

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/YL-TYST/886

- Applicant** : Tai Fat Restaurant Ltd. represented by Mr. CHEUNG Wai-leung
- Site** : Government Land in front of Shops No. 4-5, G/F, Blocks 1-9, Treasure Court, 8 Ying Fuk Street, Hung Shui Kiu, Yuen Long, New Territories
- Site Area** : 17.26 m² (about)
- Land Status** : Government Land covered by Land Licence YLOSA No. 37 (for the outdoor restaurant seating accommodation purpose)
- Plan** : Draft Tong Yan San Tsuen Outline Zoning Plan No. S/YL-TYST/11
- Zoning** : “Residential (Group A)” (“R(A)”)
[Restricted to a maximum plot ratio of 5, a maximum site coverage of 42% above the lowest 3 floors, and a maximum building height of 12 storeys (36m)]
- Application** : Renewal of Planning Approval for Temporary “Eating Place (Outside Seating Accommodation of a Licensed Restaurant)” for a Period of 1 Year

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for temporary “eating place (outside seating accommodation of a licensed restaurant)” use for a further period of 1 year on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP for the “R(A)” zone, ‘Eating Place’, unless on the lowest three floors of a building, requires planning permission from the Town Planning Board (the Board). As the proposed OSA is located on an open ground outside the footprint of a building, it requires planning permission from the Board. The Site is a strip of land on the footpath outside a restaurant (**Plans A-2 and A-4**) and it is currently covered by a valid planning permission under Application No. A/YL-TYST/834.
- 1.2 The Site was involved in 6 previous applications (No. A/YL-TYST/553, 635, 669, 720, 780 and 834) for the same applied use. The last renewal application (No. A/YL-TYST/834) was approved with conditions by the Rural and New Town

Planning Committee (the Committee) of the Board for a period of 1 year on 28.4.2017 with validity up to 11.5.2018. Details of the previous applications are at paragraph 6 below and **Appendix III**. Compared with the last application (No. A/YL-TYST/834), the current application is submitted by the same applicant for the same applied use with the same site area, layout and operation hours for the same applied period of permission (i.e. 1 year).

- 1.3 The OSA of 14.385m (L) x 1.2m (W) immediately outside the frontage of a ground floor restaurant forms an extension part of the restaurant. 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 in the OSA. The OSA will accommodate a maximum of 4 tables and 12 stools, and the tables and stools will be removed after the operation hours. The operation hours of the OSA are restricted from 9:00a.m. to 10:30p.m. The plan showing the layout of the restaurant and the OSA submitted by the applicant is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with plans and appendix received on **(Appendix I)** 22.2.2018

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary page (Appendix) attached to the Application Form at **Appendix I**. They can be summarized as follows:

- (a) The applicant has observed all the terms and conditions of the last application (No. A/YL-TYST/834) and has maintained a very high standard of management in terms of environmental hygiene and environmental protection. There has not been a single case of prosecution or complaint being recorded.
- (b) The applicant will maintain the width of the OSA at 1.2m at all times. The remaining clear width of the footpath after occupation by the OSA will be not less than 3.5m.
- (c) The OSA would be confined to the operation hours of 9:00 a.m. to 10:30 p.m. daily, and the applicant has never operated beyond the allowed operation hours. No permanent structure or furniture will be erected in the OSA. There will be a maximum of 4 tables and 12 stools within the OSA. All these items will be removed after the operation hours.
- (d) The operation of the OSA may benefit the community especially the bicycle riders who would like to monitor their bikes parked at the nearby cycle parking area. It is demonstrated that the applicant could observe all the terms and conditions of the licence and provide a nice and environmental friendly outdoor seating area without causing inconvenience to the neighborhood or the community.

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

As the Site involves government land 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. Town Planning Board Guidelines

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) are relevant to this application. The relevant assessment criteria are attached at **Appendix II**.

5. Background

The Site is not subject to planning enforcement action.

6. Previous Applications

- 6.1 The Site was involved in 6 previous applications (No. A/YL-TYST/553, 635, 669, 720, 780 and 834) for the same applied use on the same site submitted by the same applicant which were approved with conditions by the Board on review or by the Committee. Details of the applications are summarized in **Appendix III** and the location is shown on **Plan A-1**.
- 6.2 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 would not be less than 3.5m; the approval period sought was shortened from 5 years to 1 year; the proposed operation hours were changed from between 9:00a.m. and 11:00p.m. to between 9:00a.m. and 10:30p.m.; and no permanent structures would be erected in the OSA.
- 6.3 The subsequent renewal applications (No. A/YL-TYST/635, 669 and 720 and 780) were approved with conditions by the Committee each for a period of 1 year on 19.4.2013, 21.3.2014, 27.3.2015 and 4.3.2016 respectively. The last renewal application (No. A/YL-TYST/834) was approved with conditions by the Committee for a period of 1 year on 28.4.2017 and the validity of the planning approval is up to 11.5.2018.
- 6.4 Compared with the last application (No. A/YL-TYST/834), the current renewal application is submitted by the same applicant for the same applied use with the same site area, layout and operation hours. The approval period sought under the current application (i.e. 1 year) is also of the same timeframe as the previous approval.

7. Similar Application

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

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

8.1 The Site is a strip of land (14.385m (L) x 1.2m (W)) on a footpath of about 4.7m wide to the immediate northwest of Blocks 4 and 5 of Treasure Court outside a restaurant.

8.2 The surrounding areas have the following characteristics:

- (a) predominantly an established residential area with a number of residential developments, including Treasure Court, Lai Hung Garden, Symphony Garden, Coronet Court and Beauty Court, as well as Tan Kwai Tsuen Road Garden, sitting-out areas, local shops and school in the vicinity (**Plan A-2**);
- (b) to its immediate northwest on the other side of the footpath is a long planter, beyond which are cycle track and the Castle Peak Road – Hung Shui Kiu;
- (c) to its west is the cul-de-sac of Ying Fuk Street;
- (d) shops and eating places can be found along Ying Fuk Street and Tan Kwai Tsuen Road and on the ground floor of Blocks 1 to 9 of Treasure Court; and
- (e) Tan Kwai Tsuen Road Garden and two sitting-out areas are located to the further south and further east of the Site respectively.

9. 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.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views are summarized as follows:

Land Administration

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

- (a) He has no comment from land administration point of view.

- (b) The Site relating to this planning application is covered by a Land Licence YLOSA No. 37 issued by his 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 the Licence shall be spent of effect if no valid planning permission and other terms and conditions provided in the Licence.

Traffic

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

He has no adverse comment to the application from traffic engineering point of view.

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

- (a) The subject application involves occupation of footpath and hence reduces its width. Comment should be sought from C for T and DLO/YL of LandsD.
- (b) The subject proposal may incur hygiene problem and hence additional street cleansing may be required. Comment and agreement from the Director of Food and Environmental Hygiene (DFEH) should be sought.
- (c) The applicant shall at his own cost and to the satisfaction of his Department make good of any damage to the public footpaths and any public carriageway/street furniture arising from his works. The applicant is requested to submit initial photos of the concerned footpath for record.

Food and Environmental Hygiene

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

- (a) According to his office's record, the Site has been granted with approved OSA under the respective general restaurant licenses.
- (b) He has no comment on the proposed width of 1.2m for the OSA.
- (b) No complaint concerning the Site was received by his office in the past 12 months.

Environment

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

- (a) He has no objection to the application.
- (b) No complaint against the Site was received in the past three

years.

- (c) The applicant should be reminded to comply with various pollution control ordinances, such as the Air Pollution Control Ordinance, Noise Control Ordinance and Water Pollution Control Ordinance, to address various potential environmental concerns.
- (d) 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 Environmental Aspects of Temporary Uses and Open Storage Sites”.

Landscape

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

- (a) The Site was the subject of 6 previous applications (No. A/YL-TYST/553, 635, 669, 720, 780 and 834) for the same use on which she had no objection. The current application is to renew the planning permission for the same use in the same site for a period of 1 year.
- (b) With reference to the information submitted and aerial photo dated 3.8.2015, the proposed use is considered not incompatible with the surrounding residential and mixed commercial developments. The Site, which falls within “R(A)” zone, is a small strip of pedestrian walkway located in front of a restaurant at the ground floor of a private residential building with no existing vegetation. Significant landscape impact arising from the proposed use on the area is not anticipated. Therefore, she has no objection to the application from the landscape planning perspective.
- (c) Given the tight space available in the Site, landscape condition is considered not practicable to be included in the planning permission if the Board approves the application.

Drainage

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

- (a) The Site is relatively small and he has no objection to the application from drainage viewpoint.
- (b) The development should not obstruct overland flow or cause any adverse drainage impact to the adjacent areas and existing drainage facilities.

Fire Safety

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

He has no objection to the renewal application.

Others

10.1.9 Comments of the Chief Engineer/Cross-boundary Infrastructure and Development, Planning Department (CE/CID, PlanD):

The Civil Engineering and Development Department and PlanD jointly commissioned the “Planning and Engineering Study for Housing Sites in Yuen Long South (YLS) – Investigation” (the Study). The Site falls within the “Study Area” but outside the development area of YLS. Hence, the Site would not be affected by any development proposal under the Study.

District Officer’s Comments

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

His office has not received any comment from the locals on the application.

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

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

11. Public Comment Received During the Statutory Publication Period

On 2.3.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 23.3.2018, no public comment was received.

12. Planning Considerations and Assessments

12.1 The current renewal application is for temporary eating place (outside seating accommodation 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 ground floor of a residential development, is considered not in conflict with the planning intention of the “R(A)” zone.

- 12.2 The OSA with an area of about 17.26 m² 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. Eating place, shop and services and sitting-out areas are found in the vicinity (**Plan A-2**). As such, the OSA at the Site which directly abuts the frontage of a ground floor restaurant is considered not incompatible with the surrounding land uses.
- 12.3 Government departments, including C for T, CE/MN, DSD and DEP consulted have no adverse comment on the application. The OSA is unlikely to cause significant adverse pedestrian traffic, drainage and environmental impacts on the surrounding areas. Besides, there is no complaint pertaining to the Site received by DEP in the past three years nor by DFEH in the past 12 months.
- 12.4 The current renewal application for 1 year is generally in line with TPB PG-No. 34B in that there has been no material change in planning circumstances since the granting of the previous approval under Application No. A/YL-TYST/834; all the approval conditions have been complied with; and the 1-year approval period sought is of the same time frame as the previous approval. To minimize possible environmental nuisances, approval condition restricting the operation hours, as proposed by the applicant, is recommended in paragraph 13.2 below. Any non-compliance with the approval condition will result in revocation of the planning permission. Should the planning application be approved, the applicant will also be advised to follow the relevant mitigation measures and requirements in the “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize any potential environmental impact, and to note DEP and DFEH’s comments regarding compliance with relevant ordinances and licensing requirements.
- 12.5 There is no public comment received on the application during the statutory publication period.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12, the Planning Department considers that the temporary eating place (outside seating accommodation of a licensed restaurant) could be tolerated for a further period of 1 year.
- 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 further period of 1 year from 12.5.2018 to 11.5.2019. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 10:30 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.

[Approval conditions (a) and (b) are the same as those under the permission for Application No. A/YL-TYST/834.]

Advisory clauses

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

13.3 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.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission for renewal of the planning 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 plans and appendix received on 22.2.2018
Appendix II	Relevant extracts of 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)
Appendix III	Previous Applications Covering the Application Site
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Layout Plan

Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
APRIL 2018**