

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-LTYT/395

- Applicant** : Chain Win Properties Limited represented by R-riches Property Consultants Limited
- Site** : Lot 1038 S.B (Part) in D.D. 130 and Adjoining Government Land, Fuk Hang Tsuen, Tuen Mun, New Territories
- Site Area** : About 714 m² (including about 128 m² Government Land (GL))
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTYT/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 Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services with ancillary office for a period of 3 years at the application site (the Site) (**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 Site is currently used for the applied use without valid planning permission.
- 1.2 According to the applicant, the site is for retail shop of metalware to serve the local demand in the surroundings. Plan showing the site layout submitted by the applicant is at **Drawing A-2**
- 1.3 The major development parameters of the application are as follows:

Site Area	about 714 m ² (including about 128 m ² GL)
Total Floor Area (Non-domestic)	about 804 m ²
No. of Structure	2 structures (Structure B1: 2 storeys; Structure B2: 1 storey)

Maximum Building Height	Not more than 2 storeys (11m)
No. of L/UL Space for Light Goods Vehicles	2 L/UL space for light goods vehicle (3.5m x 7m)
Operation Hours	10:00 a.m. to 5:00 p.m. Mondays to Saturdays, excluding Sundays and public holidays

- 1.4 The location plan, layout plan, floor plan, swept path analysis and ingress/egress plan are at **Drawings A-1 to A-5** respectively.
- 1.5 According to the applicant, the Site is accessible from Fuk Hang Tsuen Road (**Drawings A-1 and A-5 and Plan A-2**). No visitor parking space will be provided. The light goods vehicle L/UL spaces are only used by the staff. No queue back or reverse back outside the Site as there is sufficient maneuvering space within the Site.
- 1.6 In support of the application, the applicant has submitted the following documents:
- (a) Application form and attachments received on 21.1.2020 **(Appendix I)**
 - (b) Further Information in response to Commissioner for Transport's comments received on 4.3.2020 **(Appendix Ia)**
(accepted and exempted from publication and recounting requirements)

2. Justifications from the Applicant

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

- (a) Approval of the application on a temporary basis for a period of 3 years would not jeopardise the long-term planning intention of the "R(D)" zone. The applicant will reinstate the Site to an amenity area upon expiry of the planning approval.
- (b) The applicant will observe the "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" ("COP") to minimise the anticipated environmental impacts to the surrounding area. The applicant will also observe relevant Practice Note for Professional Persons (ProPECCPNs) to treat the sewerage generated by the proposed development and obtain relevant licence as required under the Water Pollution Control Ordinance.
- (c) The applicant will submit and implement a drainage proposal, a landscape proposal and a fire service installations proposal if required.
- (d) Adverse traffic impact is not anticipated as the vehicular trips generated by the proposed development is low.

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

4. Background

The Site is not subject to planning enforcement action.

5. Previous Applications

There is no previous application covering the Site.

6. Similar Application

6.1 There is one similar application (No. A/TM-LTYT/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 in the same “R(D)” zone. Details of the similar application are summarised at **Appendix III** and its location is shown on **Plan A-1**.

6.2 Application No. A/TM-LTYT/320 was approved by the Committee on consideration that approval of the application would not jeopardize the long term planning intention of the “R(D)” zone and not incompatible with the surrounding uses. However, the planning permission was revoked on 25.4.2019 due to non-compliance with the implementation of the drainage proposal.

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

7.1 The Site is:

- (a) currently used for the applied use without valid planning permission; and
- (b) accessible from Fuk Hang Tsuen Road via a strip of GL (**Drawing A-1 and A-5 and Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) to the north mainly residential dwellings intermixed with storage which is suspected unauthorised development (UD);
- (b) to the immediate east and south are storage of construction materials and store which are tolerated;

- (c) to the immediate south is an electricity sub-station. To the further south across Fuk Hang Tsuen Road is a site mainly covered by planning application No. A/TM-LTYT/249 for comprehensive development (flat, house, village office and public open space), which is currently used by suspected UD, including a parking of vehicles and an Agricultural Fa Pao Committee; and
- (d) to the immediate west is storage, which is a suspected UD. To the further west are warehouse and car trading and car service, which are suspected UDs and scattered residential dwellings.

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 summarised 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 No. 1038 SB in DD. 130 (“the Lot”) and the adjoining 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.
- (b) 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.

- (c) 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.
- (d) 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.
- (e) Notwithstanding the above, 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.

Traffic

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

He has no objection in principle to the application. Should the application be approved, approval conditions should be included to request the applicant to submit and implement a run-in/out proposal to/from Fuk Hang Tsuen Road for the Site.

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

- (a) If the access arrangement is agreed by Transport Department (TD), 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.
- (b) The proposed access from the Site to Fuk Hang Tsuen Road is not and will not be maintained by HyD.
- (c) Adequate drainage measures should be provided to prevent surface water flowing from the Site to 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 nuisance to the surrounding area.
- (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, 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 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.
 - (vii) 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 facility available for connection at the Site. In this regard, EPD, 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 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 (BO) (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 occupied by an existing temporary structure. Existing trees are found outside the Site along the northern boundary. The Site is situated in an area of urban fringe landscape character. Significant change to the landscape character arising from the application is not envisaged.

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

10. Public Comment Received During the Statutory Publication Period

On 7.2.2020, the application was published for public inspection. During the first 3 weeks of the statutory public inspection periods, which ended on 28.2.2020, one public comment was received. An individual objects to the application on grounds that the operations should be amalgamated in industrial parks and the Site should be free up to implement the designated zoning (**Appendix III**).

11. Planning Considerations and Assessments

- 11.1 The current application is for temporary shop and services with ancillary 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 commercial use to meet any such demand in the area. Approval of the application on a temporary basis will not frustrate the long-term planning intention of the “R(D)” zone.
- 11.2 The Site is located at the southern fringe of “R(D)” zone and is directly abutting Fuk Hang Tsuen Road. The Site is mainly surrounded by residential dwellings, storage and parking of vehicles (**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 “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 There is one public comment received during the statutory publication period objecting to the application on grounds as summarised in paragraph 10 above. The planning considerations and assessments in the paragraphs 11.1 to 11.3 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, 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 **20.3.2023**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 5:00 p.m. and 10:00 a.m. and Sundays and public holidays is allowed on the Site, as proposed by the applicant, during the planning approval period;
- (b) only light goods vehicles, as defined in the Road Traffic Ordinance is allowed to enter/exit the site, as proposed by the applicant, at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public roads at any time during the planning approval period;
- (d) the submission of a run-in/out proposal to / from Fuk Hang Tsuen Road 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 **20.9.2020**;
- (e) in relation to (d) above, the implementation of run-in/out proposal to/from Fuk Hang Tsuen Road 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 **20.12.2020**;
- (f) 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 **20.9.2020**;
- (g) in relation to (f) 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 **20.12.2020**;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) 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 **20.9.2020**;
- (j) in relation to (i) 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 **20.12.2020**;
- (k) if any of the above planning conditions (a), (b), (c) or (h) 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
- (l) if any of the above planning conditions (d), (e) (f), (g), (i) or (j) 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 "R(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 and attachments received on 21.1.2020
Appendix Ia	Further Information in response to Commissioner for Transport's comments received on 4.3.2020
Appendix II	Similar application
Appendix III	Public comment received during statutory publication period
Appendix IV	Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Layout Plan
Drawing A-3	Floor Plan
Drawing A-4	Swept Path Analysis
Drawing A-5	Ingress/egress Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2020**