

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NOS. A/K5/806 & 807

- Applicants** : Cheng Chun Bor and Chan Chai Ping represented by Aikon Development Consultancy Limited
- Premises** : Portions of Factory No. 6, G/F, Elite Industrial Centre, 883 Cheung Sha Wan Road, Cheung Sha Wan, Kowloon
- Floor Areas of Premises** : About 48.5 m² (A/K5/806)
About 116.8 m² (A/K5/807)
- Lease** : (a) New Kowloon Inland Lot (NKIL) No. 5944
(b) To expire on 30.6.2047
(c) Restricted to industrial or godown purposes or both (excluding offensive trades)
- Plan** : Approved Cheung Sha Wan Outline Zoning Plan (OZP) No. S/K5/37
- Zoning** : “Other Specified Uses” annotated “Business (3)” (“OU(B)3”)

[Restricted to a maximum plot ratio (PR) of 12 and a maximum building height (BH) of 120mPD, or the PR/BH of the existing building, whichever is the greater. A minimum setback of 3.5m from the lot boundary abutting Cheung Shun Street or Cheung Yue Street shall be provided.]
- Applications** : Proposed Shop and Services (A/K5/806)
Proposed Shop and Services (Fast Food Counter and Local Provisions Store) (A/K5/807)

1. The Proposal

- 1.1 The applicants submitted two planning applications for permissions to use the two application premises (the Premises) for proposed ‘Shop and Services’ and ‘Shop and Services (Fast Food Counter and Local Provisions Store)’ uses respectively. The two Premises, which occupy Factory No. 6 on G/F of an existing industrial building namely Elite Industrial Centre, fall within an area zoned “OU(B)3” on the approved Cheung Sha Wan OZP No. S/K5/37 (**Plan A-1**). According to Schedule II of the Notes of the OZP for the “OU(B)” zone applicable to industrial or industrial-office (I-O) building, ‘Shop and Services (not elsewhere specified)’ on

the G/F of an industrial building requires planning permission from the Town Planning Board (the Board).

1.2 The layout and floor plans showing the two Premises, as submitted by the applicants, are at **Drawings A-1 and A-2** (A/K5/806) and **Drawings A-3 and A-4** (A/K5/807). According to the applicants' submissions, the portion of the Premises covered by Application No. A/K5/806 will be subdivided into three units and all can be accessed from Cheung Lai Street (**Drawing A-1**), and the portion of the Premises covered by Application No. A/K5/807 will be subdivided into four units and can be accessed from Cheung Lai Street or Cheung Shun Street (**Drawing A-3**). There will be internal walls to separate the individual units within the two Premises. The two Premises are under renovation.

1.3 In support of the applications, the applicants have submitted the following documents:

A/K5/806

(a) Application form with covering letter received on 16.5.2019 (**Appendix I**)

(b) Letter dated 9.7.2019 providing information responding to departmental comments (**Appendix Ia**)

A/K5/807

(c) Application form with covering letter received on 16.5.2019 (**Appendix II**)

(d) Letter dated 18.6.2019 providing clarifications (**Appendix IIa**)

(e) Letter dated 9.7.2019 providing information responding to departmental comments (**Appendix IIb**)

1.4 The applications were originally scheduled for consideration by the Committee on 5.7.2019. On 5.7.2019, as requested by the applicants, the Committee agreed to defer making a decision on the applications for two months in order to allow sufficient time for the applicants to prepare further information. The applicants subsequently submitted further information on 9.7.2019 for both applications (**Appendices Ia and IIb**). The two applications are scheduled for consideration by the Committee of the Board at this meeting.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the applications are similar as set out at **Appendices I, Ia, II and IIb**. They are summarized as follows:

- (a) the proposed uses are considered in line with the planning intention of the "OU(B)" zone given the general business nature of the proposed uses;

- (b) the proposed uses are compatible with the uses within the same building and in the surroundings as there are existing shop and services uses in the vicinity including local provisions stores, fast food counters, real estate agencies. The proposed 'Shop and Services (Fast Food Counter and Local Provisions Store)' supports the industrial activities and routine activities of workers in the subject industrial building and the industrial or I-O buildings in the Cheung Sha Wan area;
- (c) there have been similar planning applications for 'Shop and Services' use in the "OU(B)3" zone approved by the Board;
- (d) the proposed uses are non-polluting and non-dangerous in nature and no parking provision is required as there are public transport services nearby. There will be no adverse environmental and infrastructure impact; and
- (e) according to the Town Planning Board Guidelines for Development within "OU(B)" Zone (TPB PG-No. 22D), the aggregate commercial floor area on the G/F of the subject industrial building, which is equipped with a sprinkler system, would not be exceeded 460m² if the proposed 'Shop and Services' use is approved, while the floor area limit does not apply to the proposed 'Shop and Services (Fast Food Counter and Local Provisions Store)' as they are considered uses which supports the industrial activities and routine activities of workers in the industrial or I-O buildings in the Cheung Sha Wan area. The applicants have also made submission under the Minor Works Control System of the Buildings Department for the Premises including the provision of fire separation.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicants are the sole "current land owner" of the two Premises. 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 are 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 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 the ground floor of an existing industrial/I-O building with and without sprinkler systems should as a general principle not exceed 460m² and 230m² respectively. 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 Applications

There is no previous application for the Premises.

6. Similar Applications

6.1 Since the site was rezoned from “Industrial” (“I”) to “OU(B)” in 2001, the Committee has considered a total of 12 applications for ‘Shop and Services’ and ‘Wholesale Trade’ uses on G/F of the subject industrial building (**Plan A-2a**). Eleven applications were approved with conditions by the Committee, and one application (No. A/K5/570) was rejected by the Board upon review on 21.1.2005 on the ground that the application was not acceptable from fire safety point of view. Besides, Application No. A/K5/79 for ‘Showroom with Retail Outlet’ was approved with conditions by the Committee on 27.5.1988 when the site was zoned “I”¹. The details of the approved applications are shown in the table below.

Application No.	Unit No.	Proposed Use	Floor Area (m ²)	Date of Consideration	Decision
Uses applicable for the maximum permissible limit of 460m ² for aggregate commercial floor area on G/F of an industrial building (with sprinkler systems)					
A/K5/79	5 (Portion)	Showroom with Retail Outlet	54	27.5.1988	Approved with conditions
A/K5/654	1	Shop and Services	425.67	28.3.2008 (Lapsed)	Approved with conditions

¹ When the site was zoned “I” before it was rezoned to “OU(B)” in 2001, there were a total of eight planning applications for showroom, retail shops and offices uses at the G/F of the subject industrial building. Out of these eight applications (including Application No. A/K5/79 mentioned in paragraph 6.1 above), four were approved with conditions and four were rejected. Except application No. A/K5/79, the other three approved applications either lapsed or expired and hence they are not included in the table of paragraph 6.1.

Application No.	Unit No.	Proposed Use	Floor Area (m ²)	Date of Consideration	Decision
A/K5/693	4	Shop and Services	126.33	28.5.2010	Approved with conditions
A/K5/700	1 (front portion)	Wholesale Trade (Wholesale Shop)	115.45	23.12.2010 (Revoked)	Approved with conditions
A/K5/790	8	Shop and Services	214.7	24.11.2017	Approved with conditions
Total Approved Commercial Floor Area*:			395.03 m²		
Uses not applicable for the maximum permissible limit of 460m ² for aggregate commercial floor area on G/F of an industrial building (with sprinkler systems)					
A/K5/562	1	Wholesale Trade (Wholesale Centre) for a Period of five Years	426	14.5.2004 (Expired)	Approved with conditions on a temporary basis
A/K5/587	3	Shop and Services (Showroom)	266	13.5.2005	Approved with condition
A/K5/594	5C	Shop and Services (Fast Food Shop)	19	15.7.2005	Approved with condition
A/K5/612	4 (Portion)	Shop and Services (Local Provisions Store and Metal and Electrical Shop)	47.9	7.4.2006	Approved with conditions
A/K5/613	4 (Portion)	Shop and Services (Fast Food Counter)	13.5	2.6.2006	Approved with conditions
A/K5/658	4 (Portion)	Shop and Services (Fast Food Counter/Local Provisions Store)	21.39	23.5.2008	Approved with conditions
A/K5/685	4C2 and 4D	Shop and Services (Local Provisions Store/Metal and Electrical Shop/Fast Food Counter)	35.8	4.12.2009 (Lapsed)	Approved with conditions

* The total floor areas have excluded the floor areas in overlapping premises and approved cases of which planning permissions have been lapsed / revoked.

- 6.2 According to TPB PG-No. 22D, the proposed 'Shop and Services' use under Application No. A/K5/806 is subject to a maximum permissible limit of 460m² for aggregate commercial floor area on G/F of the subject industrial building with a sprinkler system. If Application No. A/K5/806 is approved, the aggregate commercial floor areas approved (by the Committee) on G/F of the subject industrial buildings will be 443.53m². The limit on aggregate commercial floor

area on the G/F for an industrial building is not applicable to the proposed 'Shop and Services (Fast Food Counter and Local Provisions Store)' use under Application No. A/K5/807.

- 6.3 Since 2001, the Committee has considered 145 planning applications for various 'Shop and Services' uses on the G/F of the industrial building and I-O buildings within the "OU(B)" zone in the Cheung Sha Wan Industrial/Business Area. The Committee approved 136 of these applications while rejecting nine applications mainly for fire safety reasons.

7. The Premises and Its Surrounding Areas
(Plans A-1 to A-2a and Photos on Plans A-3 to A-5)

7.1 The two Premises:

- (a) occupy Factory No. 6 on G/F of Elite Industrial Centre located at the junction of Cheung Shun Street and Cheung Lai Street;
- (b) are having direct frontage to Cheung Shun Street and/or Cheung Lai Street; and
- (c) are under renovation.

7.2 The subject industrial building has the following characteristics:

- (a) is a 14-storey industrial building (including one level of basement for car parking spaces) completed in 1986 and equipped with a sprinkler system; and
- (b) is currently used for the following purposes:

Floor	Main Uses
G/F	The two Premises , canteens and shops
1/F to 12/F	Industrial-related offices/trading firms, workshops, storage, shop and services*, eating places#

* No record of planning approval granted for these Shop and Services uses.

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

7.3 The surrounding areas have the following characteristics:

- (a) it is an established industrial/business area in Cheung Sha Wan (which was rezoned from "I" to "OU(B)" in 2001 and 2002);
- (b) the subject industrial building is surrounded mainly by industrial and I-O buildings with 'Shop and Service' uses on G/F; and

- (c) it is easily accessible by various modes of public transport with MTR Lai Chi Kok Station located at about 40m to the north of the subject industrial building (**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 applications are summarised as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Kowloon West, Lands Department (DLO/KW, LandsD):

- (a) no objection to the applications;
- (b) the two premises fall within NKIL 5944 (“the Lot”) which are governed by the Conditions of Sale No. UB11707 dated 25.11.1983 (“the lease conditions”). The Lot is restricted to industrial or godown purposes or both excluding offensive trades. The proposed ‘shop and services’ use and proposed ‘shop and services (fast food and local provision store)’ use at the premises are not permitted under the lease conditions;
- (c) if the subject planning applications are approved by the Committee, the lot owner has to apply to LandsD for a waiver or no-objection letter to permit the proposed ‘shop and services’ use and proposed ‘shop and services (fast food and local provision store)’ use. However, there is no guarantee that the applications will be approved. Such applications, if received by LandsD, will be considered by LandsD acting in capacity as the landlord at its sole discretion. If such applications are approved, they would be subject to such terms and conditions including, among others, the payment of premium/waiver fee and administrative fee as may be imposed by LandsD.

Building Matters

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

- (a) no in-principle objection to the applications;
- (b) the applicants are advised to engage an Authorized Person to ensure that any alternations and additions/change in use are implemented in compliance with the Buildings Ordinance (BO);
- (c) under section 14(1) of the BO, no person shall commence or carry out any building works without having first obtained approval and consent from the Building Authority (BA) before commencement of works unless they are exempted under s.41 of the BO, or fall within Minor Works under the Building (Minor Works) Regulations;
- (d) detailed comments under the BO would be provided at the building plan submission stage and/or the food business license application stage; and
- (e) attention of the applicants should be drawn that “no objection” to the applications should not be construed as an acceptance of any unauthorized building work (UBW) on the Premises under the BO. Enforcement action may be taken by the BA to effect their removal in accordance with BD’s enforcement policy against UBW as and when necessary.

Traffic

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

- (a) no in-principle objection to the applications at nil provisions of carparking and loading/unloading spaces given that the small and constrained site layout; conveniently located to mass transport/public transport services; and small scale of developments; and
- (b) the applicants should be reminded that C for T has the rights to impose, alter or cancel any carparking, loading/unloading 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 developments.

Fire Safety

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

- (a) no in-principle objection to the applications subject to:
 - (i) the proposed fast food shop under Application No. A/K5/807 being licensed as food factory or factory canteen;
 - (ii) fire service installations and equipment being provided to the satisfaction of his Department. Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans; and
 - (iii) means of escape separated from the industrial portion is available for the subject units; and
- (b) the building is provided with a sprinkler system so that the maximum permissible aggregated commercial floor area on the G/F is 460m² in accordance with TPB PG-No. 22D. The proposed 'Shop and Services' use under Application No. A/K5/806 should be counted up to the aggregated commercial floor area;
- (c) regarding matters related to fire resisting construction of the Premises, the applicants are reminded to comply with "Code of Practice for Fire Safety in Building" which is administered by the BA; and
- (d) the applicants' 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 applications are approved.

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

- (a) Director of Food and Environmental Hygiene (DFEH);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD);
- (d) Chief Highway Engineer/Kowloon, Highways Department (CHE/K, HyD);
- (e) Commissioner of Police (C of P); and
- (f) District Officer (Sham Shui Po), Home Affairs Department (DO(SSP), HAD).

10. Public Comments Received During Statutory Publication Period

On 24.5.2019, the two applications were published for public inspection. During the three-week statutory public inspection period ending on 14.6.2019, nine public comments from individuals on Application No. A/K5/806 were received with seven objecting to the application and two providing comments. The major objection reasons and comments are that the proposed small shops would induce an increase in rent of the subject industrial building and those in the vicinity, cause adverse impacts on hygiene and pedestrian safety, reducing space for industrial related uses and there are already sufficient retail services in the district (**Appendix III**). No public comment was received on Application No. A/K5/807.

11. Planning Considerations and Assessments

- 11.1 The applications are to seek planning permissions to use the two Premises for proposed 'Shop and Services' and 'Shop and Services (Fast Food Counter and Local Provisions Store)' uses respectively. The two Premises are under renovation. The planning intention of the "OU(B)" zone is intended primarily for general business uses. It allows greater flexibility in the use of the existing industrial or I-O buildings provided that the use would not result in adverse fire safety or environmental impacts. The proposed uses at the Premises are considered generally in line with the planning intention.
- 11.2 The Cheung Sha Wan Industrial/Business Area is being transformed into commercial/business uses 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 uses are considered compatible with the changing land use character of the area. Moreover, the proposed uses are considered not incompatible with other uses of the same industrial building which mainly comprises canteens and shops on the G/F and industrial-related offices/trading firms, workshops and storage uses on the upper floors.
- 11.3 A total of 12 applications for 'Shop and Services' use on the G/F of the subject industrial building were approved with condition(s) by the Committee (Table of paragraph 6.1 above and **Plan A-2a**). There is no change in planning circumstances and the approval of the applications is consistent with the previous decisions of the Committee on similar applications.
- 11.4 The proposed uses in general comply with the Town Planning Board Guidelines for Development within "OU(B)" zone (TPB PG-No. 22D) in that they would not induce adverse fire safety, traffic and infrastructural impacts on the developments within the subject building and the adjacent areas. Relevant Government departments including D of FS, C for T, CBS/K of BD, CE/C of WSD and CE/MS of DSD have no comment on/no objection to the two applications.
- 11.5 As confirmed by D of FS, the subject industrial building is protected by a sprinkler system and subject to a maximum permissible limit of 460m² for aggregate commercial floor area on G/F in accordance with TPB PG-No. 22D. If the proposed 'Shop and Services' use (Application No. A/K5/806) is approved, the aggregate commercial floor area approved by the Committee on the G/F of the

subject industrial building will be 443.53m², which is within the maximum permissible limit, and the limit does not apply to the proposed 'Shop and Services (Fast Food Counter and Local Provisions Store)' under Application No. A/K5/807. To address D of FS's concern on fire safety aspect, an approval condition in paragraph 12.2(a) to require the submission and implementation of the proposal for fire safety measures to the satisfaction of D of FS are recommended for the two applications.

- 11.6 Nine public comments on Application No. A/K5/806 were received, which are mainly related to the concerns on pedestrian safety and hygiene impacts, reducing space for industrial-related uses and there are already sufficient retail services in the district. The departmental comments in paragraph 9 and planning assessments above are relevant. As regard to rental increase in industrial buildings in the Cheung Sha Wan area, it is a market-driven decision of the owners. No public comment on Application No. A/K5/807 was received.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments on Application No. A/K5/806 mentioned in paragraph 10 above, the Planning Department has no objection to both applications.
- 12.2 Should the Committee decide to approve the applications, it is suggested that the permissions shall be valid until 16.8.2021, and after the said date, the permissions shall cease to have effect unless before the said date, the developments permitted are commenced or the permissions are renewed. The following conditions of approval and advisory clauses for the two applications are suggested for Members' reference:

Approval conditions

- (a) the submission and implementation of fire safety measures, including the provision of fire service installations and a means of escape separated from the industrial portion before operation of the proposed use to the satisfaction of the Director of Fire Services or of the Town Planning Board; and
- (b) if the above planning condition (a) is not complied with before operation of the proposed use, 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 IV**.

- 12.3 There is no strong planning reason to recommend rejection of both applications.

13. Decision Sought

- 13.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant permissions.
- 13.2 Should the Committee decide to approve any of the two applications, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission(s), and the date when the validity of the permission(s) should expire.
- 13.3 Alternatively, should the Committee decide to reject any of the two applications, Members are invited to advise what reason(s) for rejection(s) should be given to the applicants.

14. Attachments

Appendix I	Application form with covering letter received on 16.5.2019 (A/K5/806)
Appendix Ia	Letter dated 9.7.2019 providing information responding to departmental comments (A/K5/806)
Appendix II	Application form with covering letter received on 16.5.2019 (A/K5/807)
Appendix IIa	Letter dated 18.6.2019 providing clarifications (A/K5/807)
Appendix IIb	Letter dated 9.7.2019 providing information responding to departmental comments (A/K5/807)
Appendix III	Public comments received (A/K5/806)
Appendix IV	Advisory Clauses
Drawings A-1 and A-2	Floor and Layout Plans submitted by the Applicants (A/K5/806)
Drawings A-3 and A-4	Floor and Layout Plans submitted by the Applicants (A/K5/807)
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-2a	Location plan of applications on G/F of Elite Industrial Centre
Plans A-3 to A-5	Site Photos

**PLANNING DEPARTMENT
AUGUST 2019**