

**Relevant Extract of Town Planning Board Guidelines for
“Application for Eating Place within “Village Type Development” Zone in
Rural Areas under section 16 of the Town Planning Ordinance”
(TPB PG - No. 15A)**

The main planning criteria for assessing the application include:

- (a) the eating place use should not create environmental nuisance or cause inconvenience to the residents nearby. Such use should preferably be located at the fringe of a village area, e.g. area abutting the main road. For any eating place use that is situated amidst the existing village houses, sympathetic consideration may only be given if there are no objections from local residents;
- (b) the eating place use should not have any adverse traffic impact on its surrounding areas nor should it affect any pedestrian circulation in the area;
- (c) sympathetic consideration may also be given to any application which would not have adverse impacts on drainage, sewage disposal facilities or fire safety aspects;
- (d) for any application on open ground as an extension to ground floor eating place in a New Territories Exempted House or as a free-standing development, the eating place use should not adversely affect the land availability for village type development. Application sites with configurations/dimensions which are not suitable to be delineated separately for village type development or which are considered not suitable for village type development (e.g. within 20m of public roads constructed/ maintained by the Highways Department or 15m of other local public roads), sympathetic consideration may be given by Town Planning Board on individual merits;
- (e) for a village located adjacent to recreational uses or tourist attraction spots, favourable consideration may be given to eating place use which will provide catering facilities to serve the visitors and tourists. In such circumstances, adequate car-parking spaces should be provided to serve the eating place use as required by the Transport Department. If it is impossible to provide car-parking spaces at the application site, the applicant should demonstrate that there are adequate car-parking facilities conveniently located in the vicinity to serve the eating place use; and
- (f) all other statutory or non-statutory requirements of relevant Government departments should be met.

Previous s.16 Application covering the Application Site

Approved Application

	<u>Application No.</u>	<u>Proposed Use</u>	<u>Zoning</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Approval Conditions</u>
1	A/YL-PS/216	Temporary Public Vehicle Park for Private Cars and Light Goods Vehicles for a Period of 3 Years	V	24.6.2005 (revoked on 15.12.2005)	1-8

Approval condition(s)

1. No vehicles without valid licences issued under the Road Traffic Ordinance were allowed to be parked/stored on site;
2. Only private cars and light goods vehicles were allowed to be parked on the site;
3. No night time operation;
4. The implementation of the accepted landscape proposal.
5. The submission and implementation of drainage proposals.
6. The provision of a 9-litres water type/3kg dry powder fire extinguisher in the site office.
7. The provision of paving and fencing of the site.
8. Revocation clauses.

Rejected Application

	<u>Application No.</u>	<u>Proposed Use</u>	<u>Zoning</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Approval Conditions</u>
1	A/YL-PS/90	Temporary Containeer Vehicles and Trailers Park with Ancillary Repair/Maintenance Workshops, Open Storage of Building Materials and Office for a Period of 3 Years	V	12.1.2001	1-3
2	A/YL-PS/119	Temporary Container Trailer, Lorry and Car Park for a Period of 3 Years	V	10.1.2003 (upon review)	1-4
3	A/YL-PS/151	Temporary Public Vehicle Park for private cars, lorries & container trailers for a Period of 3 Years	V	31.10.2003 (upon review)	1-4
4	A/YL-PS/240	Temporary Public Vehicle Park for Private Car, Light Goods Vehicle and Container Trailer for a Period of 3 Years	V	13.10.2006 (upon review)	1,3,5

Rejected Reason(s)

1. The development is not in line with the planning intention of the "Recreation" ("REC") and "Village Type Development" ("V") zones which are to designate areas for recreational developments and land for recognised villages and village expansion respectively. There is no strong justification in the

submission for a departure from the planning intention, even on a temporary basis;

2. The development is incompatible with the surrounding uses which are predominantly residential and rural in nature,
3. There is insufficient information in the submission to demonstrate that the development would not have adverse noise, dust, environmental, traffic, landscape, drainage and/or visual impacts on the surrounding areas or rural uses.
4. The approval of the application would set an undesirable precedent for other similar applications. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area
5. The development did not comply with the Town Planning Board Guidelines No. 13D for 'Application for Open Storage and Port Back-up Uses' in that there was no exceptional circumstances to merit approval and the development was not compatible with the residential dwellings nearby

Advisory clauses

- (a) to resolve any land issues relating to the development with the concerned owner(s) of the application site (the Site);
- (b) to note the comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) that the Site comprises an old schedule agricultural lot governed by Block Government Lease. A Building Licence No. 9215 was granted on 1.2.2013 for the erection of a NTEH on the Lot. The NTEH shall not be used for any purpose other than non-industrial purposes. Except for the NTEH, the remaining Lot (“the Non-building Area”) shall not be built upon and continue to be used for garden purposes. The relevant Certificates of Exemption and Certificate of Compliance for the NTEH were issued on 19.3.2015 and 19.10.2017 respectively. The applicant should ensure that the canopy structure falls within the criteria of Green and Amenity Facilities exempted under Cap.121, otherwise, the application should comply with the Building Ordinance (Cap. 123) for any structure not exempted under Cap 121. The Site is accessible via a local track leading to Yung Yuen Road. His office provides no maintenance work for the Government Land (GL) involved and does not guarantee any right-of-way to the Site. The lot owner(s) will need to apply to his Office for a short term waiver to vary the use of the Non-building Area and to permit the structure(s) to be erected or regularize any irregularities on lot, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Application(s) for any of the above will be considered by LandsD acting in the capacity of the landlord at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD;
- (c) to note the comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD) that before any new building works (including containers / open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO. If the new building works fall within the category of minor work items under the Building (Minor Works) Regulation, such minor works can be carried out under the simplified requirements of the Minor Works Control System as an alternative to obtaining prior approval and consent from the BA. For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with prevailing 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. 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. 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. If the proposed use under application is subject to issue of a licence, the applicant should be reminded that 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. Detailed checking under the BO will be carried out at building plan submission stage;
- (d) to note the comments of the Director of Environmental Protection that the applicant is advised of the following:

- (i) to observe and adopt the environmental requirements in the Environmental Protection Department's (EPD) "General Environmental Guidelines for Outside Seating Accommodation" which is in Annex 2 of Appendix B of the Food and Environmental Hygiene Department (FEHD)'s "A Guide to Application for Outside Seating Accommodation". It is also available at FEHD's website;
 - (ii) to properly design and maintain adequate mechanical ventilation and necessary pollution control measures to avoid accumulation of aerial emissions and minimise oily fume and cooking odour emissions to the nearby air sensitive receivers including nearby residents, by making reference to EPD's Pamphlet "Control of Oily Fume and Cooking Odour from Restaurant and Food Business" which is available at EPD's website;
 - (iii) to follow the Guidelines on Industry Best Practices for External Lighting Installations via the below link: https://www.enb.gov.hk/sites/default/files/en/node78/guidelines_ex_lighting_install_eng.pdf for taking appropriate measures (e.g. lowering the lighting intensity where appropriate, adjusting the angle of spot lights to avoid nuisances from spilled light, or switching off non-essential lights at an earlier time) to minimise the impacts of the lighting installations on the residents in the vicinity; and
 - (iv) to note that it is the applicant's obligation to comply with the relevant environmental pollution control ordinances;
- (e) to note the comments of the Commissioner for Transport that the Site is connected to the public road network via a section of a local access road which is not managed by Transport Department (TD). The applicant should clarify with LandsD regarding the land status of the local access road. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly. The applicant should arrange by herself if necessary, and should seek the relevant land owner(s) on the right of using the vehicular access;
- (f) to note the comments of the Director of Fire Services (D of FS) that the applicant is advised to submit relevant layout plans incorporated with the proposed fire services installations (FSIs) to his department for approval. The applicant is advised that 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. 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; and
- (g) to note the comments of the Director of Food and Environmental Hygiene (DFEH) that any operator intends to operate a restaurant business in the territory, a general restaurant/light refreshment restaurant licence should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132), the application for restaurant licence is required. Furthermore, any operator who wish to include an outside seating accommodation (OSA) outside the restaurant premises for alfresco dining, the application for OSA is also required. If the application is acceptable by FEHD, it will be referred to relevant government departments such as BD, TD, Fire Services Department, and Planning

Department for comment. FEHD will refer the OSA application to Home Affairs Department for an assessment of local public consultation while comment will be obtained from Lands Department to ascertain the legitimate use of the land for OSA. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicant for compliance and the licence will be issued upon compliance of all the requirements. In accordance with Section 4 of Food Business Regulation, Cap. 132X, the expression "food business" means, any trade or business for the purpose of which any person engages in the handling of food or food is sold by means of a vending machine. But it does not include any canteen in work place (other than a factory canteen referred to in section 31) for the use exclusively of the persons employed in the work place. As such, a staff canteen that exclusively use by the staff members of that working place does not require a food business licence from his department. However, if the said canteen provided foods to the outsiders with payment, a food business licence is required. The operation of the eating place must not cause any environmental nuisance to the surroundings. The refuse generated by the proposed eating place are regarded as trade refuse. The management or owner of the Site is responsible for its removal and disposal at their expenses. The operation of any business should not cause any obstruction or environmental nuisance in the vicinity.