

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K5/798

- Applicant** : Chief ICS Agency (LCK) Limited represented by CHFT Advisory And Appraisal Ltd.
- Premises** : Flat D1B (Portion), Ground Floor, Garment Centre, 576-586 Castle Peak Road, Cheung Sha Wan, Kowloon
- Floor Area** : 27 m² (Internal Floor Area)
- Lease** : (a) New Kowloon Inland Lot (NKIL) No. 1892 Section C and Remaining Portion
(b) Restricted to general industrial purpose, excluding offensive trades
- Plan** : Approved Cheung Sha Wan Outline Zoning Plan (OZP) No. S/K5/37
- Zoning** : “Other Specified Uses” annotated “Business 1” (“OU(B)1”)
- [Restricted to a maximum plot ratio (PR) of 12 and a maximum building height (BH) of 130 metres above Principal Datum, or the PR/BH of the existing building, whichever is the greater. A minimum setback of 2m from the lot boundary abutting Castle Peak Road shall be provided.]
- Application** : Shop and Services (Real Estate Agency)

1. The Proposal

- 1.1 The applicant seeks planning permission to continue the shop and services (real estate agency) use at Shop D1B (Portion) on the ground floor (G/F) (the Premises) of an existing industrial building (Garment Centre), which falls within an area zoned “OU(B)1” on the approved Cheung Sha Wan OZP No. S/K5/37 (**Plan A-1**)
- 1.2 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 within the “OU(B)” zone requires planning permission from the Town Planning Board (the Board).
- 1.3 The Premises was the subject of a previous application (No. A/K5/781) submitted by the same applicant for the same use which was approved by the Metro Planning

Committee (the Committee) of the Board on 14.7.2017. However, the planning approval was revoked on 14.1.2018 since the approval condition (b) in relation to the implementation of fire safety measures was not complied with before the due date.

- 1.4 The location plan and G/F plan showing the Premises and the dimension of the Premises, as submitted by the applicant, are at **Drawings A-1 to A-3**.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form attached with Certificate of Fire Service Installation and Equipment, received on 17.7.2018 (**Appendix I**)
 - (b) Applicant's email received on 20.8.2018 providing supplementary explanations for the application (**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 and Ia**. They can be summarized as follows:

- (a) planning permissions for "Shop and Services" use had been granted to several units within the G/F of the subject building;
- (b) no adverse impacts were noted; and
- (c) the applicant has changed the agent and appointed the representative to represent the applicant and this prolonged and delayed the compliance of approval condition (b) of the Application No. A/K5/781 regarding the implementation of fire safety measures. The applicant would strive to comply with the outstanding condition (b) to fulfil the planning application requirement.

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 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 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) 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, 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 (HKPSG), and all other statutory or non-statutory requirements of relevant Government departments must also be met.

5. Previous Applications (Plan A-2a)

- 5.1 The Premises is the subject of six previous planning applications (Nos. A/K5/581, A/K5/586, A/K5/677, A/K5/732, A/K5/777 and A/K5/781) applied for shop and services use. Five were approved with conditions while one was rejected. The first four applications were submitted by other applicants, while the last two were submitted by the same applicant of the current application.
- 5.2 Application No. A/K5/581 for proposed shop and services (retail shop) covering most of the G/F units of the subject building (about 1,520m²) was rejected by the Committee on 28.1.2005 on fire safety ground.
- 5.3 Application No. A/K5/586 for shop and services (oxygen inhalation centre) covering the Premises, another portion of Shop D1B and the adjoining space including Shop D1A was approved with conditions by the Committee on 13.5.2005. The Oxygen Inhalation Centre has ceased operation and the planning permission lapsed.

- 5.4 Application No. A/K5/677 for proposed shop and services covering the Premises and portions of Shops D1 and D2 was approved with conditions by the Committee on 4.9.2009. Application for extension of time for commencement of the development until 4.12.2012 was approved. However, the permission lapsed as the proposed shop and services use had not commenced before the extended time limit, though the applicant had complied with the approval condition relating to the submission and implementation of fire safety measures.
- 5.5 Application No. A/K5/732 for shop and services covering the same area as Application No. A/K5/677 was approved with conditions by the Committee on 3.5.2013. As the applicant had not taken any action to comply with the approval condition on fire safety measures before the specified time, the permission ceased to have effect.
- 5.6 Application No. A/K5/777 for shop and services (real estate agency) covering the same area of the Premises was approved with conditions by the Committee on 10.6.2016. Application for extension of time (Application No. A/K5/777-1) for three months (until 10.3.2017) for compliance with the approval condition in relation to the submission and implementation of fire safety measures was approved. On 3.3.2017, the applicant submitted another application (No. A/K5/777-2) for further extension of time for compliance with the approval condition. Since the application was received less than ten working days before the specified time (10.3.2017), the Committee on 17.3.2017 agreed that the application could not be considered as the time limit for compliance with the approval condition expired and the planning permission for Application No. A/K5/777 was revoked on 10.3.2017.
- 5.7 Application No. A/K5/781 for shop and services (real estate agency) covering the same area of the Premises was approved with conditions by the Committee on 14.7.2017, and approval condition (a) on submission of fire safety measures was complied with. However, no action had been taken to comply with the approval condition (b) on implementation of fire safety measures before the specified time. As such, the planning permission was revoked on 14.1.2018.
- 5.8 Details of the previous applications are at **Appendix II**.

6. Similar Applications

- 6.1 The Committee has so far considered a total of 8 applications for 'Shop and Services' on G/F of the subject building (**Plan A-2a**). Apart from the 6 previous applications, 2 applications (Nos. A/K5/588 and A/K5/616) were approved with conditions in 2005 and 2006 respectively but the planning permissions lapsed. As of today, there were no approved commercial floor areas on the ground floor of the subject industrial building. The details of the approved applications are shown in the table below.

<u>Application No.</u>	<u>Shop</u>	<u>Proposed Use</u>	<u>Floor Area (m²)</u>	<u>Date of Consideration (MPC/TPB)</u>	<u>Decision</u>
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/K5/586	D1 and part of the adjoining space	Proposed Shop and Services (Oxygen Inhalation Centre)	162	13.5.2005 (Lapsed)	Approved with conditions
A/K5/588	Portion of shop at Wing Hong Street/Yu Chau West Street and portion of Shop B [^]	Proposed Shop and Services (Retail Shop/Fast Food Shop/ Courier Service Counter)	121	27.5.2005 (Lapsed)	Approved with conditions
A/K5/616	A & B [#]	Proposed Shop and Services	255	21.7.2006 (Lapsed)	Approved with conditions
A/K5/677	Portions of D1 & D2	Proposed Shop and Services	209	4.9.2009 (Lapsed)	Approved with conditions
A/K5/732	Portions of D1 & D2	Proposed Shop and Services	216	3.5.2013 (Lapsed)	Approved with conditions
A/K5/777	Portion of D1B	Shop and Services (Real Estate Agency)	27	10.6.2016 (Revoked)	Approved with conditions
A/K5/781	Portion of D1B	Shop and Services (Real Estate Agency)	27	14.7.2017 (Revoked)	Approved with conditions
Total approved commercial floor area*: 0 m²					

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

[^] Previously known as B and D2 (Portion)

[#] Previously known as D1 (Portion) and D2 (Portion)

6.2 According to TPB PG-No.22D, the applied real estate agency under the application is subjected to a maximum permissible limit of 460m² for aggregate commercial floor area on G/F of the subject building with a sprinkler system. If the current application (No. A/K5/798) for shop and services is approved, the aggregate commercial floor areas approved (by the Committee) on G/F of the subject buildings will be 27m².

6.3 Since 2001, the Committee has considered 140 planning applications for various 'Shop and Services' uses on the G/F of the industrial buildings and I-O buildings within the "OU(B)" zone in the Cheung Sha Wan Industrial/Business Area. The Committee approved 131 of these applications while rejecting 9 applications mainly for fire safety reasons.

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

7.1 The Premises:

- (a) occupies Flat D1B (Portion) on G/F of an existing industrial building (Garment Centre) at the junction of Castle Peak Road and Yu Chau West Street; and
- (b) is currently used as a real estate agency.

7.2 The subject industrial building:

- (a) was completed in 1980 and is equipped with a sprinkler system;
- (b) has a total of 13 storeys including a basement car park;
- (c) the G/F is mainly occupied by shop and services (real estate agency and interior design company), testing laboratories, post office, fast food counter, auto services and loading and unloading area (**Plan A-2a**);
- (d) the upper floors are mainly used for industrial-related offices and trading firms; and
- (e) the current uses by floor are summarised as follows:

Floor	Current Use
Basement	Car park
G/F	Application premises , testing laboratories, post office, interior design company*, fast food counter*, auto services*, loading and unloading area
1/F	Testing laboratories
2/F to 11/F	Industrial-related offices and trading firms

*No record of planning approval granted

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 “Industrial” to “OU(B)” in 2001 and 2002);
- (b) the subject 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 about 150m southwest of the subject industrial building.

8. Planning Intention

The planning intention of “OU(Business)” 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 West, Lands Department (DLO/KW, LandsD):

- (a) The Premises falls within NKIL 1892 s.C and NKIL 1892 R.P. (“the Lots”) which is governed under the Government Lease of NKIL 1892 dated 19.5.1936 as varied or modified, (i) so far as NKIL 1892 s.C is concerned, by a Modification Letter dated 14.5.1959; (ii) so far as NKIL 1892 R.P. is concerned, by a Modification Letter dated 6.2.1959; and (iii) so far as both NKIL 1892 s.C and NKIL 1892 R.P. are concerned, by a Deed of Variation of Crown Lease dated 12.3.1985 and by a No-objection Letter dated 9.2.2011 (hereinafter collectively referred to as “the Lease”). The Lease restricts the Lots to general industrial purposes and for such domestic accommodation as the Director of Public Works may consider reasonable for the housing of staff and workmen employed on the premises excluding offensive trade except those uses permitted under the Deed of Variation of Crown Lease and the No-objection letter.
- (b) The proposed use at the Premises does not comply with the Lease. The owner of the subject premises has applied to LandsD for a temporary waiver to permit the proposed use. The waiver application is pending the approval of the planning application by the Board. However, there is no guarantee that the approval will be given. If the application is approved by LandsD acting in the capacity as the private landlord at its sole discretion, it will be subject to payment of waiver fee and imposition of other terms as may be appropriate.

Building Matters

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

- (a) He has no in-principle objection to the application subject to comments (b) and (c):
- (b) Under section 14(1) of the Buildings Ordinance (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 s.41 of BO, or fall within minor works under the Building (Minor Works) Regulations.
- (c) The applicant is advised to appoint an Authorized Person (AP) to check and ensure the following are in compliance with the BO and its allied regulations:
 - (i) Adequate means of escape and fire resisting construction should be provided in accordance with the Building (Planning) Regulation 41(1) and Building (Construction) Regulation 90 and the Code of Practice for Fire Safety in Buildings 2011 (FS Code).
 - (ii) Access and facilities for persons with a disability should be provided in accordance with Building (Planning) Regulations 72 and Design Manual: Barrier Free Access 2008.
 - (iii) Provision of adequate sanitary fitments in accordance with the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulation.
- (d) The use of the Premises as shown on the approved G/F plan dated 7 January 1980 is “workshop”. Alterations and Additions plans were approved on 13 June 2013 for changing portion of G/F to shops including the area of the subject premises. Consent to commence works was also granted on 13 June 2013. However, no notice of commencement of works has been received.

Traffic

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

- (a) She has no in-principle objection to the application at nil provisions of car parking and loading / unloading spaces given the following observations :
 - (i) small and constrained site layout;
 - (ii) conveniently located to mass transport / public transport services; and
 - (iii) small scale of development.

- (b) The applicant should note that C for T has the right to impose, alter or cancel any car parking, 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 development.

Fire Safety

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

- (a) He has no in-principle objection to the application provided that :
 - (i) Fire service installations and water supplies for firefighting being provided to the satisfactory of his department. Detailed fire safety requirement 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 provided 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 aggregated commercial floor area.
- (c) 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.
- (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.

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/Kowloon, Highways Department (CHE/K, HyD);
- (d) Commissioner of Police (C of P); and
- (e) District Officer (Sham Shui Po), Home Affairs Department (DO(SSP), HAD).

10. Public Comments Received During Statutory Publication Period

On 24.7.2018, the application was published for public inspection. During the three-week statutory public inspection period ending on 14.8.2018, one public comment was received which considers the Site where the Premises is located should be used for public housing as it is located in the urban area and served by roads. (**Appendix III**).

11. Planning Considerations and Assessments

- 11.1 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 and environmental impacts. The Premises is currently used as a real estate agency without a valid planning permission and the application is to regularise the use. The applied use at the Premises is considered generally in line with this 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 applied use under application is compatible with the changing land use character of the area. Moreover, the shop and services (real estate agency) use is considered not incompatible with other uses of the same industrial building which mainly comprises post office and testing laboratories on ground floor and industrial-related offices and trading firms on the upper floors.
- 11.3 A total of seven applications for ‘Shop and Services’ use on G/F of the subject industrial building were approved by the Committee (**Plan A-2a**). Among them, a previous application (No. A/K5/781) for the same use at the Premises was approved with conditions by the Committee on 14.7.2017 and the planning permission was revoked on 14.1.2018 as no action had been taken to comply with an approval condition on implementation of fire safety measures before the specified time. 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.
- 11.4 The applied use in general complies with the TPB Guidelines for Development within the “OU(B)” Zone (TPN PG-No. 22D) in that it would not induce adverse fire safety, traffic and infrastructural impacts to the development within the subject building and the adjacent areas. Relevant Government departments consulted including FSD, BD, TD and LandsD have no comment on/no objection to the application.
- 11.5 As confirmed by D of FS, the subject industrial building is equipped with 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 current application is approved, the aggregate commercial floor area approved by the Committee on the G/F of the subject building will be 27m², which is within the maximum permissible limit of 460m² as stated above.

- 11.6 The Premises is the subject of two previous planning applications (No. A/K5/777 and No. A/K5/781) submitted by the same applicant for the same use. Both were revoked due to non-compliance with the approval conditions related to the submission and/or implementation of fire safety measures by the due dates. For Application No. A/K5/781, the applicant had taken action with a view to complying with the approval condition on submission of fire safety measures, which was accepted by D of FS before the due date. However, the approval condition on implementation of fire safety measures was not complied with before the due date and the planning permission was revoked. In this connection, sympathetic consideration could be given to the application. However, a shorter compliance period is recommended to closely monitor the progress of compliance with approval conditions on submission and implementation of fire safety measures should the Committee decide to approve the application. The applicant should also be advised that if he fails to comply with the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 11.7 One public comment on the application was received, which is related to housing supply and is irrelevant to the subject application.

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.
- 12.2 Should the Committee decide to approve the application, no time clause on commencement is proposed as the 'Shop and Services (Real Estate Agency)' use under application is already in existence. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval conditions

- (a) the submission 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 within 3 months from the date of approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 7.12.2018;
- (b) the 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 within 6 months from the date of approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 7.3.2019; and
- (c) if the above planning conditions (a) or (b) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall be revoked immediately 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 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

Appendix I	Application Form with Certificate of Fire Services Installations and Equipment received on 17.7.2018
Appendix Ia	Applicant's email received on 20.8.2018 providing supplementary explanations for the application
Appendix II	Previous applications
Appendix III	Public comment received
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Location Plan submitted by the applicant
Drawing A-2	Ground Floor Plan submitted by the applicant
Drawing A-3	Dimensions of the Premises submitted by the Applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-2a	Previous and Similar Applications on Ground Floor, Garment Centre
Plan A-3 and A-4	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2018**