

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/966

<u>Applicant</u>	:	HUI Ka Kit
<u>Premises</u>	:	Workshop I1, G/F, Century Industrial Centre, 33-35 Au Pui Wan Street, Fo Tan, Sha Tin, New Territories
<u>Floor Area</u>	:	38m ² (about)
<u>Lease</u>	:	(a) STTL No. 68 (New Grant No. 11293) (b) restricted to industrial and/or godown purposes
<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 (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 use in “I” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 The Premises, with a floor area of about 38m², is located on the ground floor of Century Industrial Centre abutting Au Pui Wan Street. The subject fast food shop is currently operating without valid planning permission.
- 1.3 The layout plan of the Premises submitted by the applicant is shown in **Drawing A-1**.
- 1.4 In support of the application, the applicant submitted an application form on 12.11.2018 (**Appendix I**).

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

- (a) the fast food shop is located on ground floor fronting Au Pui Wan Street. It provides catering services to the workers of the surrounding industrial buildings;
- (b) there is no seating accommodation and the food is for consumption off the Premises which would not attract large number of persons to stay; and
- (c) the fast food shop 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 four previous applications (Nos. A/ST/104, A/ST/191, A/ST/578 and A/ST/913) (**Plan A-2** and **Appendix II**). Application Nos. A/ST/104 and A/ST/578 for 'Showroom and Retail Shop (for Construction Materials)' and 'Fast Food Shop' uses were approved by the Committee in 1987 and 2003 respectively. Both planning permissions have lapsed as the applied uses no longer exist. Application No. A/ST/191 for 'Restaurant' use was rejected by the Committee in 1992 mainly on the grounds of insufficient justification for sacrificing the industrial ground floor space, exposure to fire and life risks and setting of undesirable precedent.
- 5.2 Application No. A/ST/913 submitted by a different applicant for temporary 'Shop and Services (Fast Food Shop)' use was approved with conditions by the Committee in 2017 on 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; the applied use complied with TPB PG-No. 25D; and the relevant departments had no adverse comment. The planning permission was subsequently revoked due to non-compliance of approval conditions on the submission and implementation of the fire service installations.

6. Similar Applications

- 6.1 The ground floor of Century Industrial Centre, where commercial floor spaces are found, abuts Au Pui Wan Street, Min Fong Street and Fo Tan Road respectively. On the ground floor of Century Industrial Centre, there are 34 similar applications for commercial uses where 29 were approved and 5 were rejected by the Committee between 1988 and 2018 (**Plan A-2** and **Appendix III**). The following three applications are still valid and should be counted towards the maximum permissible limit of 460m² for aggregate commercial floor area on the G/F of an industrial building (with sprinkler system) according to TPB PG-No. 25D:

Application No.	Application Premises	Applied Use	Floor Area (About)(m ²)	Date of Consideration	Decision
A/ST/133	Unit B	Metal Hardware Shop	95	8.7.1988	Approved

Application No.	Application Premises	Applied Use	Floor Area (About)(m2)	Date of Consideration	Decision
A/ST/207	Unit D (Part)	Packaging Materials and Stationery Shop	58	24.7.1992	Approved
A/ST/501	Unit H2	Retail Shop (Spare Parts for Electrical Appliances and Metal Parts)	7.48	8.10.1999	Approved
Total:			160.48m²		

6.2 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:

- (a) located on G/F of Century 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) 19 storeys in height bounded by Fo Tan Road, Min Fong Street and Au Pui Wan Street. 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 , fast food shop, canteens, real estate agency* [@] , metal hardware shop, electrical shop, interior design company [#] , packaging materials and stationery shop, retail shop for spare parts for electrical appliances and metal parts, antiques shop [#] , local provisions store [~] , godowns and locked premises
1/F	Carpark
2/F-18/F	Godowns, workshops, offices, locked and vacant premises

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

[~] The planning approval for such use has expired

* The planning approval for one real estate agency has expired

[@] There is no record of 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 340m from the subject industrial building; and
 - (c) a centrally located commercial centre (Shatin Galleria) is about 150 m from the Premises. Shatin Galleria is zoned “Commercial” (“C”) on the Sha Tin OZP (**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. 68 and is governed under New Grant No. 11293 (“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;
 - (b) the proposal under the application to use the Premises as ‘Shop and Services (Fast Food Shop)’ purpose is not permitted under the New Grant. If the application is approved by the Board, the owner of the Premises has to apply to LandsD for a waiver. However, there is no guarantee that the waiver application will be approved. Such application, if received by LandsD, will be considered by LandsD acting in the capacity as the landlord at its sole discretion and any approval will be subject to such terms and conditions including, among others, the payment of waiver fee and administrative fee as may be imposed by LandsD; and
 - (c) the existing fast food shop at the Premises is in breach of the lease. The Government reserves all rights under lease to take appropriate enforcement actions.

Building Matters

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

- (a) the use shall comply 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, and the means of escape of the existing adjoining workshop shall not be adversely affected. Building safety requirements will be formulated upon receipt of food premises licence application, where appropriate; and
- (b) the subdivision of the unit/ premises should comply with the provisions of Buildings Ordinance/ Building (Minor Works) Regulations. The applicant should engage a registered building professional under Buildings Ordinance to co-ordinate 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) the Shop and Services (Fast Food Shop) is the same nature as a fast food counter which is sited at street level only and licensed as food factories; and
 - (ii) fire service installations and water supplies for firefighting being provided to the satisfaction of Fire Service Department. Detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.
- (b) the subject proposal licensed and operated as a ‘general restaurant’ or ‘light refreshment restaurant’ will not be accepted;
- (c) the building is protected with a sprinkler system, so the maximum permissible aggregate commercial floor area on G/F is 460m² in accordance with TPB PG-No.25D; and
- (d) 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.

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 20.11.2018, 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 of an existing industrial building with direct access to Au Pui Wan Street (**Plan A-3**). The ‘Shop and Services (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, real estate agency, retail shop and local provisions store 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 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 to the application subject to approval conditions on provision of fire service installations and that the fast food shop is operated as a fast food shop counter which is sited at street level only and licensed as food factories.

11.4 The ‘Shop and Services (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 4.1.2024. 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 4.7.2019;
- (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 12.11.2018
Appendix II	Previous applications at the Premises
Appendix III	Similar applications for shop and services at G/F of Century Industrial Centre
Appendix IV	Recommended advisory clauses
Drawing A-1	Layout 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
JANUARY 2019**