

電話 Tel: 3793 4272

圖文傳真 Fax: 3793 4295

電郵地址 Email: sesde@landsd.gov.hk

本署檔號 Our Ref.: (43) in LD DE 7/1/4/19 Pt.3

來函檔號 Your Ref.:

覆函請註明本署檔號

Please quote our reference in response to this letter.



地政總署
LANDS DEPARTMENT
發展監管組
Development Control Section

我們矢志努力不懈，提供盡善盡美的土地行政服務。
We strive to achieve excellence in land administration.

荃灣青山公路 382 至 392 號中環大廈 27 樓

27/F., CDW BUILDING, 382-392 CASTLE PEAK ROAD,
TSUEN WAN, NEW TERRITORIES

網址 Web Site: www.landsd.gov.hk

By Post

25 July 2022

**Strict Observance of Government Lease Conditions for
Redeveloped Industrial and/or Godown Lots**

Further to our letter of 31 August 2021, copy enclosed at Appendix I, we are writing to reiterate the need for strict observance of government lease conditions for redeveloped industrial and/or godown lots and seek your assistance in bringing the contents of this letter to the attention of estate agents licensed under the Estate Agents Ordinance, Cap. 511 ("Licensees"). We should be grateful if you would inform the Licensees to take note of the following press releases.

Lands Department ("LandsD")'s press release on 27 January 2022 regarding a new industrial development in San Po Kong

LandsD on 27 January 2022 promulgated a press release, copy enclosed at Appendix II, reporting the issuance of a letter to warn a developer regarding inaccurate information in relation to permissible uses in the marketing materials of a new industrial development in San Po Kong which is currently under construction. The marketing materials of this new industrial development stated that the industrial premises therein could be used for specific non-industrial uses without having to apply to the LandsD for any temporary waiver and pay any fee, which LandsD has confirmed inaccurate and misleading.

We stress that the permissible uses of a private lot restricted for "industrial" purposes must involve a process of manufacturing and take place within the lot. This is unlike other modern industrial sites where the leases may carry a user clause allowing a wider range of uses including non-polluting industrial uses and other uses such as art studios, design and media production permitted in the "Industrial" zones in Outline Zoning Plans. Besides, we wish to

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highlight that the Development Bureau's policy ("the Policy") of relaxation of waiver application for existing industrial buildings ("IBs") of five specific non-industrial uses [*including art studio; office (audio-visual recording studio); office (design and media production); office (used by "specified creative industries" only (i.e. design and media production firms, printing and publishing industries, film companies, and film-related trade organisations)); and research, design and development centre*] for a five-year period from 1 February 2019 to 31 January 2024 applies only to IBs existing at the time of its pronouncement in February 2019. Any non-industrial uses deviating from the permissible use under lease and not covered by the Policy constitute breach of lease.

LandsD's press release on 22 July 2022 regarding a new industrial development in Kwai Chung

LandsD on 22 July 2022 promulgated a press release, copy enclosed at Appendix III, reporting the issuance of a letter to warn a developer regarding inaccurate information on permissible uses in the marketing materials of a new development under construction on an industrial and/or godown lot in Kwai Chung. The marketing materials of this new development stated that the premises will be used for workshops including intelligent video conference room, studio for video recording, sound recording and live streaming, and e-sports gaming room, etc., with sports, recreational, dining, and/or co-working areas on the podium garden and individual units designed for supporting vertical living.

The government lease restricts the user of the subject lot to "industrial and/or godown purposes". The LandsD stresses that for leases carrying such a specific user clause, the industrial use within the lot must involve a process of manufacturing (which is unlike a modern industrial site where the lease may carry a user clause allowing a wider range of uses including non-polluting industrial uses and other uses such as art studios, design and media production permitted in the "Industrial" zones in Outline Zoning Plans); whereas godown use within the lot must involve storage of goods and/or transient deposit and storage for delivery purpose. Residential use is also not permitted. The LandsD therefore opines that those non-industrial uses as advertised in the marketing materials may not entail manufacturing or storage activities. If such non-industrial uses are eventually being carried out on the lot, it may constitute a breach of the permitted user under lease and the LandsD is entitled to take enforcement action against such breach.

We emphasise that the LandsD takes a very serious view on misrepresentation. The marketing materials of the IBs should accurately reflect the specific use permitted under the government lease and avoid giving misleading impression that non-industrial use would be permitted in the IBs. Any non-industrial use contravening the government lease is liable to lease enforcement action including but not limited to re-entry of the lot concerned or vesting of the property interests in the lot concerned under the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126).

It is thus important that the Licensees do provide accurate information to the prospective purchasers or tenants ("their clients") in respect of the sales and/or letting of premises in IBs. They should remind their clients to strictly observe the terms and conditions of the government lease and to approach the LandsD for lease modification or waiver application if the intended use deviates from the permitted use under the government lease. They should also invite their clients to consider seeking independent legal or other professional advice should there be doubts about the government lease conditions.

We hope this letter makes clear the importance of strict observance of government lease conditions for redeveloped industrial and/or godown lots and also provision of accurate marketing information. Your assistance to remind all Licensees to take heed of the above when handling the sales and/or letting of industrial premises in IBs that are redeveloped or to be redeveloped is highly appreciated.

Should there be any enquiries, the Licensees may call the enquiry line of Development Control Section of the LandsD at 3793 4233.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Lilian', written in a cursive style.

(Ms Lilian FUNG)
for Director of Lands

Encl.



地政總署
LANDS DEPARTMENT
發展監管組
Development Control Section

電話 Tel: 3793 4200

圖文傳真 Fax: 3793 4295

電郵地址 Email: cesdc@landsd.gov.hk

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By Post

31 August 2021

Sales and Letting of Premises in Industrial Buildings

We are writing to seek your assistance in bringing the contents of this letter to the attention of estate agents licensed under the Estate Agents Ordinance, Cap. 511 ("Licensees").

Recently, a considerable number of industrial buildings ("IBs") which are restricted to "industrial" or "industrial and/or godown" purposes under the individual land lease have been/are to be redeveloped after obtaining planning permission from the Town Planning Board ("TPB") for redevelopment for "modern industrial uses" or "non-polluting industrial uses". However, in the context of the land lease, industrial use must involve a process of manufacturing and must take place within the lot concerned, whereas godown use must involve storage of goods and/or transient deposit and storage for delivery purpose. This interpretation is not the same as the interpretation of "non-polluting industrial use", "other uses as permitted in the "Other Specified Uses" annotated "Business" ("OU(B)") zone" and "industrial use" in the planning regime as follows –

- (a) "Non-polluting industrial use" in planning terms covers a much wider range of uses, the examples as quoted from the TPB guidelines include "research and development", "quality control", "information technology support", "training for the process of enhanced productivity/delivery of goods", "computer-aided design service", "editing of newspapers/books/magazines", "after-sale service of products", etc.

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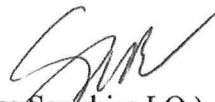
- (b) "Other uses as permitted in the OU(B) zone" include "shop and services", "office", "information, technology and telecommunication industries", "educational institution", "eating place", "place of entertainment", "place of recreation, sports or culture", etc.
- (c) "Industrial use" in planning terms covers a wide range of uses, the examples as quoted from the TPB guidelines include "art studio", "office (audio-visual recording studio, design and media production, office related to industrial use only)", "research, design and development centre", "shop and service (motor-vehicle showroom on ground floor, service trades)", "vehicle repair workshop", "technology and telecommunication industries", "non-polluting industrial use", etc.

All the above uses will constitute uses in breach of the user restriction of "industrial purpose" under lease.

LandsD takes a serious stance against breaches of land lease in respect of private properties. It is thus important that Licensees do provide accurate information to their clients in respect of the sales and/or letting of premises in IBs. Licensees should also be fully aware of the different interpretations under leases and the planning regime, in order to avoid providing inaccurate or misleading information to prospective purchasers or tenants of properties in IBs. Otherwise, if a breach of land lease conditions is detected, LandsD shall take lease enforcement actions in respect of the breach including but not limited to the Government exercising its right of re-entry under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Chapter 126.

We hope this letter has explained Government's position on the interpretation of "industrial purpose" under lease and shall be grateful if you could inform all Licensees to take note of the above when handling the sale and purchase or leasing of industrial premises in IBs that are redeveloped or to be redeveloped in accordance with the planning permission as mentioned in paragraph 2 above.

Yours faithfully,


(Miss Sapphire LO)
for Director of Lands

Lands Department emphasises strict observance c ▼

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Lands Department emphasises strict observance of land lease conditions for redeveloped industrial buildings

The Lands Department (LandsD) today (January 27) warned a developer regarding inaccurate information in relation to permissible uses in the marketing materials of a new industrial development in San Po Kong, Kowloon, that is currently under construction.

The marketing materials of this new industrial development stated that the industrial premises therein could be used for specific non-industrial uses without having to apply to the LandsD for any temporary waiver and pay any fee. The LandsD confirms that such information is inaccurate and misleading.

With the land lease restricting the use of the private lot concerned to "industrial purposes" (the Permitted User), the LandsD stresses that the industrial use within the lot must involve a process of manufacturing. This is unlike other modern industrial sites where the leases may carry a user clause allowing a wider range of uses including non-polluting industrial uses and other uses such as art studios, design and media production permitted in the "Industrial" zones in Outline Zoning Plans. For the private lot concerned, any non-industrial use as advertised in the marketing materials deviating from the Permitted User constitutes breach of lease and is liable to enforcement action by the LandsD.

The development concerned, being a new development, is also not covered by the Development Bureau's policy of relaxation of waiver application for existing industrial buildings under the revitalisation scheme for industrial buildings. As stated in the relevant press release (www.info.gov.hk/gia/general/201902/01/P2019020100743.htm) and the policy pronouncement (www.devb.gov.hk/filemanager/en/Content_3/Relaxation_of_the_Waiver_Application_in_Existing_IB.pdf) of February 2019, the policy permits certain non-industrial uses of designated sectors (e.g. arts and cultural sectors, creative industries, and innovation and technology) to operate within the premises of existing industrial buildings, on a time-limited basis from February 1, 2019, to January 31, 2024, without the need for making separate waiver applications to the LandsD and paying waiver fees, to optimise the use of existing industrial buildings. The policy applies only to industrial buildings existing at the time of its pronouncement. The development concerned is not one of them.

The LandsD has demanded the lot owner concerned to cease making any such misrepresentation; to immediately inform the buyers, the prospective buyers and other parties who have entered or shall enter into a sale and purchase agreement or the like with them that those non-industrial uses mentioned in their marketing materials contradict the Permitted User; and to take or to procure necessary remedial measures to rectify any potential breach. The lot owner has also been reminded that should they intend to use the lot deviating from the Permitted User, they must approach the LandsD for a lease modification or waiver. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit including, among others, charging of a premium and an administrative fee.

Private land owners and prospective property buyers are reminded of the need for strict observance of land lease conditions regarding the redevelopment or use of private lots. The LandsD takes a serious stance against breaches of land lease in respect of private properties and shall take lease enforcement action in respect of the breach including but not limited to the Government exercising its right of re-entry under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Chapter 126.

A land lease is a private contract signed between the Government and a land owner. The land owner is required to ensure that the use of the land is in compliance with the lease conditions and that breaches are rectified. The users/buyers of industrial building units should carefully study the lease conditions to ensure that the premises will not be used for any purposes not permitted under the lease and consider seeking legal or other professional advice should there be doubts about the lease conditions and permitted uses in individual circumstances.

Ends/Thursday, January 27, 2022

Issued at HKT 19:53

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Lands Department emphasises strict observance c ▼

GO

Lands Department emphasises strict observance of government lease conditions for redeveloped industrial and/or godown lots

The Lands Department (LandsD) today (July 22) warned a developer regarding inaccurate information on permissible uses in the marketing materials of a new development under construction on an industrial and/or godown lot in Kwai Chung.

The marketing materials of this new development stated that the premises will be used for workshops including intelligent video conference room, studio for video recording, sound recording and live streaming, and e-sports gaming room, etc., with sports, recreational, dining, and/or co-working areas on the podium garden and individual units designed for supporting vertical living.

The government lease restricts the user of the subject lot to "industrial and/or godown purposes" (the Permitted User). The LandsD stresses that for leases carrying such a specific user clause, the industrial use within the lot must involve a process of manufacturing (which is unlike a modern industrial site where the lease may carry a user clause allowing a wider range of uses including non-polluting industrial uses and other uses such as art studios, design and media production permitted in the "Industrial" zones in Outline Zoning Plans); whereas godown use within the lot must involve storage of goods and/or transient deposit and storage for delivery purpose. Residential use is also not permitted. The LandsD therefore opines that those non-industrial uses as advertised in the marketing materials may not entail manufacturing or storage activities. If such non-industrial uses are eventually being carried out on the lot, it may constitute a breach of the Permitted User and the LandsD is entitled to take enforcement action against such breach. According to the LandsD, condonement of such a breach would upset the principle of level playing field in the market where many lot owners are making proper applications for a lease modification or waiver and paying additional land premium/waiver fees to allow non-industrial uses which would not have been permitted under conventional industrial leases.

The LandsD has demanded the lot owner concerned to cease making any inaccurate or misleading misrepresentation; to immediately inform the buyers, the prospective buyers and other parties who have entered or shall enter into a sale and purchase agreement or the like with them that those non-industrial uses mentioned in their marketing materials contradict the Permitted User;

and to take or to procure necessary remedial measures to rectify any breach. The lot owner has also been reminded that should they intend to use the lot deviating from the Permitted User, they must approach the LandsD for a lease modification or waiver. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit including, among others, charging of a premium and an administrative fee.

Private land owners and prospective property buyers are reminded of the need for strict observance of government lease conditions regarding the redevelopment or use of private lots. The LandsD takes a serious stance against breaches of government lease in respect of private properties and shall take lease enforcement action in respect of the breach including but not limited to the Government exercising its right of re-entry under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Chapter 126.

The users/buyers of the units of the building erected on the land should carefully study the relevant government lease conditions to ensure that their intended use of such unit shall not be in violation of the user as permitted under the government lease. They should consider seeking independent legal or other professional advice should there be doubts about the government lease conditions.

Ends/Friday, July 22, 2022

Issued at HKT 18:17

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