

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/1004

<u>Applicant</u>	: Daywin Holdings Limited
<u>Premises</u>	Unit C5 (Portion), G/F, Block 1, Kin Ho Industrial Building, 14-24 Au Pui Wan Street, Fo Tan, Sha Tin, New Territories
<u>Floor Area</u>	33m ² (about)
<u>Lease</u>	: (a) STTL Nos. 65 and 66 (New grant Nos. 11268 and 11269) (b) to be expired on 30.6.2047 (c) restricted to industrial and/or godown purposes excluding offensive trade
<u>Plan</u>	: Draft Sha Tin Outline Zoning Plan (OZP) No. S/ST/35
<u>Zoning</u>	: “Industrial” (“I”)
<u>Application</u>	Shop and Services (Real Estate Agency and Retail Shop)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for ‘Shop and Services (Real Estate Agency and Retail 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 is a Column 2 use in “I” zone requiring planning permission from the Town Planning Board (the Board). The subject real estate agency is currently operating without valid planning permission while the subject retail shop is currently under renovation.
- 1.2 The Premises, with a floor area of about 33m², is located on the ground floor of Block 1 of Kin Ho Industrial Building abutting Au Pui Wan Street. It is also the subject of a previous application No. A/ST/951 submitted by the same applicant for the same use approved with conditions on a temporary basis for three years by the Rural and New Town Planning Committee (the Committee) of the Board in 2018. The planning permission was subsequently expired in May 2021.
- 1.3 In support of the application, the applicant submitted the application form with

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

attachments on 23.12.2022 (**Appendix I**). The floor plan and location plan of the Premises submitted by the applicant are shown in **Drawings A-1 to A-2**.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the part 10 of the application form in **Appendix I**. They can be summarised as follows:

- (a) the Premises is the subject of a previous application No. A/ST/951 for ‘Shop and Services (Real estate agency and retail shop)’ use approved by the Committee on a temporary basis for three years. All previous approval conditions have been complied with. The applied use and layout of the current application is the same as the previously approved scheme; and
- (b) the applied use is to cope with the market demand in the locality. It would not bring adverse traffic impact to the surrounding area.

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

The applicant is the sole “current land owner”. 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 summarised 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 eight previous applications (No. A/ST/194, 497, 549, 719, 756, 778, 872 and 951) for various shop and services use (**Plan A-2** and **Appendix II**). All previous applications were either approved or approved with conditions by the Committee between 1992 and 2018 on the considerations that the proposed/applied uses were not incompatible with the industrial/industrial-related use in the surroundings; the proposed/applied uses complied with the relevant Town Planning Board Guidelines related to uses/developments in “I” zone; and relevant departments had no adverse comments.
- 5.2 The last application No. A/ST/951 for the same uses under the current application was approved by the Committee on 18.5.2018 on a temporary basis up to 18.5.2021. All approval conditions had been complied with. That planning permission subsequently expired on 19.5.2021.

6. Similar Applications (Plan A-2 and Appendix III)

- 6.1 The ground floor of Kin Ho Industrial Building, where commercial uses are found, abuts Au Pui Wan Street and Min Fong Street. On the ground floor of the subject building, there are ten similar applications for commercial uses within the past 10 years, which were all approved by the Committee from 2013 to 2019. Apart from planning application No. A/ST/978 for fast food shop (without seating accommodation) approved in 2019 which is valid until 2024, all other planning permissions have either expired or been revoked due to non-compliance with approval conditions.
- 6.2 There is no valid planning permission in the subject industrial building subject to the maximum permissible limit of 460m² for aggregate commercial floor area on the ground floor according to TPB PG-No. 25D.
- 6.3 Should the subject planning application be approved, the floor area of the Premises (i.e. 33m²) will be counted into the aggregate commercial floor area of the subject building, which will not exceed the maximum permissible limit of 460m².
- 6.4 A similar application No. A/ST/1005 for ‘Shop and Services (Convenience Store)’ use on G/F of the same industrial building with a floor area of about 9.713m², is scheduled to be considered by the Committee at this meeting (**Plan A-2**). Should both planning applications be approved by the Committee, the aggregate commercial floor area of the subject building will be 42.713m², which will not exceed the maximum permissible limit of 460m².

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

7.1 The Premises is:

- (a) located on the ground floor (G/F) of Block 1 of Kin Ho Industrial Building in Fo Tan industrial area; and
- (b) directly accessible to Au Pui Wan Street.

7.2 The subject industrial building is:

- (a) 18 storey in height bounded by Au Pui Wan Street, Min Fong Street, Tsung Tau Ha Road and Shek Lau Tung Street with vehicular access from Shek Lau Tung Street. Loading/unloading and/or car parking spaces are provided on the ground floor and second floor of the building; and
- (b) currently occupied by the following uses on various floors:

Floor	Current Uses
G/F	Application premises , godown, loading/unloading areas, office, fast food shops ^{~+} , restaurants [#] , retail shops ^{*@} , locked premises, canteen (mezzanine level)
2/F	Carpark and loading/unloading areas
1/F and 3/F to 17/F	Godowns, workshops, offices, locked and vacant premises

- ~ The planning approval for such use was revoked for one fast food shop.
- + There is a valid planning approval granted for one fast food shop.
- ^ There is no record of planning approval granted for four fast food shops.
- # Such use is not allowed in an industrial building.
- * The planning approval for two retail shops has expired.
- @ There is no record of planning approval granted for one retail shop.

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 400m from the subject industrial building; and
- (c) a centrally located commercial centre (Shatin Galleria) in the Fo Tan District is about 150m from the premises. Shatin Galleria is the only site zoned “Commercial” (“C”) (**Plan A-1**) 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 Bureaux/Departments**

- 9.1 The following government bureaux/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/Shia Tin, Lands Department (DLO/ST, LandsD):

- (a) the Premises is situated on Unit C5 (Portion), G/F, Block 1, Kin Ho Industrial Building erected on Sha Tin Town Lot Nos. 65 and 66 which are held under New Grant No. 11268 and 11269 (collectively “the New Grants”). Under the New Grants, the lots shall not be used for any purposes other than industrial or godown purposes or both, excluding offensive trade; and
- (b) a Temporary Waiver was granted by his office to the existing owner of the premises to allow the use of premises with area of 33 square meters (about) for ‘real estate agency and retail shop’ purposes with a fixed term of 2 years and thereafter quarterly commencing from 12.12.2012. Thus he has no adverse view on the subject application.

Fire Safety

- 9.1.2 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application provided that:
 - (i) fire services installations and equipment being provided to the satisfaction of D of FS. Detailed Fire Services requirements will be formulated upon receipt of formal submission of general building plans; and
 - (ii) means of escape completely separated from the industrial portion is available for the subject unit;
- (b) the building is protected with a sprinklers 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 administrated by the Building Authority; and
- (d) the applicant’s attention is drawn 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):

- no in-principle objection to the application under the Buildings Ordinance (BO) subject to the following;
 - (a) the applied use shall comply with the requirements under the BO and allied regulations. For instance, the subject shop and services shall be separated from the adjoining workshops by fire barriers with Fire Resistance Rating of 120 minutes and the means of escape in case of emergency of the existing adjoining premises shall not be adversely affected;
 - (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) the subdivision of the unit / premises should comply with the provisions of Building 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
 - (d) the applicant is advised to engage an authorized person to co-ordinate the building works, if any.

9.2 The following government department had no comment on the application:

- District Officer (Sha Tin), Home Affairs Department

10. Public Comments Received During Statutory Publication Period

On 31.12.2021, the application was published for public inspection. During the statutory publication period, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for a shop and service (Real Estate Agency and Retail Shop) at the Premises located on the ground floor of an existing industrial building zoned “I” on the OZP. While 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, 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 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 and vehicular ingress/egress at Shek Lau Tung Street. The applied use 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, there is no approved planning application subject to aggregate commercial floor area on the ground floor of the subject building. Should the subject application be approved, the floor area of 33m² of the Premises will be included in the aggregate commercial floor area, which will not exceed the maximum permissible limit of 460m². D of FS has no in-principle objection to the application subject to the provision of fire safety measures to his satisfaction, and means of escape is completely separated from the industrial portion is available for the subject unit.
- 11.4 The applied use generally complies with the relevant considerations set out in TPB PG-No. 25D including the fire safety and traffic aspects. Relevant government departments including FSD, BD and TD have no objection to/ no adverse comments on the application.
- 11.5 The subject Premises is part of the subject of eight previous applications for various ‘Shop and Services’ uses all approved by the Committee from 1992 to 2018. The latest application No. A/ST/951 with the same floor area, submitted by the same applicant for the same use was approved with conditions on a temporary basis for three years in 2018, and relevant approval conditions on fire safety measures had been complied with. That planning permission subsequently expired in 2021. There has been no change in planning circumstances since the approval of this application.
- 11.6 A temporary approval of five years is recommended to avoid jeopardising 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 comments were 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 18.2.2027. The following approval conditions and advisory clauses are suggested for Members’ reference.

Approval Conditions

- (a) the submission and implementation of 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 18.8.2022; 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 in **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 23.12.2021
Appendix II	Previous applications
Appendix III	Similar applications
Appendix IV	Advisory clauses
Drawing A-1	Floor plan
Drawing A-2	Location Plan
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Floor Plan
Plans A-4a to A-4b	Site photos

**PLANNING DEPARTMENT
FEBRUARY 2022**