

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/992

<u>Applicant</u>	: V-Two Motors Company Limited
<u>Premises</u>	: Unit F1-F2, G/F, On Wah Industrial Building, 41-43 Au Pui Wan Street, Fo Tan, Sha Tin, New Territories
<u>Floor Area</u>	: 37.4952m ² (about)
<u>Lease</u>	: (a) STTL No. 70 (New Grant No. 11297) (b) restricted to industrial and/or godown purposes or both, excluding offensive trade
<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 for Motorcycle, Helmet and Related Products)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for ‘Shop and Services (Retail Shop for Motorcycle, Helmet and Related Products)’ 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 is a Column 2 use in “I” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 The Premises, with a floor area of about 37.4952m², is located on the ground floor of On Wah Industrial Building abutting Au Pui Wan Street. It is the subject of three previous applications (No. A/ST/780, 801 and 823) submitted by different applicants for ‘Shop and Services (Real Estate Agency)’ and ‘Shop and Services (Retail Shop)’ uses approved by the Rural and New Town Planning Committee (the Committee) with conditions on a temporary basis for a period of 3 years from 2012 to 2013. The latest previous planning permission expired on 17.8.2016. The subject retail shop under application is currently operating without valid planning permission.
- 1.3 The floor plan and layout plan 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.

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application form with attachments on 5.11.2020 (Appendix I)
- (b) Further information (FI) received on 9.12.2020 (Appendix Ia) clarifying the proposed use of the application
- (c) FI received on 10.12.2020 providing response to (Appendix Ib) Transport Department's comments

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 at **Appendix I**. They can be summarised as follows:

- (a) local residents needs to travel a long distance to Kowloon or Hong Kong Island for relevant products. The applied use in Fo Tan could cater for the need of local residents;
- (b) the applicant operates a motorcycle repair workshop and a go-down for motorcycle at the subject building in Fo Tan. To facilitate his management, the Premises located in the vicinity of the workshop and the go-down has been chosen for the applied use; and
- (c) motorcycles newly arrived will be stored in the go-down using the loading and unloading facilities provided inside the building and will not illegally occupy the carriageway and footpath outside the subject Premises.

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. 31A) by obtaining owner's 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 Parts of the Premises are the subject of three previous applications (Nos. A/ST/780, 801 and 823) submitted by different applicants. All these applications were approved with conditions on a temporary basis for a period of 3 years by the Committee between 2012 and 2013 (**Plan A-2 and Appendix II**) mainly on the considerations that the applied use was not incompatible with the industrial/industrial-related uses in the surroundings and complied with TPB PG-No. 25D.
- 5.2 Application No. A/ST/780 for temporary 'Shop and Services (Real Estate Agency)' was approved with conditions for a period of 3 years on 6.7.2012. It was subsequently revoked due to non-compliance of approval conditions on the submission and implementation of the fire service installations on 6.1.2013. Applications No. A/ST/801 and 823 for temporary 'Shop and Services (Retail Shop)' and 'Shop and Services (Real Estate Agency)' uses were approved with conditions for a period of 3 years on 21.12.2012 and 16.8.2013 respectively. Both planning permissions have expired.

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. There were 12 similar applications for commercial uses on the ground floor of Oh Wah Industrial Building in the past ten years, all of them were approved by the Committee between 2010 and 2020 (**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)(m²)	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 are applicable to the subject application. Should the floor area of the Premises (i.e. 37.4952m²) be included, the aggregate commercial floor area will be 52.4952m², 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 the ground floor (G/F) of On Wah Industrial Building in Fo Tan industrial area;
- (b) currently used as a retail shop for motorcycle, helmet and related products; and
- (c) with direct access to Au Pui Wan Street.

7.2 The subject industrial building is:

- (a) 17-storeys building 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 [^] , stationery shop [^] , office equipment company, vehicle repair workshops, recycle centre, metal workshop, engineering workshop, aluminium window and glass engineering workshop, locked and vacant premises
1/F	Carpark and loading/unloading area
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/Shatin, 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 is not permitted under the New Grant. If the current application is approved by the Board, 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 waiver 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.

Fire Safety

- 9.1.2 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 subject unit;

- (b) the building is protected with a sprinkler system so that the maximum permissible aggregate commercial floor area on G/F 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 Buildings 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.

Traffic

9.1.3 Comments of the Commissioner for Transport (C for T):

- no in-principle objection to the application from traffic engineering point of view.

Building Matters

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

- (a) he has no objection to the application subject to that the proposed use shall comply with the requirements under the Buildings Ordinance;
- (b) adequate access facilities for persons with disability should be provided. Building (Planning) Regulation 72 and Design Manual: Barrier Free Access 2008 are relevant;
- (c) if subdivision of the unit / premises is involved, it should comply with the provisions of Buildings Ordinance/ Building (Minor Works) Regulations. The applicant should engage a registered building professional under the Buildings Ordinance to co-ordinate the building works, if any; and
- (d) the applicant is advised to engage an authorized person to co-ordinate the building works, if any.

District Officer's Comments

9.1.5 Comments of the District Officer (Sha Tin), Home Affairs Department (DO(ST), HAD):

- (a) no comment on the application from departmental point of view; and

- (b) his office has not received any comment from the locals on the application.

10. Public Comment Received During Statutory Publication Period (Appendix IV)

On 13.11.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three comments were received from the general public objecting to the application mainly on the grounds that the applied use will attract outside traffic to the area causing more illegal parking and traffic jam; the applicant has illegally blocked the road side for their own use; and the applied use which does not tally with the “I” zone is currently in operation without planning permission. Approval of the application will encourage change of land use before obtaining permission.

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 an 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’ 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.
- 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 15m². The aggregate commercial floor area will be 52.4952m² if the floor area of the Premises is included (37.4952m²), which is within the maximum permissible limit of 460m². D of FS has no objection in principle to the application subject to the provision of fire service installations and equipment to his satisfaction.
- 11.4 In this regard, the ‘Shop and Services’ use under application generally complies with relevant considerations set out in the TPB PG-No. 25D including the fire safety and traffic aspects. Relevant Government departments including FSD, BD and TD have no objection to or no adverse comment on the application.
- 11.5 Parts of the Premises are the subject of three previous applications (Nos. A/ST/780, 801 and 823) for ‘Shop and Services (Real Estate Agency)’ and ‘Shop and Services (Retail Shop)’ uses approved by the Committee on a temporary basis for a period of three years between 2012 and 2013. Application No. A/ST/780 was revoke in 2013 due to non-compliance of approval conditions, and the other two planning permissions have expired. Similar applications for a range of mixed ‘Shop and Services’ uses including retail shop, fast food shop

and money exchange have been approved for other units on the ground floor of the subject industrial building (**Plan A-2** and **Appendix III**). There is no change in planning circumstances since the approval of these applications.

- 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 Regarding the public comments as detailed in paragraph 10, government departments' comments and planning assessments in the above paragraphs are relevant.

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 18.12.2025. 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 18.6.2021; 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 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 5.11.2020
Appendix Ia	FI received on 9.12.2020
Appendix Ib	FI received on 10.12.2020
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	Public comments
Appendix V	Recommended advisory clauses
Drawing A-1	Floor Plan
Drawing A-2	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Floor Plan
Plan A-4	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2020**