

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1010

<u>Applicant</u>	:	Tai Fat Restaurant Limited represented by Mr. CHEUNG Wai-leung
<u>Site</u>	:	Government Land (GL) in front of Shops No. 4-5, Ground Floor (G/F), Blocks 1-9, Treasure Court, 8 Ying Fuk Street, Hung Shui Kiu, Yuen Long, New Territories
<u>Site Area</u>	:	17.26 m ² (about)
<u>Land Status</u>	:	GL covered by Land Licence YLOSA No. 37 (for outdoor restaurant seating accommodation purpose)
<u>Plan</u>	:	Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/12
<u>Zoning</u>	:	“Residential (Group A)” (“R(A)”) <i>[Restricted to a maximum plot ratio of 5, maximum site coverage of 42% above the lowest 3 floors, and a maximum building height of 12 storeys (36m)]</i>
<u>Application</u>	:	Temporary Eating Place (Outside Seating Accommodation (OSA) of a Licensed Restaurant) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary eating place (OSA of a licensed restaurant) for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “R(A)” zone, ‘Eating Place’ use, unless on the lowest three floors of a building or purpose-designed non-residential portion of an existing building, requires planning permission from the Town Planning Board (the Board). The Site forms part of a footpath immediately outside a licensed restaurant (i.e. Tai Fat Restaurant), and is currently occupied by the applied use without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Site involves 8 previous approved applications (No. A/YL-TYST/553, 635, 669, 720, 780, 834, 886 and 949) for the same use as the current application, albeit for different approval periods sought (**Plan A-1**). The last application (No. A/YL-TYST/949) was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 1 year on 22.3.2019 and the planning permission had lapsed on 12.5.2020. Compared with the last application (No. A/YL-TYST/949), the current application is submitted by the

same applicant for the same use with the same site layout and development parameters covering the same site, albeit with shorter operation hours and a longer approval period sought (i.e. 3 years).

- 1.3 The OSA, measuring 14.385m in length and 1.2m in width, is located on a 5.1m-wide footpath, which would function as an extension of the licensed restaurant located on the G/F of Blocks 4 and 5 of Treasure Court (**Drawing A-1**). According to the applicant, the remaining clear width of the footpath after the OSA occupation will be not less than 3.5m. No fixed or permanent structure will be erected within the OSA. The OSA will accommodate a maximum of 4 tables and 12 stools, which will be removed after the operation hours. While the restaurant operates from 7:00 a.m to 11:00 p.m. daily, the operation hours of the OSA are restricted from 9:00 a.m. to 9:30 p.m. daily. A plan showing the layout of the restaurant and the OSA submitted by the applicant is at **Drawing A-1**.
- 1.4 The major development parameters of the previously approved application and the current application are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TYST/949 (a)	Current Application No. A/YL-TYST/1010 (b)	Difference (b)-(a)
Applied Use	Temporary Eating Place (OSA of a Licensed Restaurant) for a Period of 1 Year	Temporary Eating Place (OSA of a Licensed Restaurant) for a Period of 3 Years	Longer Approval Period Sought
Site Area	17.26 m ² (about)		--
Total Floor Area (Non-domestic)	Nil		--
No. and Height of Fixed Structures	Nil		--
Operation Hours	9:00 a.m. to 10:30 p.m. daily	9:00 a.m. to 9:30 p.m. daily	Shorter Operation Hours

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with appendix and plans received (**Appendix I**) on 5.3.2020
- (b) Further Information (FI) received on 15.5.2020 (**Appendix Ia**) clarifying the proposed operation hours
[accepted and exempted from publication and recounting requirements]
- 1.6 On 24.4.2020, the Committee agreed to defer a decision on the application for a period of two months, as requested by the applicant's representative. On 15.5.2020, FI (**Appendix Ia**) was received and the application is submitted to the Committee for consideration at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the appendix of the Application Form and the FI (**Appendices I and Ia**). They can be summarised as follows:

- (a) The applicant has observed all the terms and conditions of the current OSA licence, and has maintained a very high standard of management in terms of environmental hygiene. The OSA has never operated beyond the allowed operation hours. The proposal will not cause inconvenience or nuisance to the community. No related prosecution or complaint had been received to date. For the current application, the applicant has shortened the operation hours by closing the OSA an hour earlier.
- (b) The OSA could benefit the community, especially cyclist patrons who prefer to monitor their parked bicycles at a nearby bicycle parking area (**Plan A-2**).

3. Compliance with the “Owner’s Consent/Notification” Requirements

As the Site involves GL only, the “owner’s consent/notification” requirement 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) is not applicable to the application.

4. Background

The Site is currently not subject to planning enforcement action.

5. Previous Applications

- 5.1 The Site involves 8 previous approved applications (No. A/YL-TYST/553, 635, 669, 720, 780, 834, 886 and 949) for the same applied use as the current application covering the same site, albeit with different approval periods sought. Details of the applications are summarised in **Appendix II** and the location of the site is shown on **Plan A-1**.
- 5.2 Application No. A/YL-TYST/553 was approved with conditions by the Board on review on 11.5.2012 for a period of 1 year mainly on the consideration that the clear width of the footpath after the occupation of the OSA would not be less than 3.5m; the approval period sought was shortened from 5 years to 1 year; the proposed operation hours had been shortened to between 9:00 a.m. and 10:30 p.m.; and no permanent structures would be erected in the OSA.
- 5.3 The subsequent renewal applications (No. A/YL-TYST/635, 669, 720, 780, 834, 886 and 949) were approved with conditions by the Committee each for a period of 1 year between 2013 and 2019 mainly on considerations that the proposals were not in conflict with the planning intention of the “R(A)” zone; generally not incompatible with the surrounding areas; in line with the Town Planning Board Guidelines No. 34B on “Renewal of Planning Approval and Extension of

Time for Compliance with Planning Conditions for Temporary Use or Development” (TPB PG-No. 34B); and there were no adverse departmental comments. The planning permission under the last application (No. A/YL-TYST/949) had lapsed on 12.5.2020.

- 5.4 Compared with the last application (No. A/YL-TYST/949), the current application is submitted by the same applicant for the same use with the same site layout and development parameters covering the same site, albeit with shorter operation hours and a longer approval period sought (i.e. 3 years).

6. Similar Application

There is no similar application within the same “R(A)” zone on the OZP.

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

- 7.1 The Site is (**Drawing A-1, Plans A-2 and A-4**):

- (a) part of the 5.1m-wide footpath to the immediate northwest of a licensed restaurant (i.e. Tai Fat Restaurant) on the G/F of Blocks 4 and 5 of Treasure Court; and
- (b) currently occupied by the applied use without valid planning permission.

- 7.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):

- (a) predominantly an residential area with a number of residential developments (most of which with G/F shop and services and eating place uses), including Treasure Court, Lai Hung Garden, Symphony Garden, Coronet Court and Beauty Court, intermixed with Tan Kwai Tsuen Road Garden, sitting-out areas, shops, estate agencies, footbath, school, storage yards, carpark, parking of vehicles, refuse collection point and vacant land;
- (b) to its immediate northwest on the other side of the footpath is a long planter, beyond which are cycle track, Castle Peak Road – Hung Shui Kiu and Hung Shui Kiu Light Rail Station;
- (c) to its west is the cul-de-sac of Ying Fuk Street; and
- (d) one estate agency, three storage yards and the parking of vehicles in the vicinity are suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the “R(A)” zone is primarily for high-density residential developments. Commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building.

9. Comments from Relevant Government Departments

9.1 The following government departments have been consulted and their views on the application and public comments, where relevant, are summarised as follows:

Land Administration

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

- (a) She has no comment from land administration point of view.
- (b) The Site is covered by a Land Licence YLOSA No. 37 issued by her office on 8.7.2013 for the purpose of outdoor restaurant seating accommodation for a period of one year certain commencing on 12.5.2013 and thereafter from year to year subject to valid planning permission and other terms and conditions as provided in the Licence.

Traffic

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

- (a) The applicant shall at his own cost and to the satisfaction of his department make good of any damage to the public carriageway, footpaths and other street furniture arising from his works. The applicant is requested to submit initial photos of the concerned footpath for his record.
- (b) If his department needs to carry out any maintenance works on or adjacent to the Site, the applicant shall remove all installations and objects at the Site as necessary at his/her own costs.

Food and Environmental Hygiene

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

- (a) The OSA with 17.26m² (1.2m in width x 14.385m in length) at shopfront of the premises was approved since the year 2011. When a restaurant licensee/licence applicant wishes to use any OSA outside the restaurant premises for alfresco dining, he/she should take notice of the main licensing criteria for OSA, covering matters such as legal right to use the land concerned, planning, building safety, fire safety, and traffic requirements, etc. as well as to obtain her approval before commencement.
- (b) The boundary of the OSA was properly delineated and clearly shown on approved plan (**Drawing A-1**) and on site. Restaurateurs operating OSA business without approval may be subject to prosecution pursuant to the Food Business Regulation

(Cap. 132X). Repeated convictions may lead to suspension or cancellation of their licences.

- (c) No complaint concerning the Site has been received in the past year.

Environment

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

- (a) He has no objection to the application noting that the applicant has clarified the proposed operation hours of OSA and is willing to shorten the operation time of the OSA by closing the OSA an hour earlier (9:30 p.m. instead of 10:30 p.m.). With respect to the public concern on noise nuisance from the temporary eating place (OSA), and based on the appendix attached in the Application Form and the FI (**Appendices I and Ia**), the operation hour of the OSA will be 9:00 a.m. – 9:30 p.m. daily, as proposed by the applicant. Imposing a planning condition to control the operation hour should be considered, if the application is approved by the Board.
- (b) No substantiated environmental complaint concerning the Site received in the past 3 years.
- (c) Should the planning application be approved, the applicant will be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (Code of Practice).

Building Matters

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

If the applied use under application is related to issue of OSA of a Licensed Restaurant from the licensing authority, the applicant should be reminded that any existing structures on or above 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.

District Officer’s Comments

9.1.6 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

His office has not received any feedback from locals.

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

- (a) Commissioner for Transport (C for T);
- (b) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (c) Director of Fire Services (D of FS);
- (d) Director of Agriculture, Fisheries and Conservation (DAFC);
- (e) Director of Electrical and Mechanical Services (DEMS);
- (f) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (g) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (h) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 13.3.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, nine public comments from individuals were received (**Appendices III-1 to III-9**). They objected to the application mainly on the grounds that the OSA has caused environmental hygiene issues and noise nuisance, particularly after 11:00p.m.; and the OSA has narrowed the footpath and caused inconvenience to the residents.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary eating place (OSA of a licensed restaurant) at a site zoned “R(A)” on the OZP. The planning intention of the “R(A)” zone is for high-density residential developments, and commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building. The subject OSA, which is ancillary to a licensed restaurant at the purpose-designed commercial G/F of a residential development, is considered not in conflict with the planning intention of the “R(A)” zone.
- 11.2 The OSA with an area of about 17.26 m² is small in scale and is located at the fringe of the “R(A)” zone to the south of Castle Peak Road – Hung Shui Kiu which is predominated by residential developments. After occupation of the Site, the concerned footpath will still maintain a width of 3.9m (**Plan A-2**). Shop and services and eating place uses are generally found on the G/F of the residential developments in the vicinity (**Plan A-2**). The applied use is considered not incompatible with the surrounding uses in the area.
- 11.3 There is no adverse comment on the application from concerned government departments, including C for T, CHE/NTW, HyD, DFEH and DEP. No environmental complaint concerning the Site had been received by DEP in the past three years. In addition, the applicant has shortened the operation hours in the current application by closing the OSA an hour earlier as compared with the previous approvals. Significant adverse pedestrian traffic and environmental impacts on the surrounding areas are not envisaged. Furthermore, an approval condition restricting the operation hours of the OSA is recommended in paragraph 12.2 below to minimise any potential environmental nuisances. Any

non-compliance with the approval condition 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 planning application be approved, the applicant will also be advised to follow the latest Code of Practice to minimise any potential environmental impact on the surrounding areas.

- 11.5 Given that eight previous approvals for the same applied use have been granted to the Site since 2012, approval of the current application is in line with the Committee's previous decisions.
- 11.6 Nine public comments were received on the application during the statutory publication period as summarised in paragraph 10. The planning considerations and assessments in paragraphs 11.1 to 11.5 above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, 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 26.6.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 9:30 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period; and
- (b) if the above planning condition (a) 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.

Advisory clauses

The recommended advisory clauses are at **Appendix IV**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (a) the proposed development would reduce the width of the existing footpath and the applicant has not demonstrated that the pedestrian environment enjoyed by the public in that location would not be adversely affected; and
- (b) the continued occupation of the Site for the development would generate adverse environmental nuisance on the residential uses in the vicinity of the Site.

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 with appendix and plans received on 5.3.2020
Appendix Ia	FI received on 15.5.2020
Appendix II	Previous Applications covering the Application Site
Appendices III-1 to III-9	Public Comments received during the Statutory Publication Period
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JUNE 2020**