

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/1019

<u>Applicant</u>	:	老友記美食
<u>Premises</u>	:	Unit C3, G/F, Block 1, Kin Ho Industrial Building, 14-24 Au Pui Wan Street, Fo Tan, Sha Tin, New Territories
<u>Floor Area</u>	:	About 57m ²
<u>Lease</u>	:	(a) STTL No. 65 and 66 (New Grant No. 11268 and 11269) (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/36
<u>Zoning</u>	:	“Industrial” (“I”)
<u>Application</u>	:	Shop and Services (Fast Food Shop)

1. The Proposal

- 1.1 The applicant seeks 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 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 57m², is located on the ground floor of Kin Ho Industrial Building abutting Au Pui Wan Street (**Drawing A-1**). According to the applicant, no seating accommodation will be provided in the fast food shop. The Premises is currently operating as a fast food shop without valid planning permission.
- 1.3 In support of the application, the applicant submitted the following documents:
 - (a) Application Form received on 23.6.2023 (**Appendix I**)
 - (b) Further Information (FI) received on 20.9.2023* (**Appendix Ia**)
 - (c) FI received on 2.11.2023* (**Appendix Ib**)
 - (d) FI received on 6.11.2023* (**Appendix Ic**)

Remarks: accepted and exempted from publication and recounting requirements

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

- 1.4 On 11.8.2023, the Rural and New Town Planning Committee (the Committee) agreed to the applicant's request to defer making a decision on the application for two months to allow more time for the applicant to address departmental comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendix I**, as summarized as follows:

- due to the cessation of industrial operation at the Premises, the land owner has given consent to the applicant for operating a fast food shop.

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

The applicant is not the “current land owner” of the Premises 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. 31B) by obtaining consent from the 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. Relevant extracts of the Guidelines are at **Appendix II**.

5. Previous Application (Plan A-2 and Appendix III)

- 5.1 The Premises is the subject of five previous applications. Application No. A/ST/519 for fast food shop use (with a smaller area of about 27m²) was approved by the Committee on 16.6.2000. The planning permission has lapsed as the applied use has ceased operation.
- 5.2 The other four applications (No. A/ST/781, A/ST/824, A/ST/845 and A/ST/899) were all submitted by the same applicant² for temporary shop and services (fast food shop), and were approved with conditions on 6.7.2012, 16.8.2013, 22.8.2014 and 15.7.2016 respectively for a period of three years mainly on considerations that the applied use was not incompatible with the industrial-related uses in the vicinity and generally complied with TPB PG-No. 25D. All four applications were subsequently revoked due to non-compliance with approval conditions on fire service installations (FSIs)³.

² The four previous applications were all submitted by the same applicant, who is the manager and operator of the applicant “老友記美食” under the current application.

³ Under the current application, the applicant submitted FI (**Appendix Ic**) and committed that submission and implementation of FSIs to the satisfaction of Director of Fire Services or of the Board would be undertaken. Part of the FSIs have been completed and a fire service layout plan and documents have been submitted.

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

- 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 10 similar applications for commercial uses within the past 10 years, which were approved by the Committee from 2013 to 2022. Apart from planning application No. A/ST/978 for shop and services (fast food shop) approved in 2019 which is valid until 2024 and planning application No. A/ST/1004 and No. A/ST/1005 for different shop and services uses approved in 2022 which are both valid until 2027, all other planning permissions have either expired or have been revoked due to non-compliance with approval conditions.
- 6.2 The following similar applications are 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:

No.	Application No.	Application Premises	Applied Use	Floor Area (About)(m ²)	Date of Approval
Uses applicable for the maximum permissible limit of 460 m ² aggregated commercial floor area on the G/F of an industrial building (with sprinkler system)					
1.	A/ST/1004	Unit C5 (Portion), Block 1	Shop and Services (Real Estate Agency and Retail Shop)	33	18.2.2022
2	A/ST/1005	G/F (Minor Portion) of Canteen Hall, Block 2	Proposed Shop and Services (Convenience Store)	9.713	18.2.2022
Total:				42.713m²	

- 6.3 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:
- located on the ground floor (G/F) of Block 1 of Kin Ho Industrial Building in Fo Tan industrial area; and
 - with direct access to Au Pui Wan Street.
- 7.2 The subject industrial building is:
- 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 at

the ground floor 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

- (a) currently occupied by the following uses on various floors:

Floor	Current Uses
G/F	Application premises , godowns, loading/ unloading areas, offices, shop and services (including fast food shops ⁺), canteen, restaurants [#] , retail shop [@] , real estate agency [~] , food factory and locked premises
1/F	Godowns and locked premises
2/F	Carpark and loading/unloading areas
3/F to 17/F	Godowns, workshops (including vehicle testing and service centre), offices, canteens and locked and vacant premises

+ There is valid planning approval granted for one fast food shop.

^ There is no valid planning approval covering four fast food shops.

Such use is not allowed in an industrial building

@ The planning approval granted for such use has expired

~ There is valid planning approval granted for one real estate agency

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 Departments**

9.1 The following government departments have been consulted and their views on the application are summarized as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/Shia Tin, Lands Department (DLO/ST, LandsD):

- (a) the Premises is located at Sha Tin Town Lot Nos. 65 and 66 governed by New Grant Nos. 11268 and 11269 (“the New Grants”). Under the New Grants, the lots shall not be used for any purpose other than industrial or godown purposes or both excluding offensive trade. No building or buildings shall be erected on the lot except a factory or factories or a warehouse or warehouses or both, ancillary offices and such canteen and other welfare facilities (excluding residential quarters) for workmen employed on the lot as may in the opinion of the Director of Lands be necessary and also such quarters for watchmen or caretakers who, in the opinion of the Commissioner for Labour are essential to the safety and security of the buidlings; and
- (b) the proposal under the present application to use the Premises as ‘Shop and Services (Fast Food Shop)’ is not permitted under the New Grants. Under the established procedure for this case relating to Ground floor of industrial building, the owner of the Premises is advised to apply for a waiver for the uses under the current application at this stage. If the Board approves the current application, the waiver application will then be processed by LandsD to allow the applied use. 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 for the waiver 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 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 separated from the industrial portion is available for the Premises;
- (b) having considered the nature of the fast food shop, which shall be licensed as food factory, as well as the declaration by the applicant that there will be no seating accommodation for the fast food shop, he has no objection if the approved planning application is not applicable for the maximum permissible limit of 460 m² for aggregate commercial floor area on the G/F of the subject building (with sprinkler system).
- (c) advisory comments are at **Appendix V**.

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) no in-principle objection to the application under the Buildings Ordinance (BO); and
- (b) advisory comments are at **Appendix V**.

9.2 The following Government department has no objection to/comment on the application:

- District Officer/Shi Tin, Home Affairs Department.

10. Public Comment Received During Statutory Publication Period

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 'Shop and Services (Fast Food Shop)' use 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 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. The applied use is 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 have been approved on the ground floor of the subject industrial building.
- 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 no objection in-principle to the application subject to the provision of fire service installations

and equipment to his satisfaction and means of escape separated from the industrial portion is available for the Premises.

- 11.4 The applied use under application generally complies with the relevant considerations set out in TPB PG-No. 25D including the fire safety and traffic aspects. Relevant government departments including Fire Services Department, Buildings Department and Transport Department have no objection to/ no adverse comments on the application.
- 11.5 The previous applications (No. A/ST/781, A/ST/824, A/ST/845 and A/ST/899) submitted by the same applicant were revoked due to non-compliance with approval conditions on fire service installations. Under the current application, the applicant has submitted FI and committed that submission and implementation of FSIs to the satisfaction of Director of Fire Services or of the Board would be undertaken. The applicant also pointed out that part of the FSIs have been completed and a fire service layout plan and documents have been submitted (**Appendix Ic**). Moreover, the applicant should be advised that should he/she fail to comply with the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 11.6 A temporary approval of five years is recommended to avoid jeopardizing 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 10.11.2028. 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 10.5.2024; 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 23.6.2023
Appendix Ia	FI received on 20.9.2023
Appendix Ib	FI received on 2.11.2023
Appendix Ic	FI received on 6.11.2023
Appendix II	Relevant Extract of TPB PG-No. 25D
Appendix III	Previous Applications
Appendix IV	Similar Applications
Appendix V	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Floor Plan
Plan A-4	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2023**