

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K14/760

- Applicant** : Big Chill International (Hong Kong) Limited represented by Circle Development Company
- Premises** : Portion of Factory Unit 7 (Shop 7A), G/F, 1 Hung To Road, Kwun Tong, Kowloon
- Gross Floor Area** : About 23.5m²
- Lease** : (a) Kwun Tong Inland Lot (KTIL) No. 415
(b) Restricted to industrial purposes (excluding offensive trades)
- Plan** : Draft Kwun Tong (South) Outline Zoning Plan (OZP) No. S/K14S/21
- Zoning** : “Other Specified Uses” annotated “Business” (“OU(B)”) [Maximum plot ratio (PR) of 12 and maximum building height of 160 meters above Principal Datum, or the PR and height of the existing building(s), whichever is the greater]
- Application** : 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 (**Drawing A-2**). The Premises occupies portion of factory unit 7 (Shop 7A) of G/F of an industrial building at 1 Hung To Road, 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 The applicant indicates that the Premises is vacant, however, according to 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 22.6.2018.
- 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

The applicant indicates that the applied fast food shop is a chain store selling fresh juices and refreshments. The opening of the shop could allow people in the area enjoy their fresh juices.

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

The applicant is not a “current land owner” of the Premises but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Section 12A and 16 of the Town Planning Ordinance (TPB PG-No.31A) by obtaining consent of the current land owner. Detailed information would be deposited at the meeting for Members’ 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 GFA 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 GFA 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 The Metro Planning Committee of the Board (the Committee) has so far considered one application (No. A/K14/331) for retail shop use (with floor area of 105.98m²) on the G/F of the subject building (**Plan A-3**), which was approved on 14.5.1999. According to TPB PG-No. 22D, the aggregate commercial floor area on G/F of the subject industrial building equipped with sprinkler system is limited to 460m². Such limit however is not applicable to the ‘Shop and Services (Fast Food Shop)’ use under application.
- 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-4 to A-6**)

7.1 The Premises:

- (a) occupies portion (Shop 7A) of G/F of 1 Hung To Road (**Drawings A-1 and A-2**) and is currently used as a fast food counter (**Plans A-5 to A-6**); and
- (b) has its own entrance fronting Lai Yip Street and is separated from the entrance to other floors of the building (**Drawings A-1 and A-2**).

7.2 The subject building:

- (a) is a 33-storey industrial building including a 2-storey carpark (on 1/F and 3/F) built in 1994 and is equipped with sprinkler system; and
- (b) has the following existing uses:

Floor	Main Uses
G/F	The Premises (fast food counter), shop and services (retail shop ^[1]), training centre ^[2] , canteen, vacant units, lift lobby, L/UL area and internal driveway (Drawings A-1 and A-2)
1/F and 3/F	Carpark
2/F, 5/F-37/F ^[3]	Offices/godown (all floors except 15/F, 16/F, 31/F and 37/F which are all vacant), training centre ^[4] (23/F)

^[1] Covered by planning approval No. A/K14/331.

^[2] Covered by planning approval No. A/K14/424.

^[3] There is no 4/F, 13/F, 14/F, 24/F and 34/F at the subject building.

- ^{14]} Use 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 or I-O use located above by a buffer floor(s) of non-hazardous occupancy, and no industrial uses are located within that non-industrial portion. As such, the training centre is not allowed at the upper floor of the building.

7.3 The surrounding areas have the following characteristics:

- (a) the neighbouring buildings along Lai Yip Street and Hung To Road are mainly industrial or I-O buildings;
- (b) the G/F units of the nearby buildings are mainly used as motor services and godown; and
- (c) the MTR Ngau Tau Kok Station is about 100m to the north across Kwun Tong Road (**Plan A-1**).

8. Planning Intention

The planning intention of “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. 415 which is held under Conditions of Sale No. 7697 dated 14.1.1963 as varied or modified by a Modification Letter dated 14.7.1992 for a term of 21 years commencing from 1.7.1962 and renewable for 14 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 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 has 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 approve the planning application, the applicant is required to apply to his office for a temporary waiver/lease modification to regularise the breach. However, there is no guarantee at this stage that the temporary waiver/lease modification would be approved. If the application for 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 lease modification/temporary waiver application is submitted.

Building Matters

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

- (a) No objection to the application.
- (b) All building works/change in use are subject to compliance with the Buildings Ordinance (BO).
- (c) The applicant is advised to appoint an Authorised Person to submit building plans for the proposed change in use and/or alterations and additions works to demonstrate compliance with the BO, in particular:
 - (i) adequate means of escape should be provided to the Premises in accordance with Building (Planning) Regulation (B(P)R) 41(1) and the Code of Practice for Fire Safety in Buildings 2011 (FS Code);
 - (ii) 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;
 - (iii) access and facilities for persons with a disability including accessible toilet should be provided to the Premises in accordance with B(P)R 72 and Design Manual: Barrier Free Access 2008;
 - (iv) adequate sanitary fitments should be provided to the Premises in accordance with the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations; and
 - (v) structural justification should be provided if solid partition walls are to be erected within the Premises.

- (d) Detailed comments under the BO can only be provided at the building plan submission stage.
- (e) For unauthorised building works (UBW) erected on leased land/private buildings (if any), enforcement action may be taken by the Building Authority (BA) 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 UBW on the Premises under the BO.
- (f) The applicant's attention should be drawn to "Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers APP-47" that the BA has no powers to give retrospective approval or consent for any UBW.

Fire Safety

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

- (a) No objection to the application subject to:
 - (i) the proposed shop and services (fast food shop) is ancillary to or for purposes of supporting the industrial activities and the routine activities of the workers in the industrial building;
 - (ii) the proposed shop and services (fast food shop) 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 proposed shop and services (fast food shop) will not attract unreasonably large number of persons to stay for long periods of time, as in case of restaurants and clubs; and
 - (iv) fire services installations and equipment 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 GFA as it is considered that 'fast food shop' 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.

¹ For the business which involves the preparation of food for sale for human consumption off the Premises (excluding business carried out by hawkers), food factory licence must be obtained from Director of Food and Environmental Hygiene.

9.2 The following Government departments have no objection to/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 29.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 20.7.2018, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is to seek planning permission for ‘Shop and Services (Fast Food Shop)’ 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 proposed 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 and CBS/K of BD and DFEH have no objection to/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 No 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 II**.

- 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 22.6.2018
Appendix II	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

Plan A-3 Plan showing Similar Application on Ground Floor of the Subject Building

Plans A-4 to A-6 Site Photos

**PLANNING DEPARTMENT
AUGUST 2018**