

Similar Application in the same “R(D)” zone

Approved Application

<u>Application No.</u>	<u>Zoning(s)</u> (at the time of approval)	<u>Proposed Use(s)/Development(s)</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Approval Conditions</u>
A/TM-LTYT/320	“R(D)”	Proposed Temporary Shop and Services (Real Estate Agency and Local Provisions Store) with Ancillary Storage Area and Office for a Period of 3 Years	25.11.2016 [Revoked on 25.4.2019]	(1), (2), (3), (4), (5) and (6)

Approval conditions

- (1) No night-time operation
- (2) Submission and implementation of drainage proposal and maintain the implemented drainage facilities
- (3) Submission and implementation of water supplies for firefighting and fire service installations proposal
- (4) Submission and implementation of a tree preservation and landscape proposal
- (5) Provision of boundary fencing
- (6) Reinstatement clause

Advisory Clauses

- (a) to resolve any land issues relating to the development with other owner(s) of the application site (the Site);
- (b) prior planning permission should have been obtained before commencing the applied use at the Site;
- (c) the permission is given to the development/uses and structures under application. It does not condone any other development/uses and structures which currently occur on the site but not covered by the application. The applicant shall be requested to take immediate action to discontinue such development/uses and remove such structures not covered by the permission;
- (d) to note the comments of the District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD) that:
 - (i) the Site falls within Lot No. 1038 SB in DD. 130 (“the Lot”) and the adjoining government land (GL). The Lot is an Old Schedule Lot 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. According to his records, a Modification of Tenancy (“MOT”) and a Letter of Approval (“LOA”) have been issued permitting the erection of domestic structures and agricultures on the Lot. However, site inspection revealed that the structures permitted under the MOT and LOA were demolished and a structure was found erected on the Lot without any prior approval given from the Lands Department which is in breach of the lease condition;
 - (ii) a portion of the above said structure at the eastern side of the Lot may have encroached onto the adjoining private lot. Another portion of the above said structure together with a canopy and a ramp may also have encroached onto the adjoining GL at the southwestern side of the Lot. Besides marking for vehicle parking was found painted on the GL concerned on 29.10.2019. No prior approval has been given by the LandsD for the use and encroachment of the adjoining GL;
 - (iii) the Site is accessible via a strip of GL leading from Fuk Hang Tsuen Road through the above said GL at the southwest side of the Lot. His office does not carry out maintenance works for the said access nor guarantee that right-of-way or permission to use the GL will be given to the Site;
 - (iv) 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 and a Short Term Tenancy to regularize the minor encroachments upon 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 LandsD 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; and
 - (v) his office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alternations of

structures within the Lot 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 this office or any unauthorized occupation of GL.

- (e) to note the comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD) that the applicant should construct a run-in/out at the access point at Fuk Hang Tsuen 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; the proposed access from the Site to Fuk Hang Tsuen Road is not and will not be maintained by HyD; and adequate drainage measures should be provided to prevent surface water flowing from the Site to nearby public roads and drains;
- (f) to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the Environmental Protection Department;
- (g) to note the comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) that 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/DSD_Guidelines/index.html);
 - (ii) presumably it is the intent of applicant to make drainage connection to public drainage to discharge runoff from the Site. According to his records, there is no DSD maintained facility 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) details of the proposed u-channel and catchpits and how it would be connected to the existing drainage system should be clarified and clearly shown in the proposed drainage proposal;
 - (iv) 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;
 - (v) 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;
 - (vi) the applicant is required to rectify the existing 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; and

- (vii) the proposed works should neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.
- (h) to note the comments of the Director of Fire Services (D of FS) that 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 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. The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans; and
- (i) to note the comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD) that 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; his comments under the BO 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), 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 container/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent from 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 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; and
 - (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.