

MPC Paper No. A/K11/230
For Consideration by
the Metro Planning Committee
on 12.1.2018

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K11/230

- Applicant** : Appleland Investments Limited
- Premises** : Workshops 10, 12 and 15, G/F, New Tech Plaza, 34 Tai Yau Street,
San Po Kong, Kowloon
- Floor Area** : About 207.269m²
- Lease** : (a) New Kowloon Inland Lot (NKIL) No. 4408
(b) Restricted for the use of industrial purpose excluding
offensive trades
- Plan** : Approved Tsz Wan Shan, Diamond Hill and San Po Kong Outline
Zoning Plan (OZP) No. S/K11/29
- Zoning** : “Other Specified Uses” annotated “Business” (“OU(B)”)

[subject to a maximum plot ratio (PR) of 12.0 and a maximum
building height of 120 meters above Principal Datum, or the PR
and the height of the existing building(s), whichever is the greater.
A minimum of 3m-wide non-building area from lot boundary
abutting Tai Yau Street shall be provided.]
- Application** : Proposed Shop and Services

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for proposed ‘Shop and Services’ use. The Premises occupies Workshops 10, 12 and 15 on G/F of an existing industrial building (New Tech Plaza), which falls within an area zoned “OU(B)” on the approved Tsz Wan Shan, Diamond Hill and San Po Kong OZP No. S/K11/29 (**Plan A-1**). According to

the Notes of the OZP, ‘Shop and Services (not elsewhere specified)’ on the G/F of an industrial building within the “OU(B)” zone requires planning permission from the Town Planning Board (the Board).

- 1.2 In support of the application, the applicant has submitted an application form (**Appendix I**) which was received by the Board on 16.11.2017.
- 1.3 A plan showing the layout of the G/F of the building submitted by the applicant is at **Drawing A-1**.

2. Justifications from the Applicant

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

- (a) the Premises is operating as factory canteens. The proposed use is in line with the planning intention of “OU(B)” zone in that the nature of the proposed use to provide general commercial uses is compatible with the existing uses in the district, particularly the G/F uses along Tai Yau Street;
- (b) the proposed use tallies with the Town Planning Board Guidelines for Development within “OU(B)” Zone (TPB PG-No. 22D) in respect of allowing flexibility in the use of the existing industrial building for compatible use and creating employment;
- (c) the Premises located on G/F is served by individual and separate access directly connected to Tai Yau Street. It also satisfies the requirement of Fire Services Department (FSD) regarding G/F commercial areas of an existing industrial/I-O building with sprinkler systems not to exceed 460m²;
- (d) the Premises is located within the San Po Kong industrial area and it is encompassed by various industrial and office buildings accommodating considerable number of citizens. It is transpired that various redevelopment activities are carrying out within the district which as a result diminished the supply of G/F shop spaces. Under the changing economy, the proposed use contributes to cope with the imminent demand for retail space which is conducive to the local citizens for their daily needs;
- (e) permission for commercial use (bank/fast food shop/office/retail shop/showroom) for the Premises was previously granted by the Board (Application No. A/K11/136). The locality is generally similar to the condition when the previous approval was granted with more commercial activities. There are also similar applications approved in the district; and

- (f) given the size of the Premises is not significant and in view of its retail capacity, customers from adjacent premises will visit on foot. As such, there will be no adverse impact on environment, traffic and infrastructure.

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

The applicant is the sole “current land owner” of the Premises. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The 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 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 merit. 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

On 7.9.2001, a planning application (No. A/K11/136) for ‘Commercial Uses (Bank/Fast Food Shop/Office/Retail Shop/Showroom)’ at the 15 workshop units (covering all the G/F units including the Premises) on the G/F of the subject building (**Plan A-3**) was approved by the Metro Planning Committee (the Committee) of the Board. On 18.12.2001, District Planning Officer/Kowloon of the Planning Department under the delegated authority of the Board approved the minor amendments to the approved planning application No. A/K11/136 on premises area/location and location of parking spaces (No. A/K11/138). The two permissions should cease to have effect on 7.9.2004 and 18.12.2004 respectively unless prior to the said dates either the development permitted was commenced or the permissions were renewed. While the approved use for some of the units have commenced or have been implemented with waiver of lease conditions granted, the remaining units have been changed to other use or the approved uses have not commenced within the validity period.

6. Similar Applications

- 6.1 Two similar applications (No. A/K11/225 and No. A/K11/226) and at Workshops 11 and 13 of G/F of the subject building were approved with conditions by the Committee on 28.7.2017 and 11.8.2017 respectively (**Plan A-3**). The aggregate approved GFA for commercial uses on the G/F (including the previous applications mentioned in paragraph 5 above) is set out below:

| Workshop (WS) | Floor Area (m ²) (about) | Approved Uses | Status |
|---|--------------------------------------|---|---|
| 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), in accordance with Fire Services Department's Circular Letter No. 4/96 (Part X) | | | |
| WS 1 | 84.14 | Commercial Uses (Bank/ Fast Food Shop/ Office/ Retail Shop/ Showroom) | Permission covered by application No. A/K11/138 lapsed due to change of use and/or not commenced within the validity period |
| WS 2 | 86.599 | | |
| WS 3 | 55.783 | | |
| WS 5 | 43.914 | | |
| WS 6 | 51.7 | | |
| WS 7 | 60.06 | | |
| WS 8 | 100.721 | | |
| WS 9 | 91.078 | | |

| Workshop (WS) | Floor Area (m ²) (about) | Approved Uses | Status |
|---|--------------------------------------|---|--|
| WS 10* | 90.006 | | |
| WS 12* | 84.113 | | |
| WS 11 | 91.078 | Shop and Services | Covered by application No. A/K11/225 |
| WS 13 | 106.434 | | Covered by application No. A/K11/226 |
| WS 15* | 33.15 | Commercial Uses (Bank/ Fast Food Shop/ Office/ Retail Shop/ Showroom) | Covered by application No. A/K11/138 with Waiver (23.1.2006) |
| WS 16 and WS 17 | 51.6 | | Covered by application No. A/K11/138 with Waiver (4.8.2005) |
| Total Approved Commercial Floor Area: 282.262m² # | | | |

* Workshops covered by the Premises

The total approved commercial floor area has excluded floor area in overlapping premises and cases with planning permission lapsed.

- 6.2 Should the Committee approve the planning application, the total approved commercial floor area on the G/F of the subject building will be 456.381m² (i.e. 282.262m² + 174.119m²), which is within the maximum permissible limit of 460m² on the G/F of an industrial or I-O building with a sprinkler system.
- 6.3 Since 2012, the Committee has considered 12 planning applications for various shop and services use on the G/F of the industrial or I-O buildings within the “OU(B)” zone in the San Po Kong Business Area (**Plan A-1**). The Committee approved 11 of these applications while rejected 1 application, mainly for the reason that the application was not acceptable from fire safety point of view as the total aggregate commercial floor area on the G/F of the industrial building had exceeded the maximum permissible limit.

7. The Premises and Its Surrounding Areas (Drawing A-1, Plans A-1 and A-2, and site photos on Plans A-4 to A-6)

7.1 The Premises:

- occupies Workshops 10, 12 and 15 on the G/F of the subject industrial building (**Drawing A-1**);
- abuts Tai Yau Street with direct entrance for each workshop separated from the entrance to other floors of the industrial building (**Plan A-5**); and
- is currently used as factory canteens, according to the applicant (**Plans A-5 and A6**).

7.2 The subject building is:

- (a) a 29-storey industrial building bounded by Tai Yau Street, Sam Chuk Street and Sheung Hei Street (**Plan A-4**);
- (b) equipped with a sprinkler system; and
- (c) currently occupied by the following uses:

| Floor | Current Uses |
|--|--|
| G/F | The Premises , factory canteens, repair workshop, retail shops ^[1] , vacant units, carpark and loading/unloading areas |
| 1/F to 3/F | Carpark |
| 5/F to 31/F (4/F, 14/F and 24/F are omitted) | Offices |

^[1] WS 16 & 17 are operating as retail shops, which are covered by application No. A/K11/138.

7.3 The surrounding areas have the following characteristics:

- (a) the locality is mainly occupied by industrial buildings or I-O buildings and the units on the G/F of the neighbouring industrial buildings, particularly those facing Tai Yau Street, are being used mainly for eating places, banks/money exchange shops, retail shops, real estate agencies; and
- (b) the Premises is well served by various modes of public transport. San Po Kong Public Transport Terminus and the MTR Diamond Hill Station are 500m and 600m to the further northeast respectively (**Plans A-1 and A-2**).

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 summarised as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/Kowloon East, Lands Department (DLO/KE, LandsD):

- (a) The Premises is located at NKIL No. 4408 which is held under a Government Lease dated 17.4.1968 as varied and modified by a Deed of Variation dated 2.2.1982 and a Modification Letter dated 12.11.1993. The lot is restricted for the use of industrial purpose excluding offensive trades. Canteen facilities are permitted under the lease conditions provided that they shall have no independent or direct access to or egress from any public road/street/lane/any other area except such as may be required by the Building Authority (BA) for fire escape purpose, and that the floor area does not exceed 10% of the GFA of the building.
- (b) The proposed 'Shop and Services' use is in breach of the lease conditions governing the Premises. If the planning application is approved by the Board, the lot owner has to apply to the LandsD for a lease modification or temporary waiver to implement the proposal. However, there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including the payment of a premium/waiver fee, as considered appropriate by the LandsD acting in the capacity of landlord.

Fire Safety

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

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

- (b) The building is protected with a sprinkler system so that the maximum permissible aggregate commercial floor area on G/F is 460m² in accordance with TPB PG-No. 22D. The applied use should be counted up to the aggregate commercial floor area.
- (c) 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 BA.
- (d) 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.

Building Matters

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

- (a) He has no in-principle objection to the application.
- (b) The applicant should be advised to appoint an Authorized Person to assess the feasibility of the proposed alterations and additions works/change of use and whether building plans are required to be submitted to demonstrate compliance with the Buildings Ordinance (BO).
- (c) For unauthorized building works (UBW) erected on private land/buildings, 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. The granting of any planning permission should not be construed as an acceptance of any existing building works or UBW on the application site under the BO.
- (d) The applicant’s attention is 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.
- (e) Detailed comments under the BO can only be provided at the

building plan submission stage.

9.2 The following Government departments have no objection to/no comment 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 for Transport (C for T);
- (e) Director of Food and Environmental Hygiene; and
- (f) District Officer (Wong Tai Sin), Home Affairs Department.

10. Public Comments Received During Statutory Publication Period

On 24.11.2017, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 15.12.2017, no comment was received.

11. Planning Considerations and Assessments

11.1 The “OU(B)” zone is intended for general business uses. It allows greater flexibility in the use of the existing industrial or I-O buildings provided that the ‘Shop and Services’ use would not induce adverse fire safety and environmental impacts. The proposed ‘Shop and Services’ use at the Premises is considered generally in line with the planning intention.

11.2 San Po Kong Business Area is being under transformation with increasing commercial use. Many similar applications for ‘Shop and Services’ uses on the G/F of industrial or I-O buildings are found in the vicinity. The ‘Shop and Services’ use at the Premises is not incompatible with the uses in the same building. For the subject building, two planning applications for ‘Commercial Uses (Bank/Fast Food Shop/Office/Retail Shop/Showroom)’ covering all 15 workshop units on the G/F (Nos. A/K11/136 and A/K11/138), and two applications for ‘Shop and Services’ use on two of the units on the G/F (Nos. A/K11/225 and A/K11/226), have been approved by the Board. Five units on the G/F of the subject building have valid planning permissions (with an area of 280.592m²), while those for the remaining units have lapsed.

11.3 The ‘Shop and Services’ use at the Premises complies with TPB PG-No.22D in that it would not induce adverse fire safety, traffic, environmental and infrastructural impacts to the developments within the subject building and the

adjacent areas. Relevant Government departments including D of FS, DLO/KE, LandsD, CBS/K, BD and C for T have no objection to or no adverse comments on the application. Based on the comments of the D of FS, an approval condition concerning the provision of fire safety measures is recommended in paragraph 12.2.

- 11.4 As confirmed by D of FS, the subject building is equipped with a sprinkler system and subject to a maximum permissible limit of 460m² for aggregated commercial floor area on the G/F in accordance with TPB PG-No. 22D. Should the Committee approve the planning application, the total approved commercial area will be 456.381m², which is still within the maximum permissible limit of 460m² as stated above.
- 11.5 There is no public comment 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, it is suggested that the permission shall be valid until 12.1.2020, 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 conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission and implementation of the proposal of the fire safety measures, including the provision of fire service installations and equipment at the application premises and means of escape completely separated from the industrial portion in the subject industrial building 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 the 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 at **Appendix II**.

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 16.11.2017 |
| Appendix II | Recommended advisory clauses |
| Drawing A-1 | Layout plan of the G/F of the subject building |
| Plan A-1 | Location plan |
| Plan A-2 | Site plan |
| Plan A-3 | Previous applications on G/F of the subject building |
| Plans A-4 to A-6 | Site photos |

**PLANNING DEPARTMENT
JANUARY 2018**