

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-LTYYY/380

- Applicant** : Able Creation Management Limited represented by Wong Sun Wo William
- Site** : Lots 1156 RP (Part) and 1157 (Part) in D.D.130 and Adjoining Government Land, Wong Kong Wai Road, Lam Tei, Tuen Mun, New Territories
- Site Area** : About 385 m² (including Government Land of about 27 m² (about 7%))
- Land Status** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTYYY/10
- Zoning** : “Residential (Group C)” (“R(C)”)
[Restricted to a maximum plot ratio of 0.4 and a maximum building height of 3 storeys (9m) including car park]
- Application** : Proposed Temporary Shop and Services (Pet Supplies and Food Shop) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services (pet supplies and food shop) for a period of 3 years (**Plan A-1**). The Site is currently partly occupied by a vacant structure and partly used for parking of vehicles.
- 1.2 According to the Notes for the “R(C)” zone on the OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary permission for a period of 3 years. The Site is not related to any previous application.
- 1.3 The major development parameters of the current application are as follows:

Site area	About 385 m ²
Non-domestic gross floor area (GFA)	About 152 m ²
No. of structure	1
Maximum height of structures	1 storey (4.5m)
No. of Parking Spaces	2 (5m x 2.5m, Private Car Parking Spaces for Visitors)

Loading/Unloading Spaces	1 (7m x 3.5m, Light Goods Vehicles)
Operation hours	8:00 a.m. to 8:00 p.m. daily (including Sundays and public holidays)

- 1.4 According to the Applicant, the Site is accessible from Wong Kong Wai Road (**Plan A-2**). No vehicle repair, dismantling, car beauty, car washing and workshop use will be carried out at the Site. Application No. A/TM-LTYT/379 (**Plans A-1 and A-2**) for temporary public vehicle park (private cars only) with ancillary office for a period of 3 years to be considered at the same meeting submitted by the same applicant will share the same access of this application (**Drawing A-1**). The applicant claims that he has obtained consent from the land owner to use the vehicular access.
- 1.5 The site plan, proposed layout plan, the proposed stormwater drainage plan, the landscape proposal and the internal layout plan are at **Drawings A-1 to A-5** respectively.
- 1.6 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on **(Appendix I)** 30.7.2019
 - (b) Further information (FI) providing clarification on the trip generation rates and trip attractions from/to the Site received on 18.10.2019
(accepted and exempted from publication and recounting requirements) **(Appendix Ia)**
 - (c) FI in response to the Transport Department's (TD's) comments received on 25.11.2019
(accepted and exempted from publication and recounting requirements) **(Appendix Ib)**
 - (d) FI providing clarification on the operation received on 27.11.2019
(accepted and exempted from publication and recounting requirements) **(Appendix Ic)**
 - (e) FI providing clarification on the access road received on 4.12.2019
(accepted and exempted from publication and recounting requirements) **(Appendix Id)**
- 1.7 The application was originally scheduled for the consideration by the Rural and New Town Planning Committee (the Committee) of the Board on 20.9.2019. On 20.9.2019, the Committee agreed to defer a decision on the application for two month as requested by the applicant. On 18.10.2019, further information was received. Therefore, the application is 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 at **Appendices I to Id**. They can be summarised as follows:

- (a) The Site is at the opposite of a pet garden which attracts a great number of pet owners and pets (**Plan A-2**). The proposed use is for the convenience to the pet owners.
- (b) Light goods vehicles will enter/exit the Site from 10 a.m. to 3 p.m. and the two private car spaces are for visitors. No adverse impact on Castle Peak Road and Wong Kong Wai Road will be anticipated.
- (c) The proposed vehicular access is the only vehicular access for the Site and the applicant has obtained consent from the land owner to use the vehicular access.

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

For the private land portion of the Site, 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. 31A) by sending a registered mail to the Tuen Mun Rural Committee and by posting notice at the Site. Detailed information would be deposited at the meeting for Members’ inspection. For GL, the requirements as set out in TPB PG-No. 31A are not applicable.

4. Background

The Site was the subject of a planning enforcement case against unauthorised development (UDs) involving use for place for parking of vehicles and use for shop and services (i.e. car washing). An Enforcement Notice was issued on 28.1.2019. On 30.8.2019, the Planning Authority issued a Compliance Notice to the owner of the subject lots after discontinuance of the UD. Nevertheless, site inspection on 27.11.2019 reveals that the Site is used once again for parking of vehicles which would be subject to planning enforcement action.

5. Previous Application

There is no previous application covering the Site.

6. Similar Application

There is no similar application within the same “R(C)” zone on the OZP.

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

7.1 The Site is:

- (a) paved and currently partly occupied by a vacant structure and partly used for parking of vehicles; and
- (b) accessible from Wong Kong Wai Road (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) to the east and southeast are warehouses and godowns which are suspected unauthorised developments (UDs);

- (b) to the south and southwest are Wong Kong Wai Road, Kong Sham Western Highway, beneath is Lam Tei Pet Garden and an open storage yard which is a suspected UD (**Plan A-2**); and
- (c) to the west, northwest and north are amenity areas, residential dwellings, vacant land and storage/open storage yards which are suspected UDs.

8. Planning Intention

The “R(C)” zone is intended primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.

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/Tuen Mun, Lands Department (DLO/TM, LandsD):

- (a) The Site falls within Lots Nos. 1156 RP (Part) and 1157 (Part) both in D.D.130 (“the Lots”) and adjoining GL. The Lots are Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) Site inspection revealed that vacant structures have been found on the Lots and the adjoining GL on the south-western side. Besides, portion of GL adjoining Lot No. 1156 RP in D.D. 130 was being occupied as an open area. No permission has been given for the erection of the structures nor has any permission been given for occupation of GL. The layout of existing structures does not entirely tally with the proposal.
- (c) The Site is accessible via a strip of GL leading from Wong Kong Wai Road. His office does not carry out maintenance works for the said road nor guarantee that right-of-way will be given to the Site.
- (d) If planning permission is given by the Board, the lot owners may consider submitting formal applications to his office for Short Term Waiver and Short Term Tenancy to permit erection of the proposed structures on the Lots and occupation of the adjoining GL. However, there is no guarantee that the applications will be approved and he reserves his right to take any action as may be appropriate. The applications will be considered by Lands Department acting in the capacity as the landlord at its sole discretion. In the event that the applications are approved, they would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, rent, deposit and administration fee etc.

- (e) Notwithstanding the above, his office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alterations of the structures affected irrespective of whether planning permission will be given or not. Enforcement action will also be taken should any structures are found erected without any prior approval given by his office or any unauthorized occupation of GL.

Traffic

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

He has no comment on the application from the traffic engineering viewpoints.

9.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) The proposed access arrangement of the Site from Wong Kong Wai Road should be commented and approved by TD;
- (b) If the access arrangement is agreed by TD, the applicant should construct a run in/out at the access point at Wong Kong Wai Road in accordance with the latest version of Highways Standard Drawing No. H1113 and H1114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing adjacent pavement;
- (c) The proposed access from the Site to Wong Kong Wai Road is not and will not be maintained by HyD;
- (d) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) Should the application be approved, the applicant is advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP to minimise potential environmental impacts on the surrounding environment.
- (b) Sewage arising from the subject site should be directed to nearby public sewer. If septic tank and soakaway system is used in case of unavailability of public sewer, its design and construction should follow the requirements of the ProPECC PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” and are duly certified by an Authorized Person (AP).
- (c) There was no environmental complaint pertaining to the Site received in the past 3 years.

Drainage

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

- (a) He has no objection in principle to the application from public drainage point of view.
- (b) Should the application be approved, a condition should be included to request the applicant to submit, implement and maintain a drainage proposal for the site to ensure that it will not cause adverse drainage impact to the adjacent area.
- (c) In regards to the proposed drainage proposal, the applicant should note his below comments:
 - (i) The applicant should refer to the guidelines as specified in “Technical Note to prepare a Drainage Submission” which is available at DSD’s website (https://www.dsd.gov.hk/EN/Technical_Documents/DSD_Guidelines/index.html).
 - (ii) Based on his observation during an inspection on 19 August 2019, the existing 225 mm u-channel as specified in the applicant’s submitted drainage proposal could not be found. Please clarify.
 - (iii) Presumably it is the intent of applicant to make drainage connection to existing drainage channel adjacent to the proposed site. According to his record, the existing channel is not maintained by DSD. In this regard the applicant should be reminded to consult the relevant authorities/lot owners as appropriate.
 - (iv) Details of the proposed u-channel, catchpits and Upvc pipe and how it would be connected to the existing drainage system should be clarified and clearly shown on the drawing.
 - (v) Peripheral drainage channels should be provided to intercept the surface runoff from the uphill catchment so as to avoid the Site from overland flow influence. Please review.
 - (vi) Based on his observation during an inspection on 19 August 2019, the proposed 150mm Upvc pipe may encroach on the verge with trees and exposed tree roots Please review the routing of the proposed pipe and how it would be connected to the existing 225mm u-channel as specified in the applicant’s submitted drainage proposal.
 - (vii) The proposed drainage works, whether within or outside the lot boundary, should be constructed and maintained by the lot owner at their own expense. For any works to be carried out outside his lot boundary, the applicant

should consult DLO/TM and seek consent from relevant lot owners before commencement of the drainage works.

- (viii) The applicant is required to rectify the drainage system if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by a failure of the drainage system.
- (ix) The proposed works should neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas
- (d) There is currently no existing public sewerage facilities available for connection at the Site. In this regard, Environmental Protection Department, the planning authority of sewerage infrastructure, should be consulted on the sewage treatment/disposal arrangement.

Fire Safety

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

- (a) He has no objection in principle to the proposal 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 to his department 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 FSI to be installed should be clearly marked on the layout plans.
- (c) However the applicant is reminded that 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.

Landscape

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

With reference to the aerial photo of 2019, the Site is completely hard paved and partly occupied by existing temporary structures. The Site is in an area of rural fringe landscape character composed of open storage yards, temporary structures and village houses. Significant change to the landscape character arising from the application is not envisaged.

Nature Conservation

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

The Site falls within “R(C)” zone. According to his site visit in January 2019, the Site is currently used as car parking. The Site is largely paved with several individuals of trees at the boundary of the Site. Although the application form (Section 8) proposed that no felling or damage of trees would be involved, his site visit revealed that some trees are found at the proposed entrance of the shop. The applicant shall review and revise the application form should any tree felling be involved in the proposed development. Considering the current use of the Site and the nature of the proposed development, he has no strong views on the application from nature conservation perspective

Building Matters

9.1.9 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 (BA) for the existing structures at the Site and BD is not in a position to offer comments on their suitability for the use related to the application.
- (b) His comments under the Buildings Ordinance on the application are as follows:
 - (i) If the existing structures are erected on leased land without approval of the BA (not being a New Territories Exempted House (NTEH)), they are unauthorised under the 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, the prior approval and consent of the BA should be obtained, otherwise they are Unauthorised Building Works (UBW). An Authorised Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
 - (iii) For UBW erected on lease 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 Site under the BO.
 - (iv) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the

Building (Planning) Regulation at the building plan submission stage.

- (v) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations respectively.

Others

- 9.1.10 Comments of the Chief Town Planner/Housing and Office Land Supply, Planning Department (CTP/HOLS, PlanD) and the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD):

The Site falls within the Study Area of the on-going Preliminary Land Use Study for Lam Tei Quarry and the Adjoining Areas (the Study) jointly commissioned by CEDD and PlanD. They have no specific comment on the application as far as the Study is concerned.

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

If the proposal involves any commercial/trading activities, its state should not be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.

District Officer's Comments

- 9.1.12 Comments of the District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD):

He has distributed consultation letters to the locals concerned and understand that they would provide their comments (if any) to the Board direct.

- 9.2 The following government departments have no comment on the application:

- (a) Director of Leisure and Cultural Services (DLCS);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES (A&M), AMO); and
- (e) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 9.8.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 30.8.2019, one public comment was received. A member of the Tuen Mun District Council supported the application without giving specific reason (**Appendix II**).

11. Planning Considerations and Assessments

- 11.1 The subject application is for proposed temporary shop and services (pet supplies and food shop) for a Period of 3 Years at a site zoned “R(C)” on the OZP. The “R(C)” zone is intended primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. Whilst the proposed development is not entirely in line with the planning intention of the “R(C)” zone, there is currently no development proposal to implement the zoned use of the Site. The proposed development could also provide shop and services to serve any such demand in the area. Approval of the application on a temporary basis would not jeopardise the long-term planning intention of the zone.
- 11.2 The Site, locating at the southern fringe of the “R(C)” zone and abutting Wong Kong Wai Road, is mainly surrounded by warehouses, and residential dwellings to its north and east and amenity area and pet garden to its west. The development is considered not incompatible with the surrounding land uses.
- 11.3 Relevant government departments, including C for T, CE/MN of DSD, CTP/UD&L of PlanD and DEP have no objection to or no adverse comments on the application. The proposed development will unlikely create significant adverse traffic, drainage, landscape and environmental impacts on the surrounding areas. There has been no environmental complaint concerning the Site received in the past 3 years. To minimise any potential environmental nuisances and to address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on Site will be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimise the possible environmental impacts on the nearby sensitive receivers.
- 11.4 Regarding the public comment, the planning considerations and assessments in paragraphs 11.1 to 11.3 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 comment mentioned in paragraph 10 above, 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 13.12.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 8:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) the submission of a run-in/out proposal within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board by 13.6.2020;
- (c) in relation to (b) above, the implementation of run-in/out proposal within **9** months from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board by 13.9.2020;
- (d) the submission of a drainage proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 13.6.2020;
- (e) in relation to (d) above, the implementation of the drainage proposal within **9** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 13.9.2020;
- (f) in relation to (e) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (g) the submission of a fire service installations proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 13.6.2020;
- (h) in relation to (g) above, the implementation of the fire service installations proposal within **9** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 13.9.2020;
- (i) if any of the above planning conditions (a) or (f) 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 (b), (c), (d), (e), (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 at **Appendix III**.

- 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 planning intention of the "R(C)" zone which is intended primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. There is no strong planning justification in the submission for a departure from such 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 applicant.

14. Attachments

Appendix I	Application Form with attachments received on 30.7.2019
Appendix Ia	Further information providing clarification on the trip generation rates and trip attractions from/to the Site received on 18.10.2019
Appendix Ib	Further information in response to the Transport Department's comments received on 25.11.2019
Appendix Ic	Further information providing clarification on the operation received on 27.11.2019
Appendix Id	Further information providing clarification on the access road received on 4.12.2019
Appendix II	Public Comment received during statutory publication period
Appendix III	Advisory Clauses
Drawing A-1	Site Plan
Drawing A-2	Proposed Layout Plans
Drawing A-3	Proposed Stormwater Drainage Plan
Drawing A-4	Landscape Proposal
Drawing A-5	Internal Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos