

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/973

<u>Applicant</u>	: Sun Ni Yan (孫妮燕) represented by Tsang Siu Lan (曾小蘭)
<u>Premises</u>	: Unit 7C, Level L1, Wah Yiu Industrial Centre, 30-32 Au Pui Wan Street, Fo Tan, Sha Tin, New Territories.
<u>Floor Area</u>	: 13.26m ² (about)
<u>Lease</u>	: (a) STTL No. 142 (New Grant No.11611) (b) to be expired on 30.6.2047 (c) restricted to industrial and/or godown purposes, excluding offensive trades
<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 (Retail Shop and Fast Food Shop)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for ‘Shop and Services (Retail Shop and 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 requiring planning permission from the Town Planning Board (the Board).
- 1.2 The Premises, with a floor area of about 13.26m², is located on the ground floor (Level L1) of Wah Yiu Industrial Centre abutting Au Pui Wan Street. The subject retail shop and fast food shop is currently operating without valid planning permission.
- 1.3 In support of the application, the applicant submitted the application form on 2.8.2019 (**Appendix I**). The floor and layout plans of the Premises submitted by the applicant are shown in **Drawings A-1 and A-2**.

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

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the application form at **Appendix I**. They can be summarised as follows:

- (a) the Premises is the subject of a previous application No. A/ST/728 for ‘Shop and Services (Fast Food Shop)’ use approved by the Rural and New Town Planning Committee (the Committee) on 23.12.2010. The planning permission under the previous application has expired;
- (b) the fast food shop has a valid food factory licence issued by Food and Environmental Hygiene Department. There is no seating accommodation and the food is for consumption off the Premises which would not attract large number of persons to stay. The retail use is aimed to provide services to the workers in Fo Tan area and the opening hours are from Monday to Saturday 7:00am to 6:00pm.; and
- (c) the Premises is fronting Au Pui Wan Street. There are sufficient parking and loading/unloading facilities in the subject industrial building. The proposal will not generate any impact on environment, traffic and pedestrian flow to the surrounding areas.

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

The applicant is not a “current land owner” but has complied with the requirements as set out in the ‘Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance’ (TPB PG-No. 31) by obtaining consent. 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 part of the subject of five previous applications (Nos. A/ST/257, A/ST/475, A/ST/677, A/ST/697 and A/ST/728) (**Plan A-2** and **Appendix II**). Application Nos. A/ST/257 and A/ST/475 for 'Local Provisions Store' use were approved by the Committee in 1993 and 1998 respectively. The planning permissions have lapsed as the applied use has ceased operation. Application Nos. A/ST/677 and A/ST/697 for 'Fast Food Counter' use were approved with conditions by the Committee in 2009 and 2010 respectively on a temporary basis for a period of 3 years. The planning permissions were revoked due to non-compliance of approval conditions on the submission and implementation of fire safety measures.
- 5.2 The last application No. A/ST/728 for 'Shop and Services (Fast Food Shop)' use was approved with conditions by the Committee on 23.12.2010 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 approval conditions on fire safety measures had been complied with. The planning permission under application No. A/ST/728 is valid until 23.12.2013.

6. Similar Applications

- 6.1 Wah Yiu Industrial Centre is located on a sloping ground. The ground floor (i.e. Levels L1 and L2) of the building, where commercial floor spaces are found, are abutting Au Pui Wan Street, Sui Wo Road and Kwei Tei Street respectively. On the Level L1 of Wah Yiu Industrial Centre, there are eight similar applications for commercial uses, where seven were approved by the Committee in the past 10 years, and one application was approved by the Committee in 2004 with permanent approval granted (**Plan A-2** and **Appendix II**).
- 6.2 The following applications are still valid and should be counted towards the maximum permissible limit of 460m² for aggregate commercial floor area on the ground floors of an industrial building (with sprinkler system) according to TPB PG-No. 25D:

No.	Application No.	Application Premises	Applied Use	Floor Area (About) (m ²)	Date of Consideration
<i>Level L1</i>					
1	A/ST/588	9B	Wholesale Centre (Stationery)	25	9.1.2004
2	A/ST/953	6 (Portion C)	Shop and Services (Real Estate Agency)	8.42	1.6.2018
Total:				33.42m²	

6.3 According to the TPB-PG No. 25D, the limits on aggregate commercial floor area are applicable to the subject application. Should the floor area of the Premises (i.e. 13.26m²) be included, the aggregate commercial floor area will be 46.68m², which is within the maximum permissible limit of 460m².

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

7.1 The Premises is:

- (a) located on street level (Level L1) of Wah Yiu Industrial Centre in Fo Tan industrial area; and
- (b) with direct access to Au Pui Wan Street.

7.2 The subject industrial building is:

- (a) 18 storeys in height bounded by Au Pui Wan Street, Sui Wo Road and Kwei Tei Street. Car parking and loading/unloading spaces are provided on Level L3 of the building with vehicular access from Kwei Tei Street; and
- (b) currently occupied by the following uses on various floors:

Floor	Current Uses
L1/F (Plans A-3a)	Application premises , workshop, canteens, wholesale centre (stationery), glass workshop, real estate agencies [^] , pharmacy [#] , money exchange [#] , fast food shops ^{@*} , herbal tea shop [#] , vehicle repair workshop, pneumatics machinery wholesale [~] and locked premises
L2/F (Plan A-3b)	Godowns, vehicle repair workshop, vacant and locked premises
L3/F	Car park and loading/unloading
1/F to 15/F	Offices, godowns, workshops, vacant and locked premises

[#] There is no record of planning approval granted for such use.

[@] There is no record of planning approval granted for one fast food shop.

^{*} The planning approval for such use has revoked for one fast food shop.

[^] There is no record of planning approval granted for one real estate agency.

[~] 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 600m from the subject industrial building; and
- (c) a centrally located commercial centre (Shatin Galleria) is about 200m 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/Shatin, Lands Department (DLO/ST, LandsD):

- (a) the Premises is situated on Sha Tin Town Lot No. 142, and is governed under New Grant No. 11611 (“the New Grant”). Under the New Grant, the lot shall not be used for any purpose other than industrial or godown purposes or both excluding offensive trade; and
- (b) the proposal under the application to use the Premises as ‘Shop and Services (Retail Shop and Fast Food Shop)’ is not permitted under lease. If the Board approves the application and there is a material change of use from the existing fast food shop to additionally allow retail shop, the applicant shall submit application to LandsD for a new waiver to implement the proposal. The application, if submitted, will be considered by LandsD acting in its capacity as the landlord at its sole discretion and any approval 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) he has no in-principle objection to the application under Buildings Ordinance subject to the following:
 - (i) the use shall be complied with the requirements under the Buildings Ordinance. For instance, the shop shall be separated from adjoining workshops by fire barriers with Fire Resistance Rating of 120 minutes. Building safety requirements will be formulated upon receipt of food premises license application, where appropriate and the means of escape of the existing adjoining premises shall not be adversely affected;
 - (ii) the subdivision of the unit/premises should comply with the provisions of Buildings Ordinance/ Building (Minor Works) Regulation. The applicant should engage a registered building professional under the Buildings Ordinance to co-ordinate the building works, if any; and
 - (iii) the applicant is advised to engage an authorised person to co-ordinated the buildings works, if any.

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) fire service installations and equipment being provided to the satisfaction of Fire Services Department. 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 is available for the Premises.
- (b) the building is protected with a sprinkler system so that the maximum permissible aggregate commercial floor area on Levels L1 and L2 is 460m² in accordance with TPB PG-No.25D. The applied use should be counted up to the aggregate 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' which is administered by the Building Authority; and
- (d) the applicant should pay attention 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.

9.2 The following Government departments have no objection to/comment on 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 9.8.2019, 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 (Level L1) of an existing industrial building with direct access to Au Pui Wan Street. The ‘Shop and Services (Retail Shop and 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 and retail shop 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. Currently, the approved aggregate commercial floor area of ‘Shop and Services’ use on the ground floor of the subject building is 33.42m². If the floor area of the Premises (13.26m²) is included, the aggregate commercial floor area will be 46.68m², which is within the maximum permissible limit of 460m². D of FS has no in-principle objection to the application subject to approval conditions on provision of fire safety measures.
- 11.4 The ‘Shop and Services (Retail Shop and 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 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.
- 11.6 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 20.9.2024. 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 6 months from the date of the approval to the satisfaction of the Director of Fire Services or of the Board by 20.3.2020;
- (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 applicant.

14. Attachments

Appendix I	Application form received on 2.8.2019
Appendix II	Previous applications at the Premises
Appendix III	Similar applications for 'Shop and Services' use at Level L1 of Wah Yiu Industrial Centre
Appendix IV	Recommended advisory clauses
Drawing A-1	Floor Plan
Drawing A-2	Layout Plan

Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a to A-3b	Floor Plans
Plans A-4	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2019**