

Withdrawn by Applicant

RNTPC Paper No. A/TM-LTYYY/391
For Consideration by
the Rural and New Town
Planning Committee
on 17.1.2020

APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-LTYYY/391

- Applicant** : Chan Ping Shing represented by Goldrich Planners & Surveyors Limited
- Site** : Lots 1211 S.C (Part), 1248 (Part) and 1249 (Part) in D.D 130, Fuk Hang Tsuen, Tuen Mun, New Territories
- Site Area** : About 580.8 m²
- Lease** : 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 D)” (“R(D)”)
[restricted to maximum plot ratio of 0.2 and a maximum building height of 2 storeys (6m)]
- Application** : Temporary Shop and Services with Ancillary Storage Area and Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services with ancillary storage area and office for a period of 3 years (**Plan A-1**). According to the Notes for the “R(D)” zone on the OZP, ‘Shop and Services’ is a Column 2 use which requires permission from the Town Planning Board (the Board). The applicant is seeking temporary permission for a period of 3 years. The Site is currently used for the applied use without valid planning permission.
- 1.2 The Site is involved in a previous application (No. A/TM-LTYYY/320) for proposed temporary shop and services (real estate agency and local provisions store) with ancillary storage area and office for a period of 3 years which was approved by the Rural and New Town Planning Committee (the Committee) on 25.11.2016. However, the permission was revoked on 25.4.2019 due to non-compliance with the approval condition on the implementation of drainage proposal. Details of the previous applications are summarized at paragraph 5 below and at **Appendix II**.

- 1.3 A comparison of the major development parameters of the previously approved application and current application is as follows:

Major Development Parameters	Previously Approved Application No. A/TM-LTY Y/320 (a)	Current Application No. A/TM-LTY Y/391 (b)	Difference (b)-(a)
Applied Use	Proposed Temporary Shop and Services (Real Estate Agency and Local Provisions Store) with Ancillary Storage Area and Office for a Period of 3 Years	Temporary Shop and Services with Ancillary Storage Area and Office for a Period of 3 Years	--
Site Area	About 604.7 m ² (including about 23.1 m ² of government land (GL))	About 580.8 m ²	-23.9 m ² (-3.95%)
Gross Floor Area (GFA)	493.6 m ²	About 261.8m ²	-231.8m ² (-46.96%)
Number of Structures	4 (1 for real estate agency and local provision store; 1 for ancillary storage area and office; 1 toilet and 1 open staircase and platform)	3 (1 for real estate agency and local provision store and the shed projection; 1 toilet and 1 open staircase and platform)	-1 (-25%)
Maximum Building Height	2 storeys (not exceeding 7.5m)		Same
Car Parking Space	1 (5m x 2.5m) (for private car)		Same
Loading/ Unloading (L/UL) Space	L/UL area provided within the site	1 (7m x 3.5m) (for light goods vehicle)	+1 (100%)
Operation hours	9:00 a.m. to 8:00 p.m. daily	8:00 a.m. to 9:00 p.m. daily	+2 hours

- 1.4 Compared with the last approved Application No. A/TM-LTY Y/320, the current application is submitted by the same applicant with the same agent for the same use at the same site with smaller site area, reduction in number of structures and GFA.
- 1.5 According to the applicant, the Site is accessible from Tat Fuk Road via Wong Kong Wai Road (**Plan A-3**) and a pedestrian access at the south-eastern of the Site (**Drawing A-1**).
- 1.6 The location plan, lot index plan, site plan, drainage proposal, tree preservation and landscape proposal and swept path analysis are at **Drawings A-1 to A-7** respectively.

- 1.7 In support of the application, the applicant has submitted the following documents:
- (a) Application Form and Supplementary Information (**Appendix I**) received on 18.11.2019
 - (b) Supplementary Planning Statement with Drainage Proposal, Tree Preservation and Landscape Proposal and Swept Path Analysis (**Appendix Ia**)
 - (c) Further Information received on 30.12.2019 providing further justifications (*accepted and exempted from publication and recounting requirements*) (**Appendix Ib**)
 - (d) Further Information received on 31.12.2019 providing an updated location plan (*accepted and exempted from publication and recounting requirements*) (**Appendix Ic**)

2. Justifications from the Applicant

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

- (a) There are several village houses in Fuk Hang Tsuen and residential developments namely Botania Villa and The Sherwood to the further west of the Site (**Plan A-1**). The proposed development serves to meet the needs of local people.
- (b) The operation hours are from 8:00 a.m. to 9:00 p.m. daily (including Sundays and public holidays).
- (c) The proposed development consists of 1-2 storeys converted-container structures. It is compatible with the surrounding environment which comprises mainly domestic structures of 1-2 storeys. No significant adverse visual impact is anticipated.
- (d) A comprehensive drainage network for rainwater collection is formed (**Drawing A-4**).
- (e) 7 existing trees on the southern portion of the Site (**Drawing A-5**) will be properly maintained in accordance with the guidelines from the Greening, Landscape and Tree Management Section of Development Bureau including 'Tree Care During Construction' and 'Pictorial Guide for Tree Maintenance'.
- (f) The proposed use is small in scale and aims at serving residents in the vicinity, no significant traffic impact to the local road network is expected.

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

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.

4. Background

The temporary shop and services and office use on the Site would be subject to planning enforcement action.

5. Previous Application

5.1 The Site is involved in one previous Application No. A/TM-LTY Y/320. Details of the previous application are summarised at **Appendix II** and its location is shown on **Plan A-1**.

5.2 Application No. A/TM-LTY Y/320 for proposed temporary shop and services (real estate agency and local provisions store) for a period of 3 years as approved with conditions by the Committee on 25.11.2016. The major considerations were that the proposed development would not jeopardize the long term planning intention of the "R(D)" zone and not incompatible with the surrounding uses. However, the planning permission of Application No. A/TM-LTY Y/320 was revoked on 25.4.2019 due to non-compliance with the implementation of the drainage proposal.

5.3 When compared with the last approved Application No. A/TM-LTY Y/320, the current application is submitted by the same applicant and the same agent for the same use at the same site with smaller site area, reduction in number of structures and GFA.

6. Similar Application

There is no similar application within the same "R(D)" zone.

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

7.1 The Site is:

- (a) paved and partly fenced;
- (b) currently occupied by two 2 storeys container-converted structures for the applied use without valid planning permission; and
- (c) accessible via parking of vehicles area to its immediate north leading to Tat Fuk Road which is connected to Fuk Hang Tsuen Road or Wong Kong Wai Road (**Drawing A-1** and **Plan A-3**).

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate north and northeast are parking of vehicles;
- (b) to its immediate south, west and northwest are residential dwellings intermixed with storages and open storage of containers and some vacant land; and

- (c) to the further southeast/south are amenity areas and a factory; to the further southwest is a marble workshop.

8. Planning Intention

The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from 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 Lot Nos. 1211 S.C (Part), 1248 (Part) and 1249 (Part) in DD. 130 (“the Lots”). The Lots concerned are Old Schedule 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 two 2-storey container-converted structures for office as well as storage and toilet were erected on Lot Nos. 1211 S.C and 1249 in DD. 130. No permission has been given for the erection of the structures. It is also noted that a fire pump room and F.S. water tank on Lot No. 1249 in DD. 130 suspected for the proposed shop use have been excluded from the Site. The configuration of the existing structures does not entirely tally with the proposal as shown on **Drawing A-3**.
- (c) The Site is accessible via a strip of GL and a number of private lots leading from Tat Fuk Road. His office does not carry out maintenance works for the said GL nor guarantee that right-of-way will be given to the Site.
- (d) According to para. 9(c) in **Appendix Ia**, 225mm U-channels are proposed on the eastern and southern boundary of the Site. However, they were not indicated on the drainage proposal (**Drawing A-4**). The applicant would be reminded that if there is any private lots and GL involved in the proposed drainage works, he is required to seek prior approval from the lot owners concerned and his office before commencement of any drainage works on the private lots concerned and the GL if the drainage proposal is acceptable to Drainage Services Department (DSD). Nevertheless, there is no guarantee that approval to lay drains on GL will be given.

- (e) If planning permission is given by the Board, the lot owner may consider submitting a formal application to his office for a Short Term Waiver to permit erection of the proposed structures on the Lots. However, there is no guarantee that the application will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, deposit and administration fee etc.
- (f) His office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alterations of structures within the Lots 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 from traffic engineering viewpoint on the understanding that there is no change to the existing public roads and no adverse traffic impact to the local road networks.

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

- (a) The proposed vehicular access (i.e. via Wong Kong Wai Road and Tat Fuk Road) from the public road to the Site is not and will not be maintained by HyD.
- (b) As no public road is affected and the applicant shall be responsible for his own access arrangement, he has no comment on the application from highways maintenance point of view.

Environment

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

- (a) There was no environmental complaint pertaining to the Site received in the past 3 years.
- (b) 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" (CoP) issued by DEP to minimise potential environmental impacts on the surrounding environment.
- (c) 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).

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, please 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/DS_D_Guidelines/index.html).
 - (ii) Presumably it is the intent of the applicant to make drainage connection to public drainage via proposed catchpit from the Site. According to his records and subsequent site inspection on 24 December 2019, no DSD maintained facilities is observed in the vicinity of the Site. In this regard, the applicant should be reminded to identify such public drainage and consult, as appropriate, the relevant authorities/owners of the existing drainage for consent of the connection works.
 - (iii) 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 owner before commencement of the drainage works.
 - (iv) 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.
 - (v) The proposed works should neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.

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. 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) 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):

- (a) With reference to the aerial photo of 2018 the Site is hard paved with a row of trees within the Site along the southern boundary. The Site is situated in an area of rural landscape character. In consideration of previous approved application No. A/TM-LTY/320 for similar use, significant change to the landscape character arising from the application is not envisaged.
- (b) The applicant is advised that approval of section 16 application by the Board does not imply the approval of tree works (such as felling/transplanting or pruning) and/or requirements under lease. Tree works applications should be submitted direct to relevant authority for approval if necessary.

Building Matters

9.1.8 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 structures existing 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 (BO) on the application are as follows:

- (i) If the existing structures are erected on leased land without approval of the Building Authority (BA) (not being a New Territories Exempted House), they are unauthorized under the BO and should not be designated for any proposed 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 unauthorized building works (UBW). An AP should be appointed as the coordinator 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 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 (B(P)R) 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 B(P)R respectively.

Others

- 9.1.9 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 Site 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.

District Officer's Comments

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

He has distributed consultation letters to the concerned locals and understand that they will 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) Director of Food and Environmental Hygiene (DFEH);
- (d) Director of Agriculture, Fisheries and Conservation (DAFC);
- (e) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (f) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES (A&M), AMO); and
- (g) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 26.11.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 17.12.2019, one public comment was received from a villager of Fuk Hang Tsuen objecting to the application on the ground of environment impacts and causing nuisance to the villagers nearby (**Appendix III**).

11. Planning Considerations and Assessments

- 11.1 The current application is for temporary shop and services with ancillary storage area and office for a period of 3 years at the site zoned “R(D)”. The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board. Whilst the development is not entirely in line with the planning intention of the “R(D)” zone, the applied development could provide shop and services use to meet any such demand in the area. Approval of the application on a temporary basis for 3 years would not jeopardize the planning intention of the “R(D)” zone.
- 11.2 The Site is surrounded by residential dwellings, vacant land, parking of vehicles, open storage of containers and structures for storage use (**Plan A-2**). The proposed 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 (CoP) in order to minimise the possible environmental impacts on the nearby sensitive receivers.
- 11.4 The last application No. A/TM-LTYY/320 submitted by the same applicant and the same agent for the same use was revoked due to non-compliance with the time-specific approval condition on the implementation of drainage proposal. The

applicant explained that the implemented drainage facilities was found inconsistent with the approved drainage proposal thus the approval condition was not complied with. For the current application, the applicant has submitted a drainage proposal with photographic evidence showing that completed drainage facilities. CE/MN, DSD has no objection to the application. Sympathetic consideration may be given to the current application. Nevertheless, shorter compliance periods are recommended in order to closely monitor the progress of compliance with approval conditions. Should the application be approved, the applicant should be advised that should the applicant fail to comply with any of the approval conditions again resulting in the revocation of planning permission, sympathetic consideration would not be given to any of the application.

11.5 Regarding the public comment, the planning considerations and assessments in paragraphs 11.1 to 11.4 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 17.1.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 9:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the existing fencing of the Site shall be maintained at all times during the planning approval period;
- (c) the existing tree planting within the Site shall be maintained in good condition at all times during the planning approval period;
- (d) the submission of a revised drainage proposal within **3 months** from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 17.4.2020;
- (e) in relation to (d) above, the implementation of 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 17.7.2020;
- (f) the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (g) the submission of fire service installations 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 17.4.2020;

- (h) in relation to (g) above, the implementation of fire service installations 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 17.7.2020;
- (i) if any of the above planning conditions (a), (b), (c) 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 (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 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 "Residential (Group D)" zone, which is intended primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. There is no strong planning justification in the submission for 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 applicant.

14. Attachments

Appendix I	Application Form received on 18.11.2019
Appendix Ia	Supplementary Planning Statement with Drainage Proposal, Tree Preservation and Landscape Proposal and Swept Path Analysis
Appendix Ib	Letter received on 30.12.2019 providing further justifications
Appendix Ic	Email received on 31.12.2019 providing an updated location plan
Appendix II	Previous s.16 Application Covering the Application Site
Appendix III	Public Comment received during statutory publication period
Appendix IV	Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Lot Index Plan

Drawing A-3	Site Plan
Drawing A-4	Drainage Proposal
Drawing A-5	Tree Preservation and Landscape Proposal
Drawings A-6 and A-7	Swept Path Analysis
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JANUARY 2020**