

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/967

<u>Applicant</u>	: Mr. LAM Ping Sum and Ms. PO Yuk Yin represented by Mr. NG Siu Kei, David
<u>Premises</u>	: Unit A5, G/F, On Wah Industrial Building, 41-43 Au Pui Wan Street, Fo Tan, Sha Tin, N.T.
<u>Floor Area</u>	: 24.16m ² (about)
<u>Lease</u>	: (a) STTL No. 70 (New Grant No. 11297) (b) to be expired on 30.6.2047 (c) restricted to industrial and/or godown purposes or both
<u>Plan</u>	: Approved Sha Tin Outline Zoning Plan (OZP) No. S/ST/34
<u>Zoning</u>	: “Industrial” (“I”)
<u>Application</u>	: Shop and Services (Fast Food Shop)

1. The Proposal

- 1.1 The applicants seek planning permission to use the application premises (the Premises) for ‘Shop and Services (Fast Food Shop)’ use. According to the Notes of the OZP, ‘Shop and Services (not elsewhere specified) (ground floor only, except in wholesale conversion of an existing building and Ancillary Showroom which may be permitted on any floor)’¹ use in “I” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 The Premises, with a floor area of about 24.16m², is located on the ground floor of On Wah Industrial Building abutting Au Pui Wan Street. It is the subject of a previous application (No. A/ST/942) submitted by the same applicants for the same use approved by the Rural and New Town Planning Committee (the Committee) with conditions on 6.4.2018. The planning permission was revoked on 6.10.2018 due to non-compliance of approval condition on the submission and implementation of the fire service installations. The subject fast food shop is currently operating without valid planning permission.
- 1.3 In support of the application, the applicants have submitted the following documents:
 - (a) Application form received on 28.11.2018 (Appendix I)
 - (b) Further Information (FI) received on 3.1.2019 (Appendix Ia)

¹ ‘Shop and Services (Motor-vehicle Showroom on ground floor, Service Trades only)’ is always permitted in the “I” zone.

1.4 The layout plan of the Premises submitted by the applicants is shown in **Drawing A-1**.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the application are detailed in Part 9 and the attached letter of the application form at **Appendix I**, and FI at **Appendix Ia**. They can be summarised as follows:

- (a) the fast food shop is located on ground floor fronting Au Pui Wan Street with a valid food factory licence issued by Food and Environmental Hygiene Department;
- (b) there is no seating accommodation and the food is for consumption off the Premises which would not attract large number of persons to stay;
- (c) the fast food shop will not generate any adverse environmental and sewerage impacts to the surrounding areas; and
- (d) the preparation work for the provision of fire service installations has commenced and the approval condition will be complied with within the specified period.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The ‘Town Planning Board Guidelines for Use/Development within “Industrial” Zone’ (TPB PG-No. 25D), which was revised and promulgated in September 2007, is relevant to this application. For a proposed commercial use in an industrial building, relevant planning assessment criteria are summarized as follows:

- (a) it should be demonstrated that there is a genuine need for the proposed use under application and no suitable alternative accommodation can be found in the vicinity. The location and scale of the proposed use should be justified on operational grounds;
- (b) there should be an adequate provision of parking and loading/unloading facilities within the site in accordance with the Hong Kong Planning Standards and Guidelines and to the satisfaction of the Transport Department. The inclusion and operation of the proposed commercial use should not adversely affect the traffic conditions in the local road network; and
- (c) the Fire Services Department 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 building with and without sprinkler systems should as a

general principle not exceeding 460m² and 230m² respectively. The limits on aggregate 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 building. These uses include bank, fast food counter (sited at street level without seating accommodation and licensed as food factory), electrical shop, local provisions store and showroom in connection with the main industrial use. Moreover, the 230m²/460m² criteria do not apply to cases involving conversion of the low zone of an existing industrial building for commercial uses if the commercial portion is completely separated from the industrial portion on the upper floors by a buffer floor of non-hazardous occupancy such as a car-parking floor. In all cases, separate means of escape should be available for the commercial portion.

5. Previous Applications

- 5.1 The Premises is the subject of two previous applications (Nos. A/ST/620 and A/ST/942) (**Plan A-2** and **Appendix II**). Application No. A/ST/620 for 'Fast Food Shop' use was approved with conditions by the Committee in 2005. In view that the applied use has ceased operation, the planning permission granted has lapsed.
- 5.2 Application No. A/ST/942 submitted by the same applicants for temporary 'Shop and Services (Fast Food Shop)' use was approved with conditions by the Committee in 2018 on a temporary basis for a period of 3 years on the consideration that the applied use was not incompatible with the industrial/industrial-related uses in the surroundings and complied with TPB PG-No. 25D. The planning permission was subsequently revoked due to non-compliance of approval conditions on the submission and implementation of the fire service installations.

6. Similar Applications

- 6.1 The ground floor of On Wah Industrial Building, where commercial floor spaces are found, abuts Au Pui Wan Street, Tsung Tau Ha Road and Fo Tan Road respectively. On the ground floor of On Wah Industrial Building, there are 21 similar applications for commercial uses where 20 were approved and 1 was rejected by the Committee between 1984 and 2018 (**Plan A-2** and **Appendix III**). The following application is still valid and should be counted towards the maximum permissible limit of 460m² for aggregate commercial floor area on the ground floor of an industrial building (with sprinkler system) according to TPB PG-No. 25D:

Application No.	Application Premises	Applied Use	Floor Area (About)(m ²)	Date of Consideration
A/ST/957	Unit K (Part)	Shop and Services (Retail Shop)	15	6.7.2018
Total:			15 m²	

6.2 According to the TPB-PG No. 25D, the limits on aggregate commercial floor area do not apply to fast food counter which is sited at street level without seating accommodation and licensed as food factory. Hence, the limits on aggregate commercial floor area are not applicable to the current application.

7. The Premises and its Surrounding Areas (Plans A-1 to A-4)

7.1 The Premises is:

- (a) located on the ground floor (G/F) of On Wah Industrial Building in Fo Tan industrial area; and
- (b) with direct access to Au Pui Wan Street.

7.2 The subject industrial building is:

- (a) 17 storeys in height bounded by Au Pui Wan Street, Tsung Tau Ha Road and Fo Tan Road. Car parking and loading/unloading spaces are provided on the first floor of the building with vehicular access from Au Pui Wan Street; and
- (b) currently occupied by the following uses on various floors:

Floor	Current Uses
G/F (Plan A-3)	Application premises , printing shop, foreign exchange [^] , real estate agency [^] , stationery shop [^] , office equipment company [^] , retail shop, vehicle repair workshops, recycle centre, metal workshop, engineering workshop, aluminium and glass engineering workshop, locked and vacant premises
1/F	Carpark
2/F to 16/F	Offices, godowns, workshops, locked and vacant premises

[^]The planning approval for such use has expired.

7.3 The surrounding areas have the following characteristics:

- (a) Fo Tan is an established industrial area with high-rise industrial buildings;
- (b) MTR Fo Tan Station is located about 450m from the subject industrial building; and
- (c) a centrally located commercial centre (Shatin Galleria) is about 90m from the Premises. Shatin Galleria is zoned “Commercial” (“C”) on the approved Sha Tin OZP No. S/ST/34 (Plan A-1) and is the only “C” zone in the vicinity.

8. Planning Intention

The “I” zone of Fo Tan is intended primarily for general industrial uses to ensure an adequate supply of industrial floor space to meet demand from production-oriented

industries. Information technology and telecommunications industries and office related to industrial use are also always permitted in this zone.

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/Shu Tin, Lands Department (DLO/ST, LandsD):

- (a) the Premises is situated on Sha Tin Town Lot No. 70 which is governed under New Grant No. 11297 (“the New Grant”). Under the New Grant, the lot shall not be used for any purpose other than industrial or godown purposes or both; and
- (b) the proposal under the application to use the Premises as ‘Shop and Services (Fast Food Shop)’ is not permitted under lease. If the Board approves the application, the owner of the Premises is required to apply for a waiver from LandsD to implement this proposal. However, there is no guarantee that the wavier application will be approved. Such application, if received, will be considered by LandsD acting in its capacity as the landlord at its sole discretion and any approval given will be subject to such terms and conditions including, inter alia, payment of waiver fee and administrative fee as may be imposed by LandsD.

Building Matters

9.1.2 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW of BD):

- (a) the subdivision of the unit/ premises should comply with the provisions of Buildings Ordinance/ Building (Minor Works) Regulations. For instance, the shop shall be separated from adjoining workshops by fire barriers with Fire Resistance Rating of 120 minutes, and the means of escape of the existing adjoining premises shall not be adversely affected. The applicants should engage a registered building professional under the Buildings Ordinance to co-ordinate the building works, if any; and
- (b) if the use under application is subject to the issue of a licence, the applicants should be reminded that any existing structures at 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.

Fire Safety

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

- (a) he has no objection in-principle to the application provided that:
 - (i) the 'Shop and Service (Fast Food Shop)' shall be sited at street level only and licensed as food factories; and
 - (ii) fire service installations are provided to the satisfaction of Fire Service Department. Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans or referral from licensing authority.
- (b) the subject proposal licensed and operated as a 'general restaurant' or 'light refreshment restaurant' will not be accepted;
- (c) the building is protected with a sprinkler system, so the maximum permissible aggregate commercial floor area on G/F is 460 m² in accordance with TPB PG-No.25D. The applied use should not be counted up to the aggregate commercial floor area; and
- (d) regarding matters related to fire resisting construction of the Premises, the applicants are reminded to comply with the 'Code of Practice for Fire Safety in Buildings' which is administered by the Building Authority.

9.2 The following Government departments have no comment on / objection to the application:

- (a) Director of Food and Environmental Hygiene;
- (b) Commissioner for Transport; and
- (c) District Officer/Shu Tin, Home Affairs Department.

10. Public Comment Received During Statutory Publication Period

On 7.12.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, no comment was received.

11. Planning Considerations and Assessments

11.1 The planning intention of the "I" zone is to reserve land primarily for general industrial uses to ensure adequate supply of industrial floor space to meet demand from production-oriented industries. However, commercial uses in industrial buildings within the "I" zone may be permitted on application to the Board based on individual merits and the planning assessment criteria set out in the TPB PG-No. 25D.

- 11.2 The Premises is located on the ground floor of an existing industrial building with direct access to Au Pui Wan Street. The ‘Shop and Services (Fast Food Shop)’ use under application is small in scale and considered not incompatible with the industrial and industrial-related uses in the subject industrial building and the surrounding developments. Similar applications for a range of mixed ‘Shop and Services’ uses including fast food shop, retail shop and real estate agency have been approved for other units on the ground floor of the subject industrial building (**Plan A-2** and **Appendix III**) and its vicinity.
- 11.3 The subject industrial building is subject to a maximum permissible limit of 460m² for aggregate commercial floor area on the ground floor but the limit does not apply to fast food counter at street level without seating accommodation and licensed as food factory. D of FS has objection to the application subject to approval conditions on provision of fire service installations and that the fast food shop is operated as a fast food shop counter which is sited at street level only and licensed as food factories.
- 11.4 The ‘Shop and Services (Fast Food Shop)’ use under application generally complies with the relevant considerations set out in the TPB PG-No. 25D including the fire safety and traffic aspects. Relevant Government departments including BD and TD have no objection to or no adverse comment on the application.
- 11.5 The previous application (No. A/ST/942) submitted by the same applicants for the same use was revoked on 6.10.2018 due to non-compliance with approval condition on fire service installations. In this connection, the applicants have submitted relevant document in support of the application and pledge to comply with the approval condition within the specified period (**Appendix Ia**). Shorter compliance period is proposed to monitor the progress of submission and implementation of fire service installations should the Committee decide to approve the application. Moreover, the applicants should be advised that should they fail to comply with the approval condition again resulting in the revocation of the planning permission, sympathetic consideration will not be given to any further application. There is no change in planning circumstances since the approval of the previous application.
- 11.6 A temporary approval of five years is recommended in order not to jeopardise the long term planning intention of industrial use for the Premises and to allow the Committee to monitor the supply and demand of industrial floor space in the area.
- 11.7 No public comment was received during the statutory public inspection period.

12. **Planning Department’s Views**

- 12.1 Based on the assessment made in paragraph 11 above, the Planning Department has no objection to the application on a temporary basis for a period of five years.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of five years until 18.1.2024. The following approval conditions and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) the submission and implementation of the fire safety measures within 3 months from the date of the approval to the satisfaction of the Director of Fire Services or of the Board by 18.4.2019;
- (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 IV**.

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 period of which the permission should be valid on a temporary basis.
- 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 applicants.

14. Attachments

Appendix I	Application form received on 28.11.2018
Appendix Ia	Further Information received on 3.1.2019
Appendix II	Previous applications at the Premises
Appendix III	Similar applications for shop and services at G/F of On Wah Industrial Building
Appendix IV	Recommended advisory clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Floor Plan
Plans A-4a and A-4b	Site Photos