

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K14/791

- Applicant** : Mr. LEE Man Kei
- Premises** : Unit 3A, G/F, Century Centre, 44 - 46 Hung To Road, Kwun Tong, Kowloon
- Floor Area** : About 68m²
- Lease** : (a) Kwun Tong Inland Lot (KTIL) Nos. 276 & 278
(b) Restricted to industrial or godown purposes or both
- Plan** : Approved Kwun Tong (South) Outline Zoning Plan (OZP) No. S/K14S/22
- Zoning** : “Other Specified Uses” annotated “Business” (“OU(B)”) [Maximum plot ratio (PR) of 12 and the maximum building height of 100 metres above Principal Datum or the PR and the height of the existing building(s), whichever is the greater]
- Application** : Shop and Services (Convenience Store)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for ‘Shop and Services’ (Convenience Store) use (**Drawings A-1 and A-2**). The Premises occupies a unit on G/F of an existing industrial building (IB), namely Century Centre, at 44 – 46 Hung To Road, Kwun Tong, which falls within an area zoned “OU(B)” on the approved Kwun Tong (South) OZP No. S/K14S/22 (**Plan A-1**). According to the 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, which would require planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant and our recent site inspection, the Premises is currently occupied by the applied use without a valid planning permission.
- 1.3 In support of the application, the applicant has submitted an application form received on 23.6.2020 (**Appendix I**). Floor plan for G/F of the subject building and layout plan of the Premises submitted by the applicant are at **Drawings A-1 and A-2** respectively.

2. Justifications from the Applicant

The applicant has not provided any justification in support of the application.

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 demonstrating that reasonable steps have been taken to give the necessary owner’s notification. 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) Fire Services Department 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 areas on G/F of an existing industrial/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 merits. 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 (L/UL) 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 Applications

The Premises was the subject of three previous planning applications (Nos. A/K14/52, A/K14/442 and A/K14/633) (**Plan A-3**). The Premises formed part of the application site of Application No. A/K14/52 for proposed bank, retail shops and canteen uses which was rejected by the Metro Planning Committee (the Committee) on 20.7.1990 on the grounds

that there were vacant commercial floor space available nearby for the applied bank and retail shop uses, and the proposed canteen was essentially a restaurant which was not acceptable within an IB for fire-safety reasons. Applications No. A/K14/442 and A/K14/633 (covering portion of the Premises) for proposed retail shop and ‘Shop and Service’ use were approved with conditions on 26.3.2004 and 14.1.2011 respectively on the grounds that the applied uses were in line with the planning intention of “OU(B)” zone, and would not have adverse implications on fire safety, car parking provision or environmental aspects. The former application had lapsed and the latter was revoked on 14.7.2011 due to non-compliance with approval condition on fire safety aspect.

6. Similar Applications

6.1 The Committee has so far considered a total of 20 applications (including three previous applications mentioned in paragraph 5 above) on G/F of the subject building for ‘Shop and Services’ (include ‘Bank’, ‘Convenience Store’, ‘Fast Food Shop’ or ‘Retail Shop’ uses), ‘Eating Place (Canteen)’ and ‘Office’ uses (**Plan A-3**). 18 of these applications were approved with conditions on fire safety measures by the Committee and two were rejected mainly for the fire-safety reasons. Among the 18 approved applications, six of them are still valid, details of which are shown in the table below.

Application No.	Unit No.	Applied Uses	Floor Area (m ²)	Date of MPC/TPB Meeting	Decision
Uses not applicable for the maximum permissible limit of 460m² [1]					
A/K14/436	1D	Fast Food Shop	77.2	19.12.2003 (Lapsed)	Approved with Conditions
A/K14/485	1D	Shop and Services (Convenience Store)	74.05	28.10.2005	Approved with Conditions
Uses applicable for the maximum permissible limit of 460m²					
A/K14/52	3	Bank, Retail Shops & Canteen	851	20.7.1990	Rejected (see paragraph 5 for details)
A/K14/432	1B (part)	Office (Estate Agency)	69.4	19.12.2003 (Lapsed)	Approved with Conditions
A/K14/437	1A	Fast Food Shop & Retail Shop	117.983	9.1.2004 (Lapsed)	Approved with Conditions
A/K14/438	4 (part)	Fast Food Shop & Retail Shop	94.45	9.1.2004 (Lapsed)	Approved with Conditions
A/K14/440	3 (part)	Retail Shop (Metal Hardware Shop)	23.62	27.2.2004 (Lapsed)	Approved with Conditions
A/K14/441	1C	Retail Shop	80	12.3.2004	Approved with Conditions
A/K14/442	3 (part)	Retail Shop	21.27	26.3.2004 (Lapsed)	Approved with Conditions
A/K14/447	4 (part)	Office (Recyclable Collection of Scrap Metal & Waste Paper)	2.23	28.5.2004	Approved with Conditions

Application No.	Unit No.	Applied Uses	Floor Area (m ²)	Date of MPC/TPB Meeting	Decision
A/K14/486	2	Shop and Services	683.5	11.11.2005	Rejected ^[2]
A/K14/502	1A	Temporary Shop and Services (Estate Agency) for 3 Years	118	28.4.2006 (Lapsed)	Approved with Conditions
A/K14/531	1B	Shop and Services	89.18	23.3.2007 (Revoked)	Approved with Conditions
A/K14/563	1B (part)	Shop and Services	88.421	7.3.2008 (Lapsed)	Approved with Conditions
A/K14/585	1A	Shop and Services	115	13.3.2009 (Lapsed)	Approved with Conditions
A/K14/597	2 (part)	Shop and Services	78.98	21.8.2009	Approved with Conditions
A/K14/615	1B (part)	Shop and Services	74	25.6.2010	Approved with Conditions
A/K14/633	3 (part)	Shop and Services	33.4	14.1.2011 (Revoked)	Approved with Conditions
A/K14/648	1A	Shop and Services	115	15.4.2011	Approved with Conditions
A/K14/733	1B	Shop and Services	86.3	12.8.2016 (Revoked)	Approved with Conditions
Total Approved Floor Area: 350.21m² ^[3]					

^[1] As set out in TPB PG-No. 22D (see paragraph 4(c)), the limits on commercial floor area do not apply to bank, fast food counter, electrical shop, local provisions store and showroom in connection with the main industrial use.

^[2] Rejected on the ground that the application was not acceptable from fire safety point of view.

^[3] The total approved floor area of 350.21m² have excluded the floor areas within the overlapping premises and cases of which planning permission have lapsed or been revoked.

6.2 According to TPB PG-No. 22D, local provisions stores can be regarded as uses that 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. The limit on aggregate commercial floor areas on G/F of an IB is therefore not applicable to this application.

6.3 There are a total of 214 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). 180 of them were approved with conditions and the remaining 34 were rejected by the Committee of the Board, 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 (Plans A-1 and A-2 and photos on Plans A-4 and A-5)

7.1 The Premises:

- (a) occupies Unit 3A on G/F of Century Centre (**Plan A-3**), and is currently occupied by a convenience store (**Plan A-4**); and
- (b) has an entrance fronting Hung To Road which is physically separated from the entrance to other floors of the existing IB.

7.2 The subject building:

- (a) is a 15-storey IB (with a basement carpark) built in 1983 and is equipped with sprinkler system (**Plan A-5**); and
- (b) has the following existing uses:

Floor	Main Uses
G/F	The Premises (currently used as a convenience store), eating place (canteen), metal hardware shop, money exchange, fast food shop, vacant/locked units
M/F, 1/F – 12/F	Office, warehouse (M/F to 12/F except 5/F), showroom (3/F and 10/F), and locked units (M/F to 12/F except 1/F and 5/F)

7.3 The surrounding areas have the following characteristics:

- (a) the neighbouring buildings along Hung To Road are mainly industrial or I-O buildings. To the further southeast across Tsun Yip Street is an existing commercial development, namely Sun Wing Building, zoned “Commercial (1)” on the OZP (**Plan A-2**);
- (b) the G/F units of the nearby buildings are mainly used as eating places, retail shops and vehicle repair workshops; and
- (c) MTR Kwun Tong Station is approximately 500m to the northeast.

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) The Premises falls within KTIL Nos. 276 and 278 which are restricted to industrial or godown purposes or both.
- (b) The proposed ‘Shop and Services’ use would be in conflict with the lease conditions. Should the Board approve the planning application, the applicant is required to apply to his office for waiver/lease modification to give effect to the proposal. However, there is no guarantee at this stage that the waiver/lease modification would be approved. If the application for 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 considered appropriate to be imposed by LandsD. Approval by the Board shall not prejudice the government’s right to take enforcement action against any breach identified at the Premises.
- (c) Upon receipt of the application of waiver/lease modification, if applied by the owner of the Premises, he is required to prove his ownership and demonstrate the dimensions and calculation of the floor area in all respect to the satisfaction of LandsD.

Fire Safety

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

- (a) No objection to the application subject to the following conditions:
 - (i) Fire service installations and equipment being provided to the satisfaction of his department. Detailed fire services requirements will be formulated upon receipt of formal submission of general building plans; and
 - (ii) Means of escape separated from the industrial portion is available for the Premises.
- (b) Regarding matters related to fire resisting construction of the Premises, the applicant is reminded to comply with the “Code of Practice for Fire Safety in Buildings” which is administered by the Buildings Department (BD).
- (c) Applicant’s attention should be drawn to the ‘Guidance Note on Compliance with Planning Condition on Provision of Fire Safety Measures for Commercial Uses in Industrial Premises’ if the application is approved.

Building Matters

9.1.3 Comments of the Chief Building Surveyor/Kowloon (CBS/K), BD:

- (a) No objection in-principle to the application.

- (b) All building works/ alterations and additions (A&A) works/ change of use are subject to compliance with the Buildings Ordinance (BO). The applicant is advised to appoint an Authorized Person to ensure any building works/ A&A works/ change of use are in compliance with BO.
- (c) Exit route have a clear width of not less than 1050mm should be provided within the premises and kept clear of any obstructions at all times.
- (d) For unauthorized building works (UBW) erected on private land/buildings, 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 application site under the BO.
- (e) The applicant should note the Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers PNAP APP-47 that the BA has no powers to give retrospective approval or consent for any UBW.
- (f) Detailed comments under the BO can only be provided at the building plan submission stage.

Traffic

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

- (a) He has no in-principle objection to the application from traffic engineering perspective as the Premises is small in size with a constrained layout, conveniently located close to mass transport/ public transport services, and that L/UL facilities are available on G/F of the subject building.
- (b) He advises the applicant to note that C for T has the right to impose, alter or cancel any car parking, L/UL facilities and/or any no-stopping restrictions, on all local roads to cope with changing traffic conditions and needs. The frontage road space would not be reserved for any exclusive uses of the subject development.

9.2 The following Government departments have no objection to/no comments on the application:

- (a) Chief Highway Engineer/Kowloon, Highways Department;
- (b) Chief Engineer/Mainland South, Drainage Services Department;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Commissioner of Police; and
- (e) District Officer (Kwun Tong), Home Affairs Department.

10. Public Comments Received During Statutory Publication Period

On 30.6.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 21.7.2020, no public comment was received.

11. Planning Considerations and Assessments

11.1 The application is to seek planning permission for 'Shop and Services' (Convenience Store) use at the Premises, which is currently occupied by the applied use without a valid planning permission. 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 use would not induce adverse fire safety and environmental impacts. The applied use at the Premises is considered generally in line with the planning intention.

11.2 The KTBA is being transformed into commercial use with many similar applications for 'Shop and Services' use approved for 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 the TPB PG-No. 22D in that it would not induce adverse fire safety, traffic and environmental impacts on the developments within the subject building and the adjacent areas. Relevant Government departments including D of FS, C for T and CBS/K, BD have no in-principle objection to/no adverse comment on the application.

11.4 The applied use is not subject to the maximum permissible limit for aggregated commercial floor area on G/F under TPB PG-No. 22D. Direct access is provided for the Premises with street frontage at Hung To Road. In this regard, D of FS has no in-principle objection to the application subject to approval conditions on the submission and implementation of fire safety measures as recommended in paragraphs 12.2(a) and (b) below.

11.5 As the convenience store has been in operation on the Premises and that the previous permission granted for the same use was revoked due to non-compliance with the approval condition on the submission and implementation of the fire safety measures within the specified time limit, a shorter compliance period of three months and six months for the submission and implementation of proposal for fire safety measures respectively is recommended to monitor the progress of compliance should the Committee decide to approve the application. Moreover, the applicant should be advised that should he fail to comply with the approval condition again resulting in the revocation of the planning permission, sympathetic consideration might not be given to any further application.

11.6 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’ (Convenience Store) 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 of a proposal on the fire safety measures within three months from the date of the approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 21.11.2020;
- (b) in relation to (a) above, the implementation of the fire safety measures within six months from the date of approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 21.2.2021;
- (c) if any of the above planning condition (a) or (b) is not complied with by the specified dates, 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.
- 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 23.6.2020
Appendix II	Recommended advisory clauses
Drawing A-1	G/F plan of the building as submitted by the Applicant
Drawing A-2	Layout plan of the Premises as submitted by the Applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	G/F plan of the building
Plans A-4 and A-5	Site photos