approval conditions were compiled with;
- (c) the applied use would not cause adverse traffic, drainage, visual, landscape and environmental impacts on the surroundings. No neon signboard and spotlight will be installed and thus no light pollution will be caused; and
- (d) the applied use would operate at reasonable hours i.e. from 10:30 a.m. to 10:30 p.m. daily and no environmental complaints have been received in the past three years.

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

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

- 4.1 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 this application. The relevant assessment criteria are attached at **Appendix II**.

- 4.2 According to paragraph 1(c) of TPB PG-No. 15A, even if a proposal is acceptable in land-use planning terms and other planning criteria are met, under normal circumstances only a temporary approval for a maximum of three years should be considered so as to retain planning control on the development at the Site and to cater for changing circumstances in future.

5. **Previous Applications**

The Site is the subject of two previous planning applications (No. A/NE-TK/534 and 630) submitted by the same applicants for temporary OSA for a period of three years (**Plan A-1**). Application No. A/NE-TK/534 was approved with conditions and renewed under No. A/NE-TK/630 by the Committee on 27.2.2015 and 9.2.2018 respectively. The latest approved planning application (No. A/NE-TK/630) is valid until 27.2.2021 and all approval conditions have been complied with. The applied use under current application is largely the same as the latest approved one except that a temporary structure with a covered area of about 27.6m² and a height of about 2.4m is included. Details of the previous applications are summarised at **Appendix III**.

6. **Similar Applications**

- 6.1 There are 27 similar applications involving 15 sites for OSA within the same “V” zone. All applications were approved by the Committee between 1998 and 2019 mainly on considerations that they complied with the planning criteria of TPB PG-No. 15A and would unlikely cause any nuisance to the local residents nor adverse impacts on the surrounding areas.
- 6.2 Details of the similar applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

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

- 7.1 The Site is:
- (a) paved and located to the immediate east of a restaurant on the ground floor of a village house at 59A Lung Mei Village;
 - (b) located at the southern fringe of Lung Mei Village; and
 - (c) accessible from Tai Po Lung Mei Road and the cycle track along Ting Kok Road.
- 7.2 The surrounding areas have the following characteristics:
- (a) rural in character comprising mainly village houses of Lung Mei Village; and

- (b) some restaurants with OSA are located about 200m to the east of the Site. To the further southeast on the opposite side of Ting Kok Road, there are a bus terminus, a public car park and various recreational facilities including barbeque areas, water sports centres and nature trails at Tai Mei Tuk. The Lung Mei Beach under construction is about 240m to the southwest.

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 summarised 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 covers part of three private lots in D.D. 28, Ting Kok, which are held under Block Government lease demised for agricultural purpose. No Small House application has been received in respect of the Site;
- (c) no structures shall be erected on the Site without the prior approval from LandsD. The applicants are required to clear any existing structures on the Site immediately unless they are covered by valid approval. Otherwise, appropriate enforcement action may be considered to be taken by DLO/TP;
- (d) should the Board approve the application on the Site, the lot owners are required to submit an application for Short Term Waiver (“STW”) to LandsD if they wish to erect structures on it. There is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver fee and administrative fee as considered appropriate; and
- (e) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicle access (EVA) thereto.

Environment

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

- (a) no environmental complaint has been received on the Site in the past three years; and
- (b) the applicants should strictly observe and comply with relevant environmental pollution control ordinances (including Noise Control Ordinance and Air Pollution Control Ordinance), and carry out pollution abatement measures in relevant Guidelines, including the '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.

Traffic

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

- (a) no in-principle objection to the application from traffic engineering point of view; and
- (b) since the existing village access connecting to the Site is not managed by TD, the land status, management and maintenance responsibilities of the road and footpath should be clarified with the relevant lands and maintenance authorities in order to avoid potential land disputes.

Drainage

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

- (a) there is no existing DSD maintained public drain available for connection in the area. The applicants should have their own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site;
- (b) the applicants are required to maintain their drainage system properly and rectify the system if it is found to be inadequate or ineffective during operation; and
- (c) the applicants shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the system.

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 (FSI) being provided to his satisfaction;
- (b) the applicants are advised to submit relevant layout plans incorporated with the proposed FSI to D of FS for approval and note the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy;
 - (ii) the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and
- (c) the applicants are reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) any structures on the Site shall not obstruct the exit routes, means of access for firefighting and rescue, and barrier free access of the adjoining building under the Code of Practice for Fire Safety in Buildings 2011 and Building (Planning) Regulations 41 and 72;
- (b) if the proposed use under application is subject to the issue of a licence, the applicants are 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; and
- (c) for any new proposed buildings, the advisory comments at paragraph (f) of **Appendix VI** should be observed.

Water Supplies

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

- (a) no objection to the application; and

- (b) some existing water mains inside the Site may be affected. The applicants are required to either divert or protect these water mains in accordance with the detailed advice at paragraph (d) of **Appendix VI**.

Food and Environmental Hygiene

9.1.8 Comments of the Director of Food and Environmental Hygiene:

- (a) the Site is covered by a valid General Restaurant licence (with OSA) which will expire on 19 May 2021; and
- (b) proper licence / permit issued by his department is required for any food business / catering service / activities regulated under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Whenever restaurant licensees wish to include an OSA into their licensed premises, they are required to submit application to his department. Detailed advice in relation to the issue of licence and application for the OSA are in paragraph (g) of **Appendix VI**.

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

- (a) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Commissioner of Police;
- (d) Director of Electrical and Mechanical Services;
- (e) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (f) Project Manager/North, Civil Engineering and Development Department; and
- (g) District Officer/Tai Po, Home Affairs Department.

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

On 1.12.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, a total of three public comments were received from individuals objecting to the application for concerns on noise, air and light pollution, environmental hygiene, illegal parking and public order arising from the applied use.

11. Planning Considerations and Assessments

- 11.1 The application is for a temporary eating place with OSA as an extension of a restaurant for a period of three years within the “V” zone on the OZP. The applied use is not totally in line with the planning intention of the “V” zone which is primarily intended for development of NTEH/Small Houses by indigenous villagers. However, as advised by DLO/TP of LandsD, there is at present no Small House application received in respect of the Site. It is considered that the approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the subject “V” zone and adversely affect the land availability for Small House development. DLO/TP, LandsD has no objection to the application.
- 11.2 The Site is the subject of two previously approved planning applications (No. A/NE-TK/534 and 630) submitted by the same applicants for temporary OSA for a period of three years. Application No. A/NE-TK/534 was approved with conditions and renewed under No. A/NE-TK/630 by the Committee on 27.2.2015 and 9.2.2018 respectively. The latest approved planning application (No. A/NE-TK/630) is valid until 27.2.2021 and all approval conditions have been complied with. The applied use under current application is largely the same as the latest approved one except that a temporary structure with a covered area of 27.6m² and a height of 2.4m is included. The scale of the applied use is similar to the previously approved one, and there has been no major change in planning circumstances since the approval of the last application.
- 11.3 The Site is paved and located at the fringe of Lung Mei Village. The applied use is considered not incompatible with its surrounding uses which mainly comprise village houses and recreational facilities in Tai Mei Tuk. There are also some restaurants with OSAs about 200m to the east of the Site (**Plan A-1**). The applied use occupies only about 60m² with not more than 39 seats. Furthermore, no neon signboard, spotlighting and parking space will be provided. It is small in scale and is not anticipated to cause significant environmental, traffic, drainage and landscape impact on the surrounding areas. According to DEP, there has been no environmental complaint related to the Site in the past three years. Concerned Government departments, including the C for T, CTP/UD&L, CE/C, WSD and D of FS, have no objection or 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 eating place within the “V” zone. Sympathetic consideration could be given to the application. A temporary approval for three years could also retain planning control on the Site and cater for changing circumstances in future.
- 11.4 Regarding the adverse public comments mentioned in paragraph 10, the planning assessments and comments of concerned Government departments in the above paragraphs 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 22.1.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 10:30 p.m. and 10:30 a.m., as proposed by the applicants, is allowed on the application site during the planning approval period;
- (b) 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 22.7.2021;
- (c) in relation to (c) above, the implementation of drainage facilities 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 22.10.2021;
- (d) 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 22.7.2021;
- (e) in relation to (d) 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 22.10.2021;
- (f) if the above planning condition (a) 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
- (g) if any of the above planning conditions (b) to (e) 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 immediately without further notice

Advisory Clauses

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

- 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" 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 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 applicants.

14. Attachments

Appendix I	Application form with attachments received on 23.11.2020
Appendix Ia	Further information submitted by the applicants received on 6.1.2021
Appendix Ib	Further information submitted by the applicants received on 15.1.2021
Appendix II	Relevant extract of Town Planning Board Guidelines No. 15A on Application for Eating Place within “Village Type Development” zone in Rural Areas under section 16 of the Town Planning Ordinance
Appendix III	Previous planning applications
Appendix IV	Similar planning applications
Appendix V	Public comments
Appendix VI	Recommended advisory clauses
Drawing A-1 and A-2	Location Plan and Layout Plan submitted by the applicants
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos