

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-SKW/107

<u>Applicant</u>	:	Cheng Tsz Ling
<u>Site</u>	:	Lot 637 RP in D.D.375, So Kwun Wat Village, Tuen Mun, New Territories
<u>Site Area</u>	:	About 98m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved So Kwun Wat Outline Zoning Plan (OZP) No. S/TM-SKW/13
<u>Zoning</u>	:	“Village Type Development” (“V”) <i>[Restricted to maximum building height of 3 storeys (8.23m)]</i>
<u>Application</u>	:	Proposed Temporary Shop and Services 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 for a period of 3 years (**Plan A-1**). The Site falls within an area zoned “V” on the approved So Kwun Wat OZP No. S/TM-SKW/13. According to the Notes of the OZP of the “V” zone, ‘Shop and Services’ use not on the ground floor of a New Territories Exempted House (NTEH) is under Column 2 which requires planning permission from the Town Planning Board (the Board). The Site is formed, hard-paved and vacant (**Plan A-4a and Plan A-4b**).
- 1.2 According to the applicant, the proposed shop and services is for providing interior design and renovation services. The Site is accessible from So Kwun Wat Tsuen Road via a piece of vacant land (**Plan A-2**). While no parking will be provided at the Site, vehicles are required to access the Site for installing the container. The access route plan submitted by the applicant is at **Drawing A-1**.
- 1.3 The applicant proposes to install a container (3m (H) x 6m (W) x 6m (L)) on concrete plinths with a signboard of about 1m high to be erected on top of the container. The major development parameters of the application are summarised as follows:

Site area	About 98m ²
Total Floor Area (Non-domestic)	36m ²
No. of Structure	1 (container for interior design and renovation services)
Height of Structure	3m (single-storey container) on concrete plinths
Operation hours	9 a.m. to 8 p.m. daily (including Sundays and public holidays)

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

- (a) Application Form with layout plan received on 11.5.2020 **(Appendix I)**
- (b) Supplementary Information received on 18.5.2020 clarifying the development parameters and proposed non-domestic structure at the Site **(Appendix Ia)**
- (c) Further Information (FI) received on 18.6.2020 and 19.6.2020 on traffic generation, access route and consent to right of way **(Appendix Ib)**
[The FI was accepted and exempted from publication and recounting requirements.]
- (d) FI received on 26.6.2020 providing background information and the arrangement of toilet facilities **(Appendix Ic)**
[The FI was 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 in Part 7 of the Application Form at **Appendix I** and FI at **Appendices Ia to Ic**. They can be summarised as follows:

- (a) The proposed shop and services could serve the need of the local villagers and nearby residents. The proposed development is in line with the planning intention of the “V” zone.
- (b) The proposed development is temporary in nature and would not jeopardise the long-term provision of NTEHs in the area.
- (c) The operation hours of the proposed development are confined to between 9 a.m. and 8 p.m. daily (including Sundays and public holidays).
- (d) No parking is provided at the Site. For the installation of the container, a vehicular route via private lots near the Site has been identified and owners’ consent has been obtained.

- (e) Only one staff will be employed at the Site. He/she will make use of the toilet facilities of the nearby property.

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 obtaining the consent of current land owners. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is not subject to planning enforcement action.

5. **Previous Application**

The Site is involved in one previous Application No. A/TM-SKW/7 concerning a larger area for temporary open storage of containers for a period of 12 months submitted by a different applicant. It was rejected by the Rural and New Town Planning Committee (the Committee) of the Board on 6.3.1998 on the grounds that the proposed development was not in line with the planning intention of the “V” zone; insufficient information was provided to demonstrate that the development would not have adverse traffic impact and noise impact; and the approval of the application would set an undesirable precedent for other similar applications. Details of the application are summarised in **Appendix II** and the location of the application site is shown on **Plan A-1**.

6. **Similar Applications**

Approved applications

- 6.1 Within the same “V” zone, there are three similar applications (No. A/TM-SKW/79, 84 and 98) covering two sites for temporary shop and services uses. These applications were approved with conditions for a period of three years between 2012 and 2017 by the Committee.
- 6.2 Applications No. A/TM-SKW/79 and A/TM-SKW/84 are for proposed temporary shop and services (construction consultancy services) use with ancillary private vehicle park, whilst application No. A/TM-SKW/98 is for proposed temporary shop and services (real estate agency). The applications were approved by the Committee mainly on the grounds that approval of the temporary development would not jeopardise the long-term planning intention of the “V” zone; no land use incompatibility problem was expected; and no adverse departmental comments. Details of these applications are summarised in **Appendix III** and the locations of the sites are shown on **Plan A-1**. Applications No. A/TM-SKW/79 and A/TM-SKW/84 were revoked due to non-compliance with planning conditions.

Application being processed

- 6.3 Application No. A/TM-SKW/108 for renewal of planning approval for temporary shop and services (real estate agency) approved under Application No. A/TM-SKW/98 for a period of 3 years is tentatively scheduled for consideration by the Committee on 24.7.2020.

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

7.1 The Site:

- (a) is formed, hard-paved and vacant (**Plans A-4a and A-4b**); and
- (b) is accessible from So Kwun Wat Tsuen Road via a piece of vacant land (**Plan A-2**).

7.2 The surrounding areas have the following characteristics (**Plans A-1 to A-3**):

- (a) to its north are parking of vehicles and residential dwellings; to its further north is a vegetated hill slope zoned “Green Belt” (“GB”);
- (b) to its west are residential dwellings intermixed with a storage yard and a vehicle repair workshop;
- (c) to its east are a village house with a restaurant on the ground floor; the real estate agency approved under No. A/TM-SKW/98, residential dwellings, parking of vehicles, storage yards and workshops; and
- (d) to its south across So Kwun Wat Tsuen Road, there is a construction site for small house developments and an area used for parking of vehicles.

8. Planning Intention

The planning intention of “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small House by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses 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 summarised as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD):

- (a) The application site falls within Lot No. 637 RP in D.D. 375 ("the Lot"). 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.
- (b) Regarding the access route to the Site, it is noted that the applicant has obtained the consent letters for access rights in respect of Lot Nos. 638 RP, 630 and 634 all in D.D. 375. The access arrangement is entirely agreements amongst private parties. His office will not comment or verify the legality of the consent letters nor will be involved in the rights and usage of the access route.
- (c) There is no Small House application within 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 to permit erection of the proposed structure on the Lot and the right-of-way issue. However, there is no guarantee that application and right-of-way 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.

Traffic

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

- (a) He has no comment on the application.
- (b) The Site is connected to the public road via So Kwun Wat Tsuen Road which is not under Transport Department (TD)'s purview. The applicant should seek relevant lands and maintenance authorities' comment on using the concerned road for the operation of the Site.
- (c) No vehicle is allowed to queue back to or reverse onto / from public road at any time during the planning approval period.

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

- (a) The proposed vehicular access (So Kwun Wat Tsuen Road) from So Kwun Wat Road to the Site is not and will not be maintained by HyD.

- (b) As no road maintained by HyD is affected, 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) The applicant obtained a consent from the owner of the adjacent lot (Lot 638 S.A RP in D.D.375) which undertakes to provide wastewater / toilet facilities for use by occupiers of the Site. He has no further comment on the application.
- (b) The applicant is reminded that water quality impact to the watercourse in the close vicinity of the application site should be minimised. Good practices stated in ProPECC PN 5/93 “Drainage Plan subject to comment by the Environmental Protection Department” could be referenced if necessary.

Urban Design

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

The Site falls within the fringe area of the “V” zone. Noting that the proposed temporary shop and services involves a single-storey structure (3m in height) with a total floor area of 36m², it is unlikely that the proposal would result in adverse visual impacts.

Landscape

9.1.6 Comments of CTP/UD&L, PlanD:

- (a) With reference to the site photographs (**Plans A-4a and A-4b**) and aerial photo of 2019, it is observed that the Site is vacant with existing trees and shrubs to the north outside the Site. The Site is situated in an area of rural fringe landscape character. Significant change to the landscape character arising from the application is not envisaged.
- (b) In view of the small site area and existing trees in the surrounding area, it is considered that a landscape condition is not required should the application be approved by the Board.

Drainage

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

- (a) The applicant is requested to submit a drainage proposal with a drainage plan showing the details of existing drains and any proposed drainage works, including any peripheral drainage system

for the subject site and the relative discharge point(s). The applicant should demonstrate the adequacy of existing/proposed drains such that no adverse drainage impact would result from the subject development. Reference could be made to DSD Technical Note to prepare a "Drainage Submission".

- (b) Approval conditions requiring the applicant to submit and implement a drainage proposal to his satisfaction are recommended.

Building Matters

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

- (a) There is no in-principle objection under the Buildings Ordinance (BO) to the proposed use on the Site.
- (b) If the existing structures (not being a NTEH) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any approved use under the application.
- (c) Before any new building works (including containers/open sheds as temporary buildings and connection of drains) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (d) For UBW erected on leased land, enforcement action may be taken by the BD 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.
- (e) If the proposed use under application is subject to the issue of a licence, any existing structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.
- (f) In connection with (c) above, 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 (B(P)R) respectively.
- (g) 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 B(P)R at the building plan submission stage.
- (h) Barrier free access facilities shall be provided to the development

including the washroom facilities. However, according to the drawing showing the location of washroom is to be accessed by staircase only. The applicant should be reminded that the barrier free access routes to the washroom shall be provided. The assessment of the population and the number of sanitary fitments shall be in accordance with Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations.

- (i) Formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments will be made at the building plan submission stage.

Nature Conservation

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

Noting that the Site is paved and disturbed in nature, he has no comment on the subject application from nature conservation perspective.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire services 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.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs are to be installed should be clearly marked on the layout plans.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the BO, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.
- (e) Approval conditions requiring the applicant to submit and implement fire services installation proposal to his satisfaction are recommended.

District Officer's Comments

9.1.11 Comments of District Officer/Tuen Mun, Home Affairs Department (DO/TM, HAD):

- (a) He has distributed consultation letters to the locals concerned and

understands that they would provide their comments (if any) to the Board direct.

- (b) While his office currently provides ad-hoc maintenance to So Kwun Wat Tsuen Road, he has no specific comments regarding the subject application from maintenance point of view. That said, any reinstatement works to the existing road arising from the proposed development should be carried out by the developer on their own cost and match up to the existing standard.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Director of Leisure and Cultural Services (DLCS);
- (c) Commissioner of Police (C of P);
- (d) Director of Food and Environmental Hygiene (DFEH);
- (e) Director of Electrical and Mechanical Services (DEMS);
- (f) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (g) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES(A&M), AMO).

10. Public Comments Received During Statutory Publication Periods

On 22.5.2020, the application was published for public inspection. During the statutory public inspection period, five public comments were received from one District Council member, two village representatives of So Kwun Wat Tsuen, representative of the owners' committee of Avignon and one member of the public (**Appendix IV**). Two public comments from the village representatives indicate support to the application for the reasons that the applied use will provide employment opportunities to the local villagers and boost economic activities of So Kwun Wat Tsuen. The remaining three comments object to the application mainly on the grounds summarised as follows:

- (a) the application will induce traffic problems to the area such as illegal parking and traffic congestion. Emergency services will also be affected;
- (b) the applied use will bring in people from outside the village, causing security problems;
- (c) the applied use is not compatible in district planning perspective;
- (d) there is insufficient government, institution or community facilities in the area. Facilities such as library and sports centre should be provided at the Site; and
- (e) the applied use has no economic value and is not in line with the planning intention of the "V" zone.

11. Planning Considerations and Assessments

11.1 The application involves temporary shop and services to provide interior design

and renovation services in a converted container with a total floor area of about 36m² to be placed at the Site. No car parking space and no toilet or sewage disposal facilities will be provided. The Site is located within an area zoned “V” on the approved So Kwun Wat OZP No. S/TM-SKW/13 (**Plan A-1**). Although the applied use is not entirely in line with the planning intention of the “V” zone, which is primarily for development of Small House by indigenous villagers, the proposed shop and services use could serve any such demand by the local villagers/residents in the area. Besides, DLO/TM advises that there is no Small House application within the Site. In this regard, approval of the application on a temporary basis of three years would not frustrate the long-term planning intention of the area.

- 11.2 The Site is located in an area predominately rural in character with residential dwellings intermixed with other uses such as shops and services, eating place, parking of vehicles, storage yards and workshops (**Plans A-2 and A-3**). The applied use is considered not incompatible with the surrounding land uses.
- 11.3 The proposed development would unlikely generate significant adverse environmental, traffic, drainage, fire safety and landscape impacts on the surrounding areas. All concerned Government departments consulted including DEP, C for T, CE/MN of DSD, D of FS and CTP/UD&L of PlanD have no objection to/adverse comments on the application. Relevant approval conditions are recommended to mitigate any potential traffic, drainage and fire safety impacts. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorised development on the Site will be subject to enforcement action by the Planning Authority.
- 11.4 The previous rejected application (No. A/TM-SKW/7), which was for open storage use on a much larger site, is different in nature from the current application. On the other hand, the Committee has approved three similar applications within the subject “V” zone for temporary shop and services uses (**Plan A-1**). Approval of the subject application is in line with the Committee’s previous decisions.
- 11.5 There are five public comments received during the statutory publication period. Two comments support and three object to the application on the grounds as summarised in paragraph 10 above. Departmental comments in paragraph 9 and the planning assessments in paragraphs 11.1 to 11.4 are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above and having taken into account the public comments mentioned in paragraph 10, the Planning Department has **no objection to** the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until **10.7.2023**. 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 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (c) the submission of a drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 10.1.2021;
- (d) in relation to (c) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 10.4.2021;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) the submission of fire services installation 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 10.1.2021;
- (g) in relation to (f) above, the implementation of fire services installation proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 10.4.2021;
- (h) if any of the above planning conditions (a), (b) or (e) 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
- (i) if any of the above conditions (c), (d), (f) or (g) 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 V**.

- 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 "Village Type Development" zone which is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given 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 11.5.2020
Appendix Ia	Supplementary Information received on 18.5.2020
Appendix Ib	FI received on 18.6.2020 and 19.6.2020
Appendix Ic	FI received on 26.6.2020
Appendix II	Previous Application covering the Site
Appendix III	Similar Applications within the Same “V” Zone on the OZP
Appendix IV	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan with Previous and Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
JULY 2020**