

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/457

- Applicant** : Mr. CHING Chau Chung represented by R-riches Property Consultants Ltd.
- Site** : Lot 5288 (Part) in D.D. 116, Tai Tong, Yuen Long, New Territories
- Site Area** : 1,848m² (about)
- Lease** : New Grant No. 2309 (restricted for private residential purposes)
- Plan** : Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
- Zonings** : “Residential (Group D)” (“R(D)”) (65.3%)
[restricted to a maximum plot ratio of 0.4 and a maximum building height of 3 storeys (9m)]

“Village Type Development” (“V”) (34.7%)
[restricted to a maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Eating Place (Restaurant with Ancillary Outside Seating Accommodation) for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary eating place (restaurant with ancillary outside seating accommodation (OSA)) for a period of 5 years (**Plan A-1**). According to the Notes of the OZP for the “R(D)” and “V” zones, ‘Eating Place’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant and overgrown, with three vacant buildings on site (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site is the subject of 2 previous applications (No. A/YL-TT/273 and 399) for proposed house with minor relaxation of building height restriction and proposed temporary eating place (restaurant) for a period of 3 years respectively submitted by different applicants. The former application was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 17.6.2011, the validity of which has since been extended and shall

now be valid until 17.6.2019. Application No. A/YL-TT/399 was approved with conditions for a period of 3 years by the Committee on 17.3.2017, but the planning approval was subsequently revoked on 17.9.2017 due to non-compliance with associated approval conditions. Details of the previous applications are at paragraph 6 below and **Appendix III**.

- 1.3 The Site is accessible via Tai Tong Road to its east (**Plan A-2**). The proposal consists of refurbishing an existing two-storey building for kitchen and restaurant area (floor area of about 294 m²), conversion of an outbuilding for storage of goods (about 65 m²), a washroom (26 m²) and a covered OSA for eating place (about 229 m²). The restaurant would have a maximum capacity of 50 customers. Septic tank and oil/smoke treatments would be used in accordance with the requirements of the relevant Practice Note for Professional Persons and ordinances. Fire services installation (FSI), landscape and drainage proposals would be submitted and implemented should the application be approved by the Board, where appropriate. The applicant pledges to preserve all existing trees as far as possible. There would be 5 parking spaces and customers would need to make prior reservation to use the parking spaces. The majority of the customers and employees are expected to take public transport to Tai Tong Road (bus stop located about 80m from the Site, **Plan A-2**). Plans showing the vehicular access and proposed layout submitted by the applicant are at **Drawings A-1 and A-2**.
- 1.4 The major development parameters of the application are summarised as follows:

Major Development Parameters	Application No. A/YL-TT/457
Site Area	About 1,848 m ²
Total Floor Area (Non-domestic)	About 614 m ²
No. of Structures	4 (for eating place, covered OSA for eating place, storage of goods, and washroom)
Height of Structures	3 - 8m (about) (1-2 storeys)
Parking Spaces	5 (2.5m x 5m) (for private car)
Loading/ Unloading Space	1 (3.5m x 7m) (for light goods vehicle)
Operation Hours	10:00 a.m. to 10:00 p.m. daily
Estimated No. of Employees	10

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with supplementary planning statement and plans received on 25.1.2019 (**Appendix I**)
 - (b) Further Information clarifying the extent of covered area with revised layout plan received on 14.3.2019 (**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 in Appendix I attached to the Application Form (**Appendix I**) and the Further Information (**Appendix Ia**). They can be summarised as follows:

- (a) The proposed development can provide a choice of eatery to meet the demand of local residents/villagers.
- (b) Given the approval of a previous application (No. A/YL-TT/399) for a similar use, approval of the current application would not set an undesirable precedent.
- (c) The temporary nature of the application would not jeopardise the long-term planning intentions of the “R(D)” and “V” zones.
- (d) There is sufficient space within the Site for manoeuvring of vehicles. No queuing and reverse movement of vehicles will be carried out on public road.

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 posting a notice of the application at the Site and sending the notice to the Shap Pat Heung Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The 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) is relevant to the application. Extract of the Guidelines is attached at **Appendix II**. The relevant planning criteria are summarised as follows:

- (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 be given if the eating place use 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 (NTEH) 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 20 m of public roads constructed/maintained by the Highways Department (HyD) or 15 m of other local public roads), sympathetic consideration may be given by the Board on individual merits; and

- (e) all other statutory or non-statutory requirements of relevant Government departments should be met.

5. **Background**

The Site is currently not subject to planning enforcement action.

6. **Previous Applications**

- 6.1 The Site was the subject of 2 previous applications (No. A/YL-TT/273 and 399). Details of the applications are summarised in **Appendix III** and the boundaries of the sites are shown on **Plan A-1**.
- 6.2 Application No. A/YL-TT/273 covering the same site for proposed development of four 3-storey houses with minor relaxation of building height from 8.23m to 9m was approved with conditions by the Committee on 17.6.2011. The validity of the permission has been extended by 48 months by the Director of Planning under the delegated authority of the Board and will expire on 17.6.2019.
- 6.3 Application No. A/YL-TT/399 covering only the existing two-storey building for proposed temporary eating place (restaurant) for a period of 3 years was approved with conditions by the Committee on 17.3.2017 mainly on the grounds that the proposed development was not incompatible with the surrounding environment which is predominantly a residential neighbourhood and the approval of the application on a temporary basis would not jeopardise the long-term development of the Site. However, the planning permission was subsequently revoked on 17.9.2017 due to non-compliance with the approval conditions in relation to the submission of proposals for water supplies for firefighting and FSIs.
- 6.4 Compared with the last application, the current application is submitted by a different applicant for a similar use covering a larger extent of the Site.

7. **Similar Application**

There is no similar application within the subject “R(D)” and “V” zones on the OZP.

8. **The Site and Its Surrounding Areas (Plans A-1 to A-4b)**

8.1 The Site is:

- (a) accessible from Tai Tong Road to its east;
- (b) largely paved and fenced with a two-storey main building and two one-storey outbuildings on site; and
- (c) currently vacant and overgrown.

8.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) predominantly residential uses intermixed with real estate agencies, parking of vehicles, storage yards, office, store, shop, refuse collection point, interior design and decoration engineering company, kindergarten, and some vacant land/structures;
- (b) to its north and east are the “V” zones of Sham Chung Tsuen/Tin Liu Tsuen and Shung Ching San Tsuen respectively (**Plans A-1 and A-3**); and
- (c) except the storage yard, real estate agencies, interior design and decoration engineering company and kindergarten to the north and northeast of the Site, the other storage yards, parking of vehicles, shop and office in the vicinity of the Site are suspected unauthorised development (UD) subject to enforcement action by the Planning Authority.

9. Planning Intentions

9.1 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.

9.2 The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses 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.

10. Comments from Relevant Government Departments

10.1 The following government departments have been consulted and their views on the application are summarised as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site falls within Lot No. 5288 in D.D. 116, which is held under New Grant No. 2309 and the subject lot is restricted for private residential purposes, the building(s) erected or to be erected shall not exceed 2 storeys and 25ft (i.e. about 7.62m) above the mean formation of the land and the maximum built-over area is 1,600ft² (i.e. about 148.6m²).
- (b) As a strip of the eastern portion of the subject lot has been excluded from the Site, the actual site area and boundary of the private lot involved will be subject to verification at the later stage if the applicant submits application for variation of lease conditions for implementation of the proposal.
- (c) The proposed temporary eating place (restaurant) and its proposed height as well as total covered area do not comply with the lease conditions. If planning approval is given, the grantee has to apply to her department for variation of lease conditions to permit the proposed use. Such application, if received, will be considered by her department acting in the capacity as the landlord at its sole discretion. There is no guarantee that such application will be approved. In the event any such application is approved, it would be subject to such terms and conditions including, among others, the payment of fee/premium and administrative fee as may be imposed by her department.
- (d) Notwithstanding the proposed use to be a 5-year temporary use, it is noted that a proposed 1-storey structure "B2" would be erected at the northern part of the Site which falls within "V" zone. Land within "V" zone or village environ is primarily reserved for development of NTEH by Indigenous Villagers under the NT Small House Policy. Hence, non-NTEH land variation application would not normally be entertained within "V" zones or defined village environs even if planning permission is given by the Board.
- (e) According to her record, there is no Small House application received at the Site.

Traffic

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

The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

10.1.3 Comments of the Chief Highway Engineer/New Territories West, HyD

(CHE/NTW, HyD):

- (a) The access arrangement should be commented by the Transport Department.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) His department shall not be responsible for the maintenance of any access connecting the Site and Tai Tong Road.

Environment

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

- (a) The applicant is advised to follow the relevant mitigation measures and requirement in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (Code of Practice) issued by the Environmental Protection Department to minimise any potential environmental nuisance.
- (b) There has been no environmental complaint pertaining to the Site received in the past 3 years.

Drainage

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the Board consider that the application is acceptable from the planning point of view, approval conditions should be stipulated requiring the submission of a drainage proposal and the implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board.

Fire Safety

10.1.6 Comment of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the proposal subject to 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 be

advised on the following points:

- (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
- (ii) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) However, 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.

Building Matters

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

- (a) He only has record on the existing building B1 as indicated in the application. An Occupation Permit for “a two-storey residence for domestic use” in respect of the existing building “B1” was issued on 7.11.1979. He has reservation under the BO to the proposed application as there is no application for the proposed change of use received by BD so far.
- (b) With regard to other existing buildings i.e. B2 & B3 as indicated in the application, he has no record of approval by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (c) Based on the submitted information, the applicant’s attention is drawn to the following points:
 - (i) If the existing structures (not being a NTEH) are erected on leased land without the approval of BD, they are unauthorised building works (UBW) under the BO and should not be designated for any proposed use under the subject application.
 - (ii) For UBW erected on leased land, enforcement action may be taken by 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.
 - (iii) Before any new building works (including containers/open sheds as temporary buildings) are to be

carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorised Person should be appointed as the coordinator for the proposed building works in accordance with the BO.

- (iv) 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) Regulation (B(P)R) respectively.
- (v) Presumably, the Site is abutting on a specified street of not less than 4.5m wide, then the development intensity shall not exceed the permissible figures under the 1st schedule of the (B(P)R).
- (vi) The proposed use under application is subject to the 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 licencing authority.
- (vii) The provision of barrier free access and accessible toilet required under Regulation 72 of the B(P)R for the proposed use should be complied with.
- (viii) The numbers of sanitary fitments required should comply with Chapter 123I Building (Standards of sanitary fitments, plumbing, drainage works and latrines) Regulations.

Others

10.1.8 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) No Food and Environmental Hygiene Department's facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from the commercial/trading activities, the applicant should arrange its disposal properly at his own expenses.
- (c) Proper licence/permit issued by his department is required if there is any catering service/activities regulated by him under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. If the operator/tenant intends to operate any food business at the

premises, relevant food licence/restricted food permit should be obtained from his department in accordance with Cap. 132. The application for restaurant licence with OSA, if acceptable by his department, will be referred to relevant government departments, such as BD, Fire Services Department, Planning Department, Transport Department, Home Affairs Department (HAD) and LandsD for comment. 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 the Food Business Regulation, Cap. 132, a food licence is not required for the operation of any canteen in any work place (other than a factory canteen) for the use exclusively of the persons employed in the work place. However, a restricted food permit(s) granted by his department is/are still required for the sale of any restricted foods as specified in Schedule 2 of the said regulation.

District Officer's Comments

10.1.9 Comments of the District Officer (Yuen Long), HAD (DO(YL), HAD):

The local consultation has been completed and his office has not received any comments, from the village representatives in the vicinity, regarding the application.

10.2 The following government departments have no comment on the application:

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (e) Commissioner of Police (C of P).

11. Public Comment Received During the Statutory Publication Period

On 1.2.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 22.2.2019, one public comment was received from the public (**Appendix IV**) objecting to the application for the reasons that the application is a case of 'destroy to build', the restaurant size is incompatible with the village environ and with the zoning, and the Site could be used to accommodate many low rise homes.

12. Planning Considerations and Assessments

12.1 The subject application is for temporary eating place (restaurant with ancillary OSA) for a period of 5 years at a site straddling the "R(D)" and "V" zones,

which are primarily intended for low-rise, low density residential developments and development of Small Houses by indigenous villagers respectively. 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. Although the proposed development is not entirely in line with the planning intentions of the “R(D)” and “V” zones, nevertheless, DLO/YL, LandsD advises that there is no Small House application received at the Site. The proposed development could provide eating facility to serve any such demand in the area. Approval of the application on a temporary basis would not jeopardise the long-term development of the Site.

- 12.2 The Site is located at the fringe of the village clusters of Sam Chung Tsuen and Tin Liu Tsuen, and abuts Tai Tong Road where a number of local amenities can be found. The proposed development is considered not incompatible with the surrounding uses which are predominantly rural residential mixed with real estate agencies, kindergarten, store, shop, office and scattered vehicle parks and storage yards (**Plans A-2 and A-3**).
- 12.3 The application is generally in line with TPB PG-No.15A in that the applied use is located at the fringe of the “V” zone and is readily accessible from Tai Tong Road. There is no adverse comment on the application from concerned government departments, including DEP, DFEH, C for T and CE/MN, DSD and significant adverse environmental hygiene, traffic and drainage impacts on the surrounding area are not envisaged. To minimise any possible nuisance generated by the development, approval condition restricting operation hour is recommended in paragraph 13.2. Any non-compliance with the approval conditions will result in revocation of the planning permission and UD on the Site will be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will also be advised to follow the Code of Practice in order to minimise any potential environmental impact.
- 12.4 Given that one previous approval for eating place use has been granted to the Site, approval of the current application is in line with the Committee’s previous decision.
- 12.5 There is one public comment received on the application during the statutory publication period objecting to the application (**Appendix IV**). The considerations and assessments in paragraphs 12.1 to 12.4 are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 11 above and having taken into account the public comment as mentioned in paragraph 10 above, the Planning Department has no objection to the application.
- 13.2 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 5 years until 22.3.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 10:00 p.m. and 10:00 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) all existing trees within the Site shall be maintained at all times during the planning approval period;
- (d) 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 22.9.2019;
- (e) in relation to (d) 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 22.12.2019;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of a 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 22.9.2019;
- (h) in relation to (g) above, the implementation of the fire service installations 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 22.12.2019;
- (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 V**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the development is not in line with the planning intentions of the "R(D)" and "V" zones which are primarily intended for low-rise, low density residential developments and development of Small Houses by indigenous villagers

respectively. No strong planning justification has been given in the submission to justify a departure from the planning intentions, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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.
- 14.3 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.

15. Attachments

Appendix I	Application Form with supplementary planning statement and plans received on 25.1.2019
Appendix Ia	Further Information clarifying the extent of covered area with revised layout plan received on 14.3.2019
Appendix II	Relevant Extracts 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)
Appendix III	Previous Applications covering the Application Site
Appendix IV	Public comment received during the statutory publication period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2019**