

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/H6/90

- Applicant** : CHU Wai Lim, William represented by Prosper Consultant Engineering Company Limited
- Premises** : Shop B3, G/F, 16 Tai Hang Road, Hong Kong
- Floor Area** : 17.63m²
- Lease** : Inland Lot (IL) No. 3454 Sub-Section 1 of Section B
- Restricted for houses of a European Type or a Free School and Buddhist Church or Temple
- Plan** : Approved Causeway Bay Outline Zoning Plan (OZP) No. S/H6/17
- Zoning** : “Residential (Group B)” (“R(B)”)
- Restricted to a maximum plot ratio (PR) of 5.0 and a maximum building height of 30 storeys including carports, or the PR and height of the existing building, whichever is the greater
- Application** : Proposed Shop & Services

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for shop and services use for selling snack foods. The Premises falls within the “R(B)” zone on the approved Causeway Bay OZP No. S/H6/17 (**Plans A-1 and A-2**). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board).
- 1.2 The Premises is located on part of the ground floor of an existing 5-storey building and has been renovated for the applied use. The total floor area of the Premises is 17.63m². The floor layout plan of the Premises for the applied use submitted by the applicant is at **Drawing A-1**.
- 1.3 In support of the application, the applicant has submitted the following document
- Application form with attachments received on 16.10.2020 (**Appendix I**)

2. Justifications from the Applicant

The justification put forth by the applicant in support of the application are detailed in Part 10 of the application form at **Appendix I** which could be summarised as follows:

- (a) there is no shop selling snack foods in the neighbourhood. The proposed food business would not generate pollution problems (e.g. lampblack). It is supported by the nearby residents; and
- (b) the applicant has submitted food factory licence for the applied use to the Food and Environmental Hygiene Department, but to no avail. The applicant therefore submits the current application to obtain planning permission.

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

The applicant is not a “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 consent of one “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Previous Applications

There is no previous application in respect of the Premises.

5. Similar Applications

There is no similar application for ‘Shop and Services’ use in “R(B)” zone within the Causeway Bay OZP.

6. The Premises and its Surrounding Areas (Plans A-1 to A-3)

6.1 The Premises:

- (a) is situated on the ground floor of an existing 5-storey building in Tai Hang Road. The ground floor of the subject building comprises of some shops (including the Premises) which have no valid planning permissions, while the upper floors are residential flats; and
- (b) has been renovated for the applied use.

6.2 The surrounding areas have the following characteristics

- (a) the northern side of Tai Hang Road is mainly a residential neighbourhood under “R(A)1” zone where eating places and shops can be found on the lower floors of the buildings and the southern side of Tai Hang Road is also a residential neighbourhood under “R(B)” zone with no shop on the ground floor of the buildings;

- (b) Wun Sha Street Children's Playground and a school, namely Li Sing Tai Hang School, are located to its northeast across Tai Hang Road at Wun Sha Street. True Light Middle School of Hong Kong is located to its further east of Tai Hang Road; and
- (c) to the further northeast uphill is Lai Tak Tsuen where some eating places and convenience stores selling fast food are located to serve the nearby residents.

7. Planning Intention

The "R(B)" zone is intended primarily for medium-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.

8. Comments from Relevant Government Departments

8.1 The following government departments have been consulted and their views on the application and the public comments received are summarised as follows:

Land Administration

8.1.1 Comments of the District Lands Officer/Hong Kong East, Lands Department (DLO/HKE, LandsD):

- (a) The Premises is located within Sub-section 1 of Section B of Inland Lot No. 3454 (i.e. IL 3454 s.B ss.1). According to the relevant Conditions of Sale No. 3275 for IL 3454 with lease term commenced on 23.5.1932, the lot is restricted for house of a European Type or a Free School and Buddhist Church or Temple. The proposed shops and services use does not conflict with the lease conditions governing the Premises.
- (b) With regard to the public comments concerning the deed of mutual covenant (DMC), in general the DMC is a private contractual agreement among the owners, manager and developer of a building, to stipulate the rights and obligations of the parties to the agreement. The Government is not a party to that DMC. The applicant may need to take into consideration any possible implication of the relevant DMC for the proposed change of use of the subject premises to a use permitted under the planning permission.

Building Aspect

8.1.2 Comments of the Chief Building Surveyor/Hong Kong East and Heritage, Buildings Department (CBS/HKE&H, BD):

- (a) Means of escape for the shop and services use in compliance with regulation 41(1) of the Building (Planning) Regulations (B(P)R) should be demonstrated.

- (b) Adequate fire separation between the proposed shop and services use and the rest of the building in compliance with regulation 90 of the Building (Construction) Regulation should be demonstrated.
- (c) Access and facilities for persons with a disability should be provided in compliance with regulation 72 of the B(P)R.
- (d) Sanitary fitments should be provided in compliance with the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations.
- (e) Detailed comments on compliance with the Buildings Ordinance will be given upon formal building plans submission.

Fire Safety Aspect

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

- (a) he has no in principle objection to the application subject to fire service installations (FSI) and water supplies for firefighting being provided to his satisfaction;
- (b) as no details of the emergency vehicular access (EVA) have been provided, comments could not be offered at the present stage. Nevertheless, the applicant is advised to observe the requirements of EVA as stipulated in Section 6, part D of the Code of Practice for Fire Safety in Building 2011 which is administered by BD; and
- (c) detailed Fire Services requirements will be formulated upon receipt of formal submission of general building plans.

Internal Transport Facilities

8.1.4 Comments of the Commissioner for Transport (C for T)

On the ground that there was no previous requirements on the parking provision in the available record (building plans and occupation permit) and the anticipated traffic impact arising from the application is minimal, he has no comment on the application from traffic point of view.

Others

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

- (a) proper licence/permit issued by her department is required if there is any food business/catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap.132) and other relevant legislation for the public; and
- (b) no environmental nuisance should be generated to the surroundings. The applicant should arrange proper disposal of any waste generated from the commercial/trading activities at their own expenses.

District Officer's Comments

8.1.6 Comments of the District Officer (Wan Chai):

He has no comments on the application and his office has not received any comments from members of the public.

8.2 The following departments has no objection to/no comment on the application:

- (a) Director of Environmental Protection (DEP);
- (b) Commissioner for Police (C of P);
- (c) Chief Engineer/Construction, Water Services Department (CE/C,WSD);
- (d) Chief Engineer/Hong Kong & Islands, Drainage Services Department (CE/HK&I, DSD); and
- (e) Director of Electrical and Mechanical Services.

9. Public Comments Received During Statutory Publication Period

The application was published for public inspection on 23.10.2020. During the first three weeks of the statutory public inspection period, which ended on 13.11.2020, a total of 25 valid public comments were received from the residents and the owners' corporation of the subject building, nearby residents, members of the public. Seven of the 25 public comments were conveyed by a member of the Wan Chai District Council (**Appendix II**). Amongst the public comments, 11 indicated support mainly because the shop can provide services to the nearby residents. The remaining 14 were objecting comments and their main grounds are summarised as follows:

- (a) the food and beverage nature of the proposed business will create nuisance and problems of crime, traffic, pedestrian safety, health and environmental hygiene;
- (b) the DMC stipulates that the subject building is for residential use; and
- (c) since the use of the Premises was garage/car park according to the occupation permit (OP), it should be reverted to carpark given the shortage in parking space. There is also concern that it will be a precedent case for similar conversion as ground floor car park is common in tenement buildings in the area.

10. Planning Considerations and Assessments

10.1 The application is to seek planning permission for shop and services use at the Premises for selling snack foods. The Premises falls within an area zoned "R(B)", which is primarily for medium-density residential developments where commercial use serving the residential neighbourhood may be permitted on application to the Board.

10.2 The Premises is located on the ground floor of an existing residential building fronting Tai Hang Road. Based on the OP, the ground floor of the building (including the Premises) were intended to be used as garage, but have been converted into shops (mainly real estate agents) without valid planning permission. All buildings around the Premises within the same "R(B)" zone are

without any retail shop on ground floor and, therefore the neighbourhood is generally of a pure residential nature. The proposed shop is not in keeping with the residential character of the neighbourhood. Besides, there are eating places or convenience stores selling fast food located at Lai Tak Tsuen to the northeast uphill or area around Wun Sha Street to the north downhill (**Plan A-1**). The approval of the application will set an undesirable precedent; in particular the remaining part of the ground floor of the subject building. The cumulative impact of other similar applications will result in changing the residential character of the neighbourhood. There is no strong planning justification for the change of uses in the area which is primarily for residential uses.

- 10.3 There are public comments supporting the retail use and raising concerns over the nuisance, environmental hygiene, traffic impact, pedestrian safety as well as the issue of DMC and OP, the planning assessments above and comments of the government departments in paragraph 8 are relevant.

11. Planning Department's Views

- 11.1 Based on the assessment made in paragraph 10 and having taken into account the public comments mentioned in paragraph 9, the Planning Department does not support the application for the following reason:

There is no strong planning justification for the change of uses in the area which is primarily for residential uses. The approval of the application would set an undesirable precedent for other similar applications, the cumulative effect of approving such applications would result in changing the residential character of the neighbourhood.

- 11.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 4.12.2024, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following condition of approval and advisory clauses are also suggested for Members' reference:

- the submission and implementation of fire service installations and equipment in the application premises to the satisfaction of the Director of Fire Services or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix III**.

12. Decision Sought

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 12.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

12.3 Alternatively, 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. Attachments

Appendix I	Application form and attachments
Appendix II	Public comments
Appendix III	Recommended advisory clauses
Drawing A-1	Floor plan submitted by the Applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2020**