

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K14/761

<u>Applicant</u>	: LEUNG Chi-wai
<u>Premises</u>	: Portion of G/F (Shop B1), Good Luck Industrial Building, 105 How Ming Street, Kwun Tong, Kowloon
<u>Gross Floor Area</u>	: 10.59m ²
<u>Lease</u>	: (a) Kun Tong Inland Lot (KTIL) No. 22 (b) Restricted to industrial purposes (excluding offensive trades)
<u>Plan</u>	: Draft Kwun Tong (South) Outline Zoning Plan (OZP) No. S/K14S/21
<u>Zoning</u>	: “Other Specified Uses” annotated “Business” (“OU(B)”) [Maximum plot ratio (PR) of 12 and maximum building height of 200 meters above Principal Datum, or the PR and height of the existing building(s), whichever is the greater]
<u>Application</u>	: Shop and Services (Fast Food Shop)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for ‘Shop and Services (Fast Food Shop)’ use. The Premises occupies portion of G/F (Shop B1) of an industrial building, namely Good Luck Industrial Building, at 105 How Ming Street, Kwun Tong. It falls within an area zoned “OU(B)” on the draft Kwun Tong (South) OZP No. S/K14S/21 (**Plan A-1**). According to Schedule II of the Notes of the OZP for the “OU(B)” zone, ‘Shop and Services’ on G/F of an industrial or industrial-office (I-O) building is a Column 2 use for which planning permission from the Town Planning Board (the Board) is required.
- 1.2 According to the applicant and recent site inspection, the Premises is currently used as a fast food counter.
- 1.3 In support of the application, the applicant has submitted the application form (**Appendix I**) which was received on 5.7.2018.
- 1.4 Plans showing the ground floor layout of the building and the internal layout of the Premises submitted by the applicant are at **Drawings A-1** and **A-2**.

2. Justifications from the Applicant

No justification has been put forth by the applicant in support of the application, except providing the proposed operation hours of the applied use as set out in **Appendix I**.

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

The applicant is not a “current land owner” but has complied with the 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) by demonstrating that reasonable steps have been taken to obtain/give the necessary owner’s consent/notification. Detailed information would be deposited at the meeting for Member’s inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for Development within “OU(B)” Zone (TPB PG-No. 22D) promulgated in September 2007 is relevant in the following aspects:

- (a) the “OU(B)” zone has been introduced to allow maximum flexibility in the use of existing industrial and I-O buildings as well as in the development of new buildings for both commercial and clean industrial uses. The planning intention of the “OU(B)” zone is primarily for general employment uses;
- (b) whilst it is the intention to provide greater flexibility in the use of the existing industrial or I-O buildings before such buildings are redeveloped, it is necessary to ensure that the fire safety and environmental concerns are properly addressed. In view of the possible presence of existing polluting and hazardous industrial uses, it is necessary to ensure compatibility of the uses within the same building until the whole building is modified/converted to accommodate the new non-polluting and less fire hazard-prone uses;
- (c) the Fire Services Department (FSD) should be satisfied on the risks likely to arise or increase from the proposed commercial use under application. Owing to fire safety concern, the aggregate commercial floor area on G/F of an existing industrial or I-O building with and without sprinkler systems should not exceed 460m² and 230m² respectively. For any application which would result in a slight exceedance of the relevant floor area limit, the applicant has to demonstrate that the fire safety concern can be satisfactorily addressed, and each case will be considered by the Board on its own merit. The above limits on commercial floor area do not apply to uses which are ancillary to or for the purposes of supporting the industrial activities and the routine activities of the workers in the industrial or I-O building. These uses include bank, fast food counter, electrical shop, local provisions store and showroom in connection with the main industrial use; and
- (d) for all new development, redevelopment, conversion and material change of use, adequate parking and loading/unloading spaces should be provided in accordance with the requirements of the Hong Kong Planning Standards and Guidelines, and all other statutory or non-statutory requirements of relevant Government departments must also be met.

5. Previous Application

There is no previous application in respect of the Premises.

6. Similar Applications

- 6.1 There is no similar application in respect of G/F of the subject building.
- 6.2 There are a total of 205 similar applications for ‘Shop and Services’ use on G/F of industrial or I-O buildings under the “OU(B)” zone in Kwun Tong Business Area (KTBA). 171 of them were approved with conditions and the remaining 34 were rejected by the Committee, mainly for the reasons that the applications were not acceptable from fire safety viewpoint as the total aggregate commercial floor area on G/F of the industrial or I-O building(s) had exceeded the maximum permissible limit.

7. The Premises and Its Surrounding Areas (Drawings A-1 and A-2, Plans A-1 and A-2 and photos on Plans A-3 to A-5)

7.1 The Premises:

- (a) occupies portion of G/F of Good Luck Industrial Building (**Drawings A-1 and A-2**), and is currently used as a fast food counter (**Plans A-4 to A-5**);
- (b) has its own entrance fronting How Ming Street, separated from the entrance to other floors of the building (**Drawing A-1 and Plan A-4**).

7.2 The subject building:

- (a) is a 15-storey industrial building built in 1981 (**Plan A-3**) and is equipped with sprinkler system; and
- (b) has the following existing uses:

Floor	Main Uses
G/F	The Premises (fast food counter), godown, lift lobby, carpark, L/UL area and internal driveway (Drawing A-1 and Plan A-3)
1/F	Upper part of carpark and factory canteen
2/F-14/F	Office (2/F-8/F and 10/F-13/F), godown (6/F), workshop (11/F), wholesale trade (5/F and 12/F), factory canteen (2/F), locked/vacant (2/F-10/F and 14/F), shop and services ^[1] (3/F, 8/F, 10/F, 12/F and 13/F), place of entertainment ^[2] (5/F and 9/F), eating place ^[2] (2/F and 14/F)

^[1] No record of planning approval granted for these uses.

^[2] Uses not allowed unless in the purpose-designed non-industrial portion on the lower floors of the building and such uses are separated from the industrial uses located above by buffer floor(s) of non-hazardous occupancy, and no industrial uses are located within that non-industrial portion. In view of the above, these uses are not allowed in the subject building.

7.3 The surrounding areas have the following characteristics:

- (a) the neighbouring buildings along How Ming Street are mainly industrial or I-O buildings;
- (b) to the west of the building across the junction of How Ming Street/Tsun Yip Street is a commercial/office development, namely, AXA Tower of Landmark East, while to its northwest across Tsun Yip Lane is an electricity sub-station (**Plan A-2**);
- (c) the G/F units of the nearby buildings are mainly used as retail shops, eating places, fast food counters, bank, money exchange and warehouse; and
- (d) the MTR Kwun Tong Station is approximately 200m to the east (**Plan A-1**).

8. Planning Intention

The planning intention of the “OU(B)” zone is primarily for general business uses. A mix of information technology and telecommunications industries, non-polluting industrial, office and other commercial uses are always permitted in new “business” buildings. Less fire hazard-prone office use that would not involve direct provision of customer services or goods to the general public is always permitted in existing industrial or I-O buildings.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/Kowloon East, Lands Department (DLO/KE, LandsD):

- (a) No objection to the application.
- (b) The Premises falls within KTIL No. 22 which is held under Government Lease dated 23.8.1966 for a term of 21 years from 1.7.1955 and renewable for a further term of 21 years less 3 days and was further extended to 30.6.2047. The lease conditions of the subject Lot contain, inter alia, the following restrictions:
 - (i) the user is restricted to general industrial purposes (excluding offensive trades); and
 - (ii) no building shall be erected other than a factory, ancillary offices and quarters for persons essential to the safety and security of the building.
- (c) The Premises have already been used as a fast food shop, which is in breach of the lease conditions. Without prejudice to Government’s right to take appropriate lease enforcement action against the breach,

should the Board decide to approve the planning application, the applicant is required to apply to his office for a temporary waiver/lease modification to regularize the breach. However, there is no guarantee at this stage that the temporary waiver/lease modification would be approved. If the application for a temporary waiver/lease modification is approved by LandsD in the capacity as landlord at his sole discretion, it will be subject to those terms and conditions including the payment of waiver fee/premium as appropriate as imposed by LandsD.

- (d) His office does not have any record on the size or floor plan of the Premises. The applicant is required to demonstrate the dimensions and calculation of the floor area when the temporary waiver/lease modification application is submitted.

Building Matters

9.1.2 Comments of the Chief Building Surveyor/Kowloon, Buildings Department (CBS/K, BD):

- (a) No objection in principle to the application.
- (b) The applied use should in all aspects comply with the Buildings Ordinance (BO).
- (c) The provision of adequate means of escape should be provided in accordance with Building (Planning) Regulation (B(P)R) 41(1) and the Code of Practice for Fire Safety in Buildings 2011 (FS Code). In this respect, the exit door of the shop leading to the carpark on G/F is considered not acceptable.
- (d) The Premises should be separated from the remaining portion of the building by fire barriers of adequate fire resistance rating pursuant to Building (Construction) Regulation 90 and FS Code.
- (e) Access and facilities for persons with a disability should be provided in accordance with B(P)R 72 and Design Manual: Barrier Free Access 2008.
- (f) The provision of natural lighting and ventilation should be provided to the food preparation room containing soil fitments in accordance with B(P)R 36.
- (g) Sanitary fitments should be provided in accordance with the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations.
- (h) Detailed comments under the BO would be provided at the building plan submission stage.

Fire Safety

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

- (a) No objection in principle to the application provided that:

- (i) the applied use is ancillary to or for purpose of supporting the industrial activities and the routine activities of the workers in the industrial building;
 - (ii) the applied use is used for the selling of quick meals including drinks mainly for consumption off the premises and operated as a fast food counter which is sited at street level only and licensed as food factory¹;
 - (iii) the applied use will not attract unreasonably large number of persons to stay for long period of time, as in case of restaurants and clubs; and
 - (iv) fire services installations are provided to the satisfaction of his department. Detailed fire services requirements will be formulated upon receipt of formal submission of general building plans or referral from licensing authority.
- (b) The building is protected with a sprinkler system, so the maximum permissible aggregated commercial floor area on G/F is 460m² in accordance with TPB PG-No. 22D. The applied use should not be counted up to the aggregated commercial floor area as it is considered that such use is generally in-line with the nature of fast food counter.
 - (c) Regarding matters related to fire resisting construction of the Premises, the applicant is reminded to comply with the FS Code which is administered by the BA.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Engineer/Mainland South, Drainage Services Department;
- (c) Chief Highway Engineer/Kowloon, Highways Department;
- (d) Commissioner for Transport (C for T);
- (e) Commissioner of Police;
- (f) Director of Food and Environmental Hygiene (DFEH); and
- (g) District Officer (Kwun Tong), Home Affairs Department.

10. Public Comments Received During Statutory Publication Period

On 13.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 3.8.2018, a public comment supporting the application was received from a member of Kwun Tong Central Area Committee, Mr. Fung Chi-keung, without giving any reason (**Appendix II**).

¹ For the food business which involves the preparation of food for sale for human consumption off the premises (excludes business carried out by hawker), a food factory licence must be obtained from the DFEH.

11. Planning Considerations and Assessments

- 11.1 The application is to seek planning permission for ‘Shop and Services (Fast Food Shop)’ use to regularize the existing fast food counter at the Premises. The planning intention of the “OU(B)” zone is for general business uses. It allows greater flexibility in the use of the existing industrial or I-O buildings provided that the proposed uses would not induce adverse fire safety and environmental impacts. The proposed use at the Premises is considered generally in line with the planning intention.
- 11.2 KTBA is being transformed into commercial use with many similar applications for ‘Shop and Services’ use approved on the G/F units of other industrial and I-O buildings in the vicinity of the Premises. The applied use is compatible with the changing land use character of the area.
- 11.3 The applied use at the Premises complies with TPB PG-No. 22D in that it would not induce adverse fire safety and environmental impacts on the developments within the subject building and the adjacent areas. Relevant Government departments consulted including D of FS, C for T, CBS/K of BD and DFEH have no objection to or no adverse comment on the application.
- 11.4 As set out in TPB PG-No. 22D, the applied use (i.e. fast food counter) is not subject to the aggregate commercial floor area limit since this use can be regarded as ancillary to or for the purpose of supporting the industrial activities and the routine activities of the workers in the industrial or I-O buildings. D of FS has no objection to the application. To address D of FS’s concern on fire safety aspect, an approval condition in paragraph 12.2(a) below to require the submission and implementation of the proposal for fire safety measures to the satisfaction of D of FS is recommended.
- 11.5 One supportive public comment was received on the application.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, no time clause on commencement is proposed as the ‘Shop and Services (Fast Food Shop)’ use under application is already in operation. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval conditions

- (a) the submission and implementation of a proposal for fire safety measures, including the provision of fire services installations and equipment at the application premises and means of escape separated from the industrial portion of the subject industrial building within six months from the date of the approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 17.2.2019; and

- (b) if the above planning condition (a) 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 III**.

12.3 There is no strong reason to recommend rejection of the application.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or to 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 date when the validity of the permission should expire.
- 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 5.7.2018
Appendix II	Public comment received during the statutory publication period between 13.7.2018 and 3.8.2018
Appendix III	Recommended advisory clauses
Drawing A-1	Ground Floor Layout Plan of the Subject Building as submitted by the Applicant
Drawing A-2	Internal Layout Plan of the Application Premises as submitted by the Applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3 to A-5	Site Photos

**PLANNING DEPARTMENT
AUGUST 2018**