

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.