

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K11/240

- Applicant** : Ocean Fantasy Limited represented by Allgain Land Administrators Company
- Premises** : Factory Space No. F7, G/F, Wah Hing Industrial Mansions, 36 Tai Yau Street and 21-25 Tseuk Luk Street, San Po Kong, Kowloon
- Floor Area** : about 43.56m²
- Lease** : New Kowloon Inland Lot (NKIL) No. 4411
(a) Restricted to non-offensive industrial purposes
(b) Lifetime waiver for canteen purpose for entire Factory Space No. F
- 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)”)
(a) Maximum plot ratio (PR) of 12 and the maximum building height (BH) of 120 metres above Principal Datum (mPD), or the PR and the height of the existing building, whichever is the greater
(b) A minimum of 3m and 1.5m wide “non-building area” (“NBA”) from the lot boundary abutting Tai Yau Street and Tseuk Luk Street shall be provided within this zone respectively
- Application** : Shop and Services

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for ‘Shop and Services’ use. The Premises occupies Factory Space No. F7 at G/F (**Drawing A-1, Plans A-2 and A-2a**) of an existing 12-storey industrial building (IB) (Wah Hing Industrial Mansions) at 36 Tai Yau Street and 21-25 Tseuk Luk Street in San Po Kong. The subject IB 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 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)’ use on G/F of an IB is a Column 2 use, which requires planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant and recent site inspection, the Premises is currently used as a money exchange shop without a valid planning permission. A floor plan and a layout plan showing the Premises submitted by the applicant are at **Drawings A-1 and A-2** respectively.

1.3 In support of the application, the applicant has submitted the following documents:

- (a) Application form with planning justification received on 26.7.2021 **(Appendix I)**
- (b) Further information (FI) received on 23.8.2021 providing clarification on the means of escape of the existing IB and the ingress/egress of the application premises
[Accepted and exempted from the publication and recounting requirements] **(Appendix Ia)**
- (c) FI received on 15.9.2021 providing clarification on the proposed use, boundary and layout plan of the Premises
[Accepted and exempted from the publication and recounting requirements] **(Appendix Ib)**

2. Justifications from the Applicant

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

- (a) money exchange is needed in San Po Kong. Such operation is non-offensive and will not induce adverse environmental, traffic, visual and landscape impacts; and
- (b) fire services installation plan would be submitted to Fire Services Department (FSD) for approval as a condition of approval the Board.

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 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 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 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 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 (L/UL) 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 in respect of the Premises.

6. Similar Applications

- 6.1 The Metro Planning Committee (the Committee) has so far considered two applications on G/F of the subject IB for proposed 'Shop and Services' and temporary 'Shop and Services' uses, which were approved by the Committee of the Board with conditions (**Plans A-2 and A-2a**). The details of the approved applications are shown in the table below:

Application No.	Unit	Applied/ Proposed Uses	Floor Area (m ²)	Date of Decision	Decision
Uses applicable for the maximum permissible limit of 230m²					
A/K11/192	E7	Shop and Services	71.848	27.3.2009	Approved with conditions
Total Approved Commercial Floor Area: 71.848m²					
Uses <u>not</u> applicable for the maximum permissible limit of 230m²					
A/K11/197	E8	Temporary Shop and Services for a Period of 5 Years	107	11.6.2010 (Expired)	Approved with conditions

- 6.2 According to TPB PG-No. 22D, the 'Shop and Services' use under application is subject to a maximum permissible limit of 230m² for aggregate commercial floor area on G/F of the subject IB without a sprinkler system. Should the current application be approved, the resultant total aggregate commercial floor area would be 115.408m² (i.e. 43.56m² + 71.848m²) which is within the maximum permissible limit.

- 6.3 There are a total of 41 similar applications for ‘Shop and Services’ use on G/F of industrial or I-O buildings under the “OU(B)” zone in San Po Kong Business Area (SPKBA). 40 of them were approved with conditions and the remaining one was rejected by the Committee of the Board, mainly for the reason that the application was not acceptable from fire safety viewpoint.

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

7.1 The Premises:

- (a) located at factory space no. F7 on the G/F of Wah Hing Industrial Mansions, facing Tai Yau Street and is directly accessible from the street (**Plans A-2 and A-2a**); and
- (b) is currently used for money exchange (**Plan A-3**).

7.2 The subject building:

- (a) is a 12-storey IB built in 1965; and
- (b) has the following existing uses:

Floor	Main Uses
G/F	The Premises , retail shop ^[1] , vehicle repair workshops ^[2] , shop and services (supermarket, retail shops, fast food shops and real estate agency) ^[2] , wholesale trade ^[2] , vacant units (Plan A-2a)
1/F – 11/F	Office, warehouse, workshop and vacant units

^[1] Covered by planning permission No. A/K11/192 for ‘Shop and Services’ use.

^[2] Uses at G/F without valid planning permission.

7.3 The surrounding areas have the following characteristics (**Plans A-1 and A-2**):

- (a) the locality is an established industrial/business area in San Po Kong which was rezoned from “Industrial” to “OU(B)” in 2002;
- (b) the G/F units of the nearby buildings are mainly used as industrial, motor services shops, fast food shops, canteens, real estate agencies, banks and retail shops; and
- (c) is well served by various modes of public transport. The MTR Diamond Hill Station are about 600m to the further northeast (**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 application are summarized as follows:

Land Administration

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

- (a) No objection to the application;
- (b) The Premises falls within NKIL 4411 (the Lot) which is restricted to non-offensive industrial purposes. The Premises located within Factory Space No. F which is subject to a lifetime waiver for canteen purpose;
- (c) The proposed 'Shop and Services' use at the Premises is found in conflict with the existing lease and waiver conditions. Should the planning application be approved by the Board, the applicant is required to apply to LandsD for a temporary waiver or lease modification to give effect to the proposal. However, there is no guarantee that the temporary waiver or lease modification would be approved and if the application is eventually approved by LandsD in the capacity as the landlord at its discretion, it will be subject to those terms and conditions, including payment of any administrative fee and waiver fee or premium, considered appropriate by LandsD;
- (d) Upon receipt of the application of waiver or lease modification, if submitted by the owner of the Premises, he is required to prove his ownership and demonstrate the dimensions and calculation of the floor area etc. in all respect to the satisfaction of LandsD; and
- (e) Approval by the Board of the application shall not prejudice the Government's right to take enforcement action pursuant to his prevailing practice against any breach of lease identified at the Premises. All the General and Special Conditions contained in the Condition of Sale No. 7093 governing the Lot shall remain in full force and effect.

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 completely separated from the industrial portion are available for the Premises;
- (b) The building is not fully protected with a sprinkler system so that maximum permissible aggregated commercial floor area on G/F is

230m² in accordance with TPB PG-No. 22D. The proposed use under the application 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 the “Code of Practice for Fire Safety in Buildings” (FS Code) which is administered by the Building Authority (BA); and
- (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) No objection in-principle to the application;
- (b) All building works/change in use should be in compliance with the Buildings Ordinance (BO);
- (c) In accordance with the provisions of the BO, any person intending to carry out building works is required to appoint an Authorised Person (AP) and, where necessary, a registered structural engineer and/or a registered geotechnical engineer to prepare and submit building plans for approval by the BD, unless the works fall within the scope of designated minor works that can be carried out under the simplified requirements specified in the Building (Minor Works) Regulation or such works are exempted works;
- (d) Adequate means of escape should be provided to the Premises in accordance with Building (Planning) Regulation (B(P)R) 41(1) and the FS Code;
- (e) The Premises should be separated from the remaining portion of the building by fire barriers of adequate fire resistance rating pursuant to Building (Construction) Regulation 35 and FS Code;
- (f) Access and facilities for persons with a disability should be provided in accordance with B(P)R 72 and Design Manual: Barrier Free Access 2008;
- (g) Adequate sanitary fitments should be provided to the Premises in accordance with the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations;
- (h) For unauthorized building works (UBW) erected on private land/buildings, enforcement action may be taken by the BD to effect their removal in accordance with BD’s enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing

building works or UBW on the Premises under the BO;

- (i) 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; and
- (j) If the proposed use under application is subject to the issue of a licence, please be reminded that any existing structures on the Premises intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

Traffic Matters

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

- (a) No in-principle objection to the application at nil provisions of car parking and L/UL spaces given that the Premises is small with constrained site layout, conveniently located to mass transport/public transport services, and the development scale is small; and
- (b) The applicant should be reminded that C for T has the rights to impose, alter or cancel any car parking, L/UL 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.

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

10. Public Comments Received During Statutory Publication Period

On 3.8.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 24.8.2021, no public comment was received.

11. Planning Considerations and Assessments

11.1 The application seeks planning permission to use the Premises at G/F of an existing IB within "OU(B)" zone for 'Shop and Services' use. The Premises is currently used as a money exchange shop without a valid planning permission. The planning intention of "OU(B)" zone is 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 induce adverse fire safety and environmental impacts. The 'Shop and Services' use under application is considered generally in line with the planning intention.

- 11.2 The SPKBA is being transformed into commercial/business use with similar applications for 'Shop and Services' use approved on G/F units of other industrial and I-O buildings in the vicinity of the Premises. The use under application is considered compatible with the changing land use character of the area.
- 11.3 The 'Shop and Services' use in general complies with TPB PG-No. 22D in that it would not induce adverse fire safety and environmental impacts on the developments within the subject IB and the adjacent areas. Relevant departments consulted including D of FS, CBS/K of BD, C for T, CE/C of WSD and CE/MS of DSD have no comment/no objection to the application.
- 11.4 As advised by D of FS, the subject building is not fully protected with a sprinkler system, which is subject to a maximum permissible limit of 230m² for aggregated commercial floor area on G/F in accordance with TPB PG-No. 22D. If the 'Shop and Services' use is approved, the aggregated commercial floor area approved by the Committee on the G/F of the subject IB will be about 115.408m², which is within the maximum permissible limit of 230m². To address D of FS's concern on fire safety aspect, approval conditions in paragraph 12.2 below requiring the submission and implementation of a proposal on the fire safety measures to the satisfaction of D of FS are recommended.
- 11.5 Two applications for 'Shop and Services' use on the G/F of the subject IB were approved with conditions by the Committee (Table of paragraph 6.1 and **Plans A-2 and A-2a** refer). 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.
- 11.6 No public comment on the application was received.

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, no time clause on commencement is proposed as the 'Shop and Services' use under application is already in operation. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval conditions

- (a) the submission and implementation of a proposal on the fire safety measures within six months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 24.3.2022; and
- (b) if the above planning condition is not complied with by the specified date, 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 II**.

- 12.3 There is no strong 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 to 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, and the date when validity of the permission should expire.
- 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 received on 26.7.2021
Appendix Ia	FI received on 23.8.2021
Appendix Ib	FI received on 15.9.2021
Appendix II	Recommended advisory clauses
Drawing A-1	Floor Plan
Drawing A-2	Layout Plan
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-2a	Existing uses on the G/F of Wah Hing Industrial Mansions
Plan A-3	Site photos

**PLANNING DEPARTMENT
SEPTEMBER 2021**