

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K3/593

<u>Applicant</u>	:	Joint Faith Construction Engineering Limited
<u>Premises</u>	:	Unit 1, G/F, Henley Industrial Centre, 9-15 Bute Street, Mong Kok, Kowloon
<u>Floor Area</u>	:	About 42m ²
<u>Lease</u>	:	Kowloon Inland Lot (KIL) Nos. 3569, 3570 s.A & RP, 3571 s.A & RP, 3572 s.A & RP and 3573 (a) 75 years commencing from 28.4.1932, renewable for 75 years (b) For industrial purposes subject to non-offensive trade clause
<u>Plan</u>	:	Draft Mong Kok Outline Zoning Plan (OZP) No. S/K3/33
<u>Zoning</u>	:	“Residential (Group E)” (“R(E)”) (a) maximum plot ratio (PR) of 9.0, of which domestic PR shall not exceed 7.5 (b) maximum building height (BH) of 100mPD
<u>Application</u>	:	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, with a floor area of about 42m², is located on G/F of Henley Industrial Centre fronting Arran Lane (**Drawing A-1 and Plan A-2**). According to Schedule II of the Notes for the “R(E)” zone applicable to existing industrial or industrial-office building, ‘Shop and Services’ use on G/F (except motor vehicle showroom and service trades) is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Premises is being used for a retail shop of construction materials without valid planning permission.
- 1.2 In support of the application, the applicant submitted an application form on 7.10.2021 (**Appendix I**). The relevant layout, sectional and elevation plans submitted by the applicant are shown on **Drawings A-1 and A-2**.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 10 of the application form. They can be summarised as follows:

- (a) Due to the transformation of Hong Kong's economy from industrial sector to service and trade sector, a lot of premises on G/F of the subject building have been used as shop purpose.
- (b) The Premises is located on G/F with direct access to Arran Lane. Loading/unloading (L/UL) activities will be carried out at roadside and the time for L/UL will take not more than 10 minutes per day. There will be no adverse impact on traffic and pedestrian flow.
- (c) The shop and services use is for selling construction materials. It will not generate environment pollution and nuisance as well as adverse impact on drainage and sewerage aspects.
- (d) There are many shops selling construction materials in the surrounding areas (i.e. Bute Street, Canton Road, Arran Street and Arran Lane). The Premises will be used for selling construction materials which will create a chaining effect with the surroundings.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is the sole "current land owner". Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The subject building was completed in 1991, when the site was zoned "Industrial" ("I") on the Mong Kok OZP. In 2001, the site was rezoned from "I" to "R(E)" to facilitate phasing out of isolated industrial buildings surrounded by mainly residential development whilst allowing adequate planning control on the new residential development in order to address the industrial/residential interface problem.

5. Previous Applications

The Premises is the subject of two previous applications (Nos. A/K3/502 and A/K3/504) for 'Shop and Services (Retail)' and 'Wholesale Trade' uses (**Plan A-2b and Appendix II**) submitted by a different applicant. Both applications were approved with conditions by the Committee in 2008 on the consideration that the proposed developments were not incompatible with the industrial/industrial-related uses in the surroundings; and the relevant Government departments had no adverse comment. The approval conditions of the two applications included submission and implementation of fire service installations. However, due to non-compliance of this approval condition, the two planning permissions were subsequently revoked.

6. Similar Applications

- 6.1 There are nine similar applications for commercial uses on G/F of Henley Industrial Centre. All applications were approved with conditions by the Committee between 2004 and 2010 (**Plan A-2b and Appendix II**), and the following five applications are still valid. Should the floor area of the Premises (i.e. 42m²) be included, the aggregate commercial floor area in the subject industrial building will be 278.647m².

Application No.	Application Premises	Applied/ Proposed Uses	Floor Area (About)(m ²)	Date of Consideration	Decision
A/K3/443	Unit 2	Wholesale Trade	50	28.1.2005	Approved
A/K3/444	Units 5 and 6	Retail Shop	75	18.2.2005	Approved
A/K3/451	Unit 7 and 8	Retail Shop	70.647	15.4.2005	Approved
A/K3/531	Unit 9	Shop and Services (Retail Shop)	41	24.9.2010	Approved
Total:			236.647m²		

^[1] The total approved floor area has excluded the floor areas within the overlapping premises and cases of which planning permission have lapsed or been revoked.

- 6.2 Since 2004, there have been 12 similar applications for shop and services, retail cum industrial/office uses at individual units/ floors within other “R(E)” zone in Mong Kok. These applications were approved with conditions by the Committee. The locations and details of these applications are at **Plan A-1 and Appendix III**.

7. The Premises and its Surrounding Areas (Plans A-1 to A-2b and photos on Plan A-3)

- 7.1 The Premises is:

- (a) located on G/F of Henley Industrial Centre with direct access to Arran Lane; and
- (b) currently being used as a retail shop for selling construction materials.

- 7.2 The subject building is:

- (a) bounded by Arran Lane, Bute Street and a scavenging lane to the west, south and north, and another industrial building to the east;
- (b) a 15-storey industrial building completed in 1991 with no provision of car parking and L/UL spaces; and
- (c) currently occupied by the following uses on various floors:

Floor	Current Uses
G/F (Plan A-3)	Application premises , wholesale trade*, retail shops* (selling building materials, air conditioners, water-proof materials and fire-proof materials) and car repairing workshops#
1/F to 14/F	Offices, sports training centre#, workshop, locked and vacant premises

* These uses are with valid planning permissions.

There is no record of planning permission granted for such use.

7.3 The surrounding areas have the following characteristics:

- (a) predominately industrial developments (most of them with shops on G/F) intermixed with commercial/residential developments and government, institution or community facilities (**Plan A-2**). Commercial uses are commonly found on G/F of these developments; and
- (b) well served by various modes of public transport including buses, public light buses and taxis. The MTR Prince Edward and Mong Kok Stations are located about 300m to the northeast and southeast of the Premises respectively (**Plan A-1**).

8. Planning Intention

The “R(E)” zone is intended primarily for phasing out of existing industrial uses through redevelopment (or conversion) for residential use on application to the Board. Whilst existing industrial uses will be tolerated, new industrial developments are not permitted in order to avoid perpetuation of industrial/residential interface problem.

9. Comment from the 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 KIL No. 3569, 3570 s.A and RP, 3571 s.A and RP, 3572 s.A and RP, and 3573 which are held under respective Government leases for a term of 75 years commencing from 28.4.1932 and renewable for a further term of 75 years. Under the lease conditions, the Premises is restricted to industrial purposes and subject to the offensive trade clause. By a No-objection letter dated 6.9.2010, the Premises is permitted to be used for industrial or godown purposes or both (excluding the use or storage of any dangerous goods) for the life-time of the existing building; and

- (b) the shop and service use at the Premises will be in breach of the user restriction in the leases. If planning application is given, the applicant needs to apply to LandsD for a lease modification or waiver for the proposal. She advises that the proposal will only be considered upon receipt of formal application from the applicant. There is no guarantee that the application, if received by LandsD, will be approved and she reserves her comments on such. The application will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit, including, amongst others, payment of premium/waiver fee and administrative fee as may be imposed by LandsD.

Building Matters

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

- (a) no in-principle objection to the application;
- (b) all building works should in all aspects comply with the Buildings Ordinance (BO) and its allied regulations;
- (c) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the application site, prior approval and consent of the Buildings Department (BD) should be obtained, otherwise they are Unauthorised Buildings Works (UBW). An Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO and to ensure full compliance with the BO and its allied regulations including the provision on means of escape, fire resisting construction and access and facilities for persons with a disability, etc., in particular,
 - (i) provision of adequate means of escape in accordance with Building (Planning) Regulation 41(1) and the Code of Practice for Fire Safety in Buildings 2011 (FS Code);
 - (ii) provision of fire barriers with adequate fire resisting construction between the subject premises and the remaining portion of the building in accordance with Building (Construction) Regulation 35 and the FS Code;
 - (iii) provision of access and facilities for persons with a disability in accordance with Building (Planning) Regulation 72 and Design Manual: Barrier Free Access 2008; and
 - (iv) provision of adequate sanitary fitments to the premises in accordance with the Building (Standards of Sanitary

Fitments, Plumbing, Drainage Works and Latrines)
Regulations;

- (d) for UBW erected on leased land, enforcement action may be taken by 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 application site under the BO;
- (e) if the proposed use under application is subject to the issue of a licence, the applicant is reminded that any existing structures on the application site 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;
- (f) detailed comments under BO can only be provided at the building plan submission stage; and
- (g) the applicant should also pay attention to Practice Note for Authorised Persons, Registered Structural Engineers and Registered Geotechnical Engineers APP-47 that the Building Authority has no power to give retrospective approval or consent for any UBW.

Fire Safety

9.1.3. Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to:
 - (i) fire service installations and equipment being provided to the satisfaction of D of FS. 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 of the subject building is available for the Premises; and
- (b) the building is provided with a sprinkler system so that the maximum permissible aggregate commercial floor area on G/F is 460m². The applied use should be counted up to the aggregate commercial floor area.

Traffic

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

- (a) he has no in-principle objection to the application with nil provision of car parking and L/UL spaces from traffic engineering perspective given the following observations:

- (i) small and constrained site layout;
 - (ii) conveniently located to mass transport/public transport services; and
 - (iii) small scale of the proposal; 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 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 comment on/objection to the application:

- (a) Director of Environmental Protection (DEP);
- (b) Chief Highway Engineer/Kowloon, Highways Department;
- (c) Chief Engineer/Mainland South, Drainage Services Department;
- (d) Director of Electrical and Mechanical Services Department;
- (e) Commissioner of Police;
- (f) Director of Food and Environmental Hygiene;
- (g) Project Manager (South), Civil Engineering and Development Department;
- (h) Director of Leisure and Cultural Services;
- (i) Chief Engineer/Construction, Water Supplies Department; and
- (j) District Officer (Yau Tsim Mong), Home Affairs Department.

10. Public Comments Received During Statutory Publication Period

During the statutory public inspection period, one comment submitted by an individual objecting to the application on the grounds that this type of application had been revoked since August 2008 and the environment was not appropriate to do wholesale, retail and service businesses was received (**Appendix IV**).

11. Planning Considerations and Assessments

- 11.1 The application is to seek planning permission for 'Shop and Services' use at the Premises within an existing industrial building zoned "R(E)" on the OZP. While planning intention of the "R(E)" zone is primarily for phasing out of existing industrial uses through redevelopment (or conversion) for residential use, the current 'Shop and Services' use on G/F is small in scale and is considered not incompatible with other uses in the same building and the surrounding developments.
- 11.2 According to D of FS, the subject building is protected by a sprinkler system and subject to a maximum permissible limit of 460m² for aggregate commercial floor area on G/F. If the applied 'Shop and Services' use is approved, the aggregate commercial floor area approved by the Committee on G/F of the subject building will be 278.647m², which is within maximum permissible limit. D of FS has no in-principle objection to the application subject to approval

conditions on provision of fire safety measures. The applied use is not expected to generate adverse impact on the surrounding areas. Relevant Government departments including DEP, BD and TD have no objection to or no adverse comment on the application.

- 11.3 The Premises is the subject of two previous approved applications for ‘Shop and Services (Retail)’ and ‘Wholesale Trade’ uses (**Plan A-2b and Appendix II**) submitted by a different applicant, which were revoked in 2008 due to non-compliance with approval conditions on the submission and implementation of fire safety measures. Besides, a total of nine similar applications for shop and services, retail shop and wholesale trade uses on G/F of the same building were approved with conditions by the Committee since 2004 (**Plan A-2 and Appendix II**). As there is no change in planning circumstances, approval of the application is consistent with the previous decisions of the Committee on previous and similar applications.
- 11.4 Regarding the concerns raised in the public comment, the planning assessments above and the departmental comments in paragraph 9 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 above, and having taken into account the public comment mentioned in paragraph 10 above, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, no time clause on the commencement is proposed as the shop and service use under application is already in operation at the Premises. The following conditions of the approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) the submission and implementation of fire service installations for the application premises within six months from the date of approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 26.5.2022; 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 V**.

- 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 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 the 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 the rejection should be given to the applicant.

14. Attachments

Appendix I	Application form received on 7.10.2021
Appendix II	Previous and Similar applications for ‘Shop and Services’ Use at G/F of Henley Industrial Centre
Appendix III	Similar Applications within “R(E)” Zone in Mong Kok since 2004
Appendix IV	Public Comment
Appendix V	Recommended Advisory clauses
Drawing A-1	Layout Plans
Drawing A-2	Elevation and Sectional Plans
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-2a	Current land uses of the adjoining units of the Premises
Plan A-2b	Location Plan of the Previous and Similar Applications on G/F of Henley Industrial Building
Plan A-3	Site photos

**PLANNING DEPARTMENT
NOVEMBER 2021**