

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KC/456

- Applicant** : Cheung Man Fire Engineering Consultant Co. Ltd. Represented by Cheung Man Catering Licence Consultant Company
- Premises** : Shop B7, G/F, Mai Wah Industrial Building, 1-7 Wah Sing Street, Kwai Chung, New Territories
- Floor Area** : About 46m²
- Lease** : Kwai Chung Town Lots No. 118 and 119 held under New Grants No. TW6470 and TW6471 restricted to general industrial and/or godown purposes excluding offensive trades
- Plan** : Draft Kwai Chung Outline Zoning Plan (OZP) No. S/KC/29
- Zoning** : “Industrial” (“I”)
- [Restricted to a maximum plot ratio (PR) of 9.5 and a maximum building height (BH) of 120 metres above Principal Datum, or the PR/BH of the existing building, whichever is the greater.]
- Application** : Proposed Shop and Services (Fast Food Shop)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) at Shop B7 on the ground floor (G/F) of an existing industrial building (Mai Wah Industrial Building) for the proposed ‘shop and services (fast food shop)’ use. The subject building falls within an area zoned “I” on the draft Kwai Chung OZP No. S/KC/29 (**Plan A-1**). According to the Notes of the OZP for “I” zone, ‘Shop and Services (not elsewhere specified) (ground floor only, except in wholesale conversion of an existing building and Ancillary Showroom which may be permitted on any floor)’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board).
- 1.2 The Premises is the subject of two applications (No. A/KC/351 and 449). It is part of the former application for ‘shop and services’ use approved with conditions by

the Metro Planning Committee (the Committee) of the Board on 12.2.2010 for a period of three years. It is also the subject of the latter application for ‘shop and services (fast food shop)’ use submitted by a different applicant which was approved with conditions by the Committee on 13.10.2017 for a period of three years. However, the planning approval of the Application No. A/KC/449 was revoked on 13.4.2018 since the approval condition in relation to the submission and implementation of fire safety measures was not complied with before the due date. The applicant indicated that the applied use under the current application is not in operation. According to site inspection, the Premises is currently decorated as a fast food shop for the same use of the last approved application but not in operation.

- 1.3 The G/F floor plan and layout plan showing the location of the Premises on G/F and the dimension of the Premises respectively are at **Drawings A-1** and **A-2**.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form attached with a covering letter received on 6.12.2018 (**Appendix I**)
 - (b) Applicant’s Supplementary Information received on 10.12.2018 enclosing a revised page of the Application Form (**Appendix Ia**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are set out at **Appendix I** which are summarised as follows:

- (a) the applicant intends to operate a food manufacturing and retail shop to provide more choices of catering to nearby workers and residents; and
- (b) the proposed fast food shop would allow the public to have different food experience within the industrial area.

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

The applicant is not the “current land owner” but has complied with the requirements 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 obtaining the owner’s consent. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for Use/Development within “Industrial” Zone (TPB PG-No. 25D) promulgated in September 2007 are relevant in the following aspects:

- (a) it should be demonstrated that there is a genuine need for the proposed use under application and no suitable alternative accommodation can be found in the vicinity. The location and scale of the proposed use should be justified on operational grounds;
- (b) there should be an adequate provision of parking and loading/unloading facilities within the site in accordance with the Hong Kong Planning Standards and Guidelines and to the satisfaction of the Transport Department. The inclusion and operation of the proposed commercial use should not adversely affect the traffic conditions in the local road network; and
- (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 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. 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 (sited at street level without seating accommodation and licensed as food factory), electrical shop (selling electrical accessories usually with repairing services and small in scale), local provisions store (selling cigarettes, drinks, canned food and other local convenience goods, and small in scale) and showroom in connection with the main industrial use.

5. Previous Applications

- 5.1 The Premises is the subject of two previous applications (No. A/KC/351 and 449) for the ‘shop and services’ and ‘shop and services (fast food shop)’ uses which were approved by the Committee on 12.2.2010 and 13.10.2017 respectively (**Plans A-1 and A-3**).
- 5.2 Application No. A/KC/351 for ‘shop and services’ use was approved with conditions for a period of three years by the Committee on 12.2.2010 on the grounds that the applied use was not incompatible with other uses in the subject industrial building and the surrounding area; and the applied use generally complied with the TPB PG-No. 25D in that relevant Government departments had no adverse comments on the fire safety and traffic aspects.

- 5.3 Application No. A/KC/449 for ‘shop and services (fast food shop)’ use, which was submitted by a different applicant, was approved with conditions for a period of three years by the Committee on 13.10.2017 on the grounds that the applied use was not incompatible with other uses in the subject industrial building; there was no material change in planning circumstances since the approval of previous application and similar applications in the subject building and in the vicinity; and the applied use generally complied with the requirements of the TPB PG-No. 25D in that the relevant Government departments had no adverse comments on traffic, environmental and fire safety aspects. However, the planning approval was revoked on 13.4.2018 since the approval condition in relation to the submission and implementation of fire safety measures was not complied with before the due date. The Premises is currently not in operation for any uses.

6. Similar Applications

- 6.1 There are 13 similar applications for ‘shop and services’ use on G/F of the subject building (**Plans A-1 and A-3**). Apart from the two previous applications as mentioned in paragraph 5 above, the remaining 11 similar applications (No. A/KC/401, 402, 405, 411, 412, 413, 414, 418, 419, 420 and 422) were approved with conditions on a temporary basis of three years between 2010 and 2017 since the promulgation of the TPB PG-No. 25D in September 2007. Details of the approved applications are shown in the table below.

| <u>Application No.</u> | <u>Unit No.</u> | <u>Applied/Current Use</u> | <u>Floor Area (m²)</u> | <u>Date of Consideration (MPC/TPB)</u> | <u>Decision (Permission Expiry date)</u> |
|---|------------------|-------------------------------------|-----------------------------------|--|---|
| Uses applicable for the maximum permissible limit of 230m ² for aggregate commercial floor area on G/F of an industrial building (without sprinkler systems) | | | | | |
| A/KC/351 | Unit B (Portion) | Shop and Services | 224.89 | 12.2.2010 | Approved with conditions (Lapsed on 12.2.2013) |
| A/KC/401 | Unit B4 | Shop and Services | 15.62 | 7.6.2013 | Approved with conditions (Revoked on 7.12.2013) |
| A/KC/402 | Unit B1 | Shop and Services | 67.67 | 7.6.2013 | Approved with conditions (Revoked on 7.12.2013) |
| A/KC/405 | Unit B6 | Shop and Services | 36.58 | 22.11.2013 | Approved with conditions (Revoked on 22.5.2014) |
| A/KC/411 | Unit B5 | Shop and Services (Decoration Shop) | 28.88 | 22.11.2013 | Approved with conditions (Revoked on 22.5.2014) |

| | | | | | |
|--|---------|--|-------|------------|---|
| A/KC/412 | Unit B3 | Shop and Services (Money Exchange Shop) | 37.85 | 22.11.2013 | Approved with conditions (Revoked on 22.5.2014) |
| A/KC/413 | Unit B4 | Shop and Services (Money Exchange Shop) | 15.62 | 27.6.2014 | Approved with conditions (Revoked on 27.3.2015) |
| A/KC/414 | Unit B1 | Shop and Services (Convenience Store) | 67.67 | 11.7.2014 | Approved with conditions (Lapsed on 11.7.2017) |
| A/KC/418 | Unit B5 | Shop and Services | 29.42 | 17.10.2014 | Approved with conditions (Lapsed on 17.10.2017) |
| A/KC/419 | Unit B3 | Shop and Services | 37.8 | 31.10.2014 | Approved with conditions (Lapsed on 31.10.2017) |
| A/KC/420 | Unit B6 | Shop and Services | 43.38 | 31.10.2014 | Approved with conditions (Lapsed on 31.10.2017) |
| A/KC/422 | Unit B4 | Shop and Services | 16.48 | 31.10.2014 | Approved with conditions (Lapsed on 31.10.2017) |
| Total approved commercial floor area*: 0m² | | | | | |
| Uses not applicable for the maximum permissible limit of 230m ² for aggregate commercial floor area on G/F of an industrial building (without sprinkler systems) | | | | | |
| A/KC/449 | Shop B7 | Proposed Shop and Service (Fast Food Shop) | 46 | 13.10.2017 | Approved with conditions (Revoked on 13.4.2018) |

*Excluding floor area in cases of which planning permissions have lapsed and revoked

- 6.2 According to TPB PG-No. 25D, the proposed ‘Shop and Services (Fast Food Shop)’ use under the application is regarded as use which is 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 the G/F of an industrial building is not applicable to fast food shop.
- 6.3 Since 2001, the Committee has considered 45 planning applications for various ‘Shop and Services’ uses on the G/F of the industrial buildings and I-O buildings within the ‘I’ zone in the Kwai Chung Industrial/Business Area. The Committee approved 43 of these applications while rejecting two applications mainly on the

grounds that the developments were not in line with the planning intention and TPB PG-No. 25D as well as the setting of undesirable precedent.

7. **The Premises and Its Surrounding Areas** (Plans A-1, A-2 and A-3 and photos on Plans A-4 and A-5)

7.1 The Premises:

- (a) occupies part of Unit B on the G/F of the subject industrial building;
- (b) is currently decorated as a fast food shop but not in operation; and
- (c) has direct frontage to Tai Lin Pai Road.

7.2 The subject industrial building:

- (a) is a 23-storey industrial building completed in 1974 which is not fully equipped with sprinkler system;
- (b) the current uses by floor are summarised as follows:

| Floor | Current Use |
|--------------|---|
| G/F | Application premises , canteen, eating place*, shop and services (fast food shop)*, recyclable collection centre, warehouse cum office, property agency*, money exchange shop* and convenience shop* |
| M/F | Industrial use and canteen |
| 1/F | Carpark, loading/unloading bays, warehouse and storage area |
| 2/F to 22/F | Industrial uses and office uses related to industrial workshops/trading firms |

*without valid planning permission

- (c) carparks and loading/unloading bays are located at 1/F with vehicular access at Wah Sing Street (**Plan A-3**).

7.3 The surrounding areas have the following characteristics:

- (a) the developments along both sides of Wah Sing Street, Tai Lin Pai Road and Kung Yip Street are predominately industrial in nature;
- (b) there is a range of mixed industrial and commercial uses in the vicinity of the subject industrial building; and
- (c) it is easily accessible by various modes of public transport with MTR Kwai Hing Station located at about 300m west of the subject industrial building.

8. Planning Intention

The planning intention of “I” zone is primarily for general industrial uses to ensure an adequate supply of industrial floor space to meet demand from production-oriented industries. Information technology and telecommunications industries and office related to industrial use are always permitted in the “I” zone.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/Tsuen Wan and Kwai Tsing, Lands Department (DLO/TW&KT, LandsD):

- (a) The Premises falls within Kwai Chung Town Lots No. 118 and 119 which are held under New Grants No. TW6470 and TW6471 respectively. The Premises is restricted to general industrial and / or godown purposes excluding offensive trades.
- (b) The proposed use at the Premises contravenes the existing lease conditions. If planning approval is granted, the owner of the Premises needs to apply to LandsD for a temporary waiver for shop and services use. He advised that the proposal will only be considered upon the receipt of formal application from the applicant. He also advised that there is no guarantee that the application, if received by LandsD, will be approved and he reserved his comment on such. The application will be considered by LandsD acting in the capacity as landlord at its sole discretion. In the event that the application is approved, it will be subject to such terms and conditions as the Government shall deem fit to do so, including, among others, charging of waiver fee and administrative fee.

Building Matters

9.1.2 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) He has no in-principle objection to the application under the Buildings Ordinance (BO).
- (b) The applicant is reminded that under the BO, no person shall commence or carry out any building works without having first obtained approval and consent from the Building Authority before commencement of works unless they are exempted under section 41

of the BO, or fall within minor works under the Building (Minor Works) Regulation.

- (c) The proposed fast food shop use will be subject to the building safety and other relevant requirements as may be imposed by the Licensing Authority. Detailed comments under the BO would be provided at the licence application stage upon the referral from FEHD.
- (d) The Premises should be separated from the remainder of the building with adequate fire resistance rating.
- (e) Access and facilities for persons with a disability should be provided in accordance with Building (Planning) Regulation 72 and Design Manual: Barrier Free Access 2008.

Industrial Land Supply

9.1.3 Comments of the Director-General of Trade and Industry (DG of TI):

He has no comment on the application if a temporary approval of five years is imposed as it will not jeopardise the long term use of the Premises for industrial related uses.

Traffic

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

- (a) The Premises is the subject of two applications for shop and services. There is no public complaint related to loading/unloading activities arisen from the previous applications. With reference to the previously approved applications, the proposed shop and services with a total floor area of 46m² would not generate significant amount of loading/unloading activities in the vicinity.
- (b) In view of the above, she has no comment on the application on a temporary basis for a period of five years from traffic engineering perspective provided that all future loading/unloading activities arising out of the application will be confined within the application site and would not cause adverse effects on Tai Lin Pai Road and Wah Sing Street.

Fire Safety

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

- (a) He has no in-principle objection to the application provided that :
 - (i) The proposed 'shop and services (fast food shop)' shall be sited at street level only and licensed as food factories.

- (ii) Fire service installations and water supplies for firefighting are provided to the satisfactory of his department. Detailed fire safety requirement will be formulated upon receipt of formal submission of general building plans.
- (b) The applied use licensed and operated as a 'general restaurant' or 'light refreshment' will not be accepted.
- (c) The building is not fully protected with a sprinkler system so that the maximum permissible aggregate commercial floor area on G/F is 230m² in accordance with TPB PG-No. 25D. The applied use should not be counted up to the aggregated commercial floor area.
- (d) Regarding matters related to fire resisting construction of the premises, the applicant is reminded to comply with "*Code of Practice for Fire Safety in Building*" which is administered by the Building Authority.
- (e) The applicant's attention is 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.

Food and Environmental Hygiene Matters

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

- (a) She has no comment on the application.
- (b) The applicant is reminded to fulfil all requirements stipulated by FEHD and all relevant Government departments as well as to resolve any issues raised by concerned parties.
- (c) Regarding the public comment on environment hygiene concerns arising from the proposed 'shop and services (fast food shop)' use, the applicant should be reminded that relevant food licence or permit must first be obtained from FEHD and comply with requirements of concerned departments and relevant legislation should the Premises be intended for food business.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD);
- (c) Chief Highway Engineer/New Territories West, Highways Department (CHE/NT West, HyD);
- (d) Commissioner of Police (C of P);
- (e) Director of Environmental Protection (DEP); and

- (f) District Officer (Kwai Tsing), Home Affairs Department (DO(K&T), HAD).

10. Public Comments Received During Statutory Publication Period

On 14.12.2018, the application was published for public inspection. During the three-week statutory public inspection period ending on 4.1.2019, two public comments were received (**Appendix II**). The first public comment raises questions regarding the applicant's justification for the application, applicant's cost in applying for planning permission, the relevant guideline for making submission of the application and the impact of the applied use on the interest of the surrounding shop owners and the Government. Another public comment was submitted by the Incorporated Owners of Mai Wah Industrial Building (IOMWIB) raising concern mainly on the discharge to the manhole and sewer within the Premises resulting in hygiene problems.

11. Planning Considerations and Assessments

- 11.1 The application is to seek planning permission to use the Premises for the proposed 'shop and services (fast food shop)' use. According to the recent site inspection, the Premises is currently decorated as a fast food shop but not in operation. The Premises is located within the "T" zone which is to reserve land primarily for general industrial uses to ensure adequate supply of industrial floor space to meet demand from production-oriented industries. However, commercial uses in industrial buildings may be permitted on application to the Board based on individual merits and the planning assessment criteria as stipulated in the TPB PG-No. 25D. Although the application is considered not entirely in line with the planning intention of the "T" zone, the proposed shop and services can meet such demand in the area. In terms of land use compatibility, the proposed shop and services (fast food shop) is also considered not incompatible with the subject building and the surrounding developments.
- 11.2 The proposed use in general complies with the Town Planning Board Guidelines for Use/Development within "Industrial" Zone (TPB PG-No. 25D) in that it would not have adverse traffic or environmental impact on the developments within the subject building and the adjacent areas. Relevant Government departments consulted including C for T and DEP have no objection to/no comment on the application.
- 11.3 As confirmed by D of FS, 'Fast Food Counter' would not be counted up to the aggregated commercial floor area in accordance with TPB PG-NO. 25D. To address D of FS's concern of 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.
- 11.4 A total of 13 applications for 'Shop and Services' use on G/F of the subject industrial building were approved by the Committee (**Plans A-1 and A-3**). Among them, two previous applications (No. A/KC/351 and 449) for shop and services and shop and services (fast food shop) were approved for a period of three years by the

Committee on 12.2.2010 and 13.10.2017 respectively. The remaining 11 similar applications were approved with conditions on a temporary basis of three years between 2010 and 2017. There is no change in planning circumstances and the approval of the application is consistent with the previous decisions of the Committee on similar applications.

- 11.5 The applicant submits application for the proposed use on a permanent basis. C of T and DG of TI advise that they have no comment on the application if a temporary approval of five years is imposed. In order not to jeopardize the long-term planning intention of the industrial use for the Premises, an approval on a temporary basis of five years is recommended. This is also consistent with the Committee's previous decisions on approving similar applications on a temporary basis since the promulgation of the TPB PG-No. 25D.
- 11.6 Regarding the public comment about the concerns on environmental hygiene caused by the proposed use, it should be noted that such uses would need to comply with the relevant licensing and department's requirements and subject to control of relevant regulation as stated in paragraph 9.1.6 above.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 above, the Planning Department has no objection to the application on a temporary basis for a period of five years.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of five years until 1.2.2024. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval conditions

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

- 12.3 There is no strong planning 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 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

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| Appendix I | Application Form received on 6.12.2018 |
| Appendix Ia | Supplementary Information received on 10.12.2018 |
| Appendix II | Public comment received |
| Appendix III | Recommended Advisory Clauses |
| Drawing A-1 | Ground Floor Plan submitted by the applicant |
| Drawing A-2 | Layout Plan submitted by the Applicant |
| Plan A-1 | Location Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Previous and Similar Applications on Ground Floor, Mai Wah Industrial Building |
| Plans A-4 and A-5 | Site Photos |

**PLANNING DEPARTMENT
FEBRUARY 2019**