

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/998

<u>Applicant</u>	: Fotan Property Agency (C.I.) Limited
<u>Premises</u>	: Workshop E1 (Portion) & E2 (Portion), G/F, Haribest Industrial Building, 45 – 47 Au Pui Wan Street, Fo Tan, Sha Tin, New Territories
<u>Floor Area</u>	: 12.455m ² (about)
<u>Lease</u>	: (a) STTL No. 173 (New Grant No. 11665) (b) To be expired on 30.6.2047 (c) restricted to industrial and/or godown purposes (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 (Real Estate Agency)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for ‘Shop and Services (Real Estate Agency)’ 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 12.455m², is located on the ground floor of Haribest Industrial Building abutting Fo Tan Road. The applied use is currently operating without valid planning permission.
- 1.3 In support of the application, the applicant submitted the application form with attachments on 3.6.2021 (**Appendix I**). The floor plan of the Premises submitted by the applicant is shown in **Drawing A-1**.

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 10 of the application form at **Appendix I**. They can be summarised as follows:

- (a) the applied use is to cope with the market demand and the latest development of Fo Tan; and
- (b) the subject building has sufficient car parking spaces for goods vehicles and private cars; the applied use would not bring adverse traffic impact to the surrounding area.

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 Application

The Premises is part of the subject of a previous application No. A/ST/186 submitted by a different applicant for a use different from the current application. That application for 'Bank within Industrial Building' use was rejected by the Committee on 23.8.1991 and the Board on 20.12.1991 on review, and subsequently dismissed by the Appeal Board on 25.9.1992 (**Plan A-2** and **Appendix II**) mainly on the considerations that commercial floor space was available in the vicinity, and approval of the application would set an undesirable precedent for similar applications.

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

- 6.1 The ground floor of Haribest Industrial Building, where commercial uses are found, abuts Fo Tan Road, Tsung Tau Ha Road, and Au Pui Wan Street. On the ground floor of Haribest Industrial Building, there are eight similar applications for commercial uses, where three were approved by the Committee from 1992 to 2002 with permanent approval granted. However, these planning permissions ceased to have effect as the premises are no longer used for the approved uses. The other five were approved by the Committee in the past 10 years on a temporary basis, and all of them have 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 of an industrial building (with sprinkler system) according to TPB PG-No. 25D.
- 6.3 Should the subject planning application be approved, the floor area of the Premises (i.e. 12.455m²) has to be counted into the aggregate commercial floor area of the subject building, which will be increased to 12.455m² and is within the maximum permissible limit of 460m².

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

- 7.1 The Premises is:
 - (a) located on the ground floor (G/F) of Haribest Industrial Building in Fo Tan industrial area;
 - (b) currently used as a Real Estate Agency without valid planning permission; and
 - (c) with direct access to Fo Tan Road.

7.2 The subject industrial building is:

- (a) 16 storeys in height bounded by Au Pui Wan Street, Tsung Tau Ha Road and Fo Tan Road on its north-east, south-east and south-west respectively, and another industrial building on its north-west. Car parking spaces and loading/unloading area are provided on the ground 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 , scaffolding shop, engineering workshop, renovation workshop, glass & air-conditioning workshop, metal workshop and office, office, canteen, salon [#] , locked premises, and car park and loading/unloading area
1/F	Carpark and loading/unloading area, office, godowns, and locked premises
2/F to 15/F	Offices, godowns, workshops, locked and vacant premises

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

7.3 The surrounding areas have the following characteristics:

- (a) Fo Tan is an established industrial area with high-rise industrial buildings of 9 to 23 storeys;
- (b) MTR Fo Tan Station is located about 550m from the subject industrial building; and
- (c) a commercial centre (Shatin Galleria) is about 100m from the Premises on the opposite site of Fo Tan Road. 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/Shah Tin, Lands Department (DLO/ST, LandsD):

- (a) the Premises is situated on Shah Tin Town Lot No. 173 which is governed by New Grant No. 11665 (“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 present application to use the subject premises as “Shop and Services (Real Estate Agency)” is not permitted under the New Grant. If the Board approves the present application, 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 in-principle objection to the application provided that:
 - (i) fire service installations and equipment being provided to the satisfaction of Fire Services Department. Detailed fire service 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

The application was published for public inspection. During the statutory public inspection period, no comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for a Real Estate Agency 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 Fo Tan Road. 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 aggregate commercial floor area of ‘Shop and Services’ use on the ground floor of the subject building. Should the subject application be approved, the floor area of the Premises will be included in the aggregate commercial floor area which will increase to 12.455m², and is within 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.
- 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 the application.
- 11.5 The Premises is part of the subject of a previous application No. A/ST/186 for ‘Bank within Industrial Building’ use rejected by the Board on review in 1991 and dismissed by the Appeal Board in 1992 mainly on the consideration that commercial floor space was available in the vicinity and approval of the application would set an undesirable precedent. The planning circumstances of the previous application are different from the current application as ‘Shop and Services’ use is now commonly found and approved on the ground floor of industrial buildings within “I” zone as a response to the need of the market, provided that there are no adverse fire safety and traffic impacts.
- 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 23.7.2026. 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 23.1.2022; 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 at **Appendix III**.

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 3.6.2021
Appendix II	Similar applications for 'Shop and Services' use at G/F of Haribest Industrial Building
Appendix III	Recommended advisory clauses
Drawing A-1	Floor Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Floor Plan
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
JULY 2021**