

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/ST/976**

<b><u>Applicant</u></b>	:	Outofstock Design Group Limited
<b><u>Premises</u></b>	:	Unit 4D (Part), G/F, Fo Tan Industrial Centre, 26-28 Au Pui Wan Street, Fo Tan, Sha Tin, N.T.
<b><u>Floor Area</u></b>	:	40m <sup>2</sup> (about)
<b><u>Lease</u></b>	:	(a) STTL No. 170 (New Grant No. 11640) (b) to be expired on 30.6.2047 (c) restricted to industrial and/or godown purposes or both
<b><u>Plan</u></b>	:	Approved Sha Tin Outline Zoning Plan (OZP) No. S/ST/34
<b><u>Zoning</u></b>	:	“Industrial” (“I”)
<b><u>Application</u></b>	:	Proposed Shop and Services (Retail Shop)

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for proposed ‘Shop and Services (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)’<sup>1</sup> use in “I” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 The Premises, with a floor area of about 40m<sup>2</sup>, is located on the ground floor of Fo Tan Industrial Centre abutting Au Pui Wan Street. The proposed retail shop will be used for selling furniture to the existing and future residents in the local area.
- 1.3 In support of the application, the applicant submitted the application form on 4.9.2019 (**Appendix I**). The floor plan of the Premises submitted by the applicant is shown in **Drawing A-1**.

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<sup>1</sup> ‘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 and attachment at **Appendix I**. They can be summarized as follows:

- (a) the Premises is located on the ground floor fronting Au Pui Wan Street. There are parking and loading/unloading facilities in the subject industrial building. The proposed retail shop will not generate any environmental and traffic impact to the local area; and
- (b) the proposed retail shop is targeted to provide services to new residential developments in the Fo Tan area. The rent of industrial building in Fo Tan area is more affordable as compared with other premises in the central business district.

## **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 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 460m<sup>2</sup> and 230m<sup>2</sup> 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 230m<sup>2</sup>/460m<sup>2</sup> 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 the subject of a previous application No. A/ST/844 for ‘Shop and Services (Bicycle Sale)’ use which was approved with conditions by the Committee on 9.5.2014 on a temporary basis for a period of three years on the consideration that the applied use was not incompatible with the industrial/industrial-related uses in the surroundings and complied with TPB PG-No. 25D (**Plan A-2 and Appendix II**). The planning permission was revoked on 11.9.2014 due to non-compliance of approval conditions on the submission and implementation of the fire service installations.

## 6. Similar Applications

6.1 Fo Tan Industrial Centre is located on a sloping ground. The ground and first floors of the building, where commercial floor spaces are found, are abutting Au Pui Wan Street and Tsung Tau Ha Road. On the first floor, there is no similar application. On the ground floor, there are four similar applications for commercial uses, where two applications were approved by the Committee in the past 10 years, and the other two were approved by the Committee in 1992 with permanent approval granted (**Plan A-2 and Appendix III**).

6.2 The following applications are still valid and should be counted towards the maximum permissible limit of 460m<sup>2</sup> 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 <sup>2</sup> )	Date of Consideration
<i>Ground Floor</i>					
1.	A/ST/208	3D	Metal/Hardware Shop	101	24.7.1992
2.	A/ST/213	3B	Retail Shop Selling Electrical Accessories, Stationery and Packaging Materials	149	4.9.1992
3.	A/ST/960	3A1 (Part)	Shop and Services (Real Estate Agency)	15	21.9.2018
<b>Total:</b>				<b>265m<sup>2</sup></b>	

6.3 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. 40m<sup>2</sup>) be included, the aggregate commercial floor area will be 305m<sup>2</sup>, which is within the maximum permissible limit of 460m<sup>2</sup>.

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

7.1 The Premises is:

- (a) located on the ground floor of Fo Tan 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 Au Pui Wan Street, Tsung Tau Ha Road and Kwei Tei Street. Car parking spaces are provided on the second floor of the building with vehicular access from Kwei Tei Street; and
- (b) currently occupied by the following uses on various floors:

Floor	Current Uses
G/F (Plan A-3a)	<b>Application premises</b> , godowns, canteen, crystal shop <sup>#</sup> , real estate agencies <sup>~</sup> , electrical accessories shop, advertising engineering workshop, metal hardware shop, mechanical engineering workshop, air condition and decoration engineering workshop, recycling centre, interior design companies <sup>#</sup> , florist <sup>#</sup> , restaurant*, locked and vacant premises
1/F (Plan A-3b)	Offices, godowns and locked premises
2/F	Car park
3/F-18/F	Offices, godowns, workshops, locked and vacant premises

<sup>#</sup> There is no record of planning approval granted for such use.

<sup>~</sup> There is no record of planning approval granted for one real estate agency.

\* Such use is not allowed in an industrial building.

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 500m from the subject industrial building; and
- (c) a centrally located commercial centre (Shatin Galleria) is about 130m 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/Shu Tin, Lands Department (DLO/ST, LandsD):

- (a) the Premises is situated on Sha Tin Town Lot No. 170 which is governed by New Grant No. 11640 (“the New Grant”). Under the New Grant, the lot shall not be used for any purpose other than industrial or godown purpose or for showrooms and facilities for the sale of motor vehicles, accessories and spare parts or motor vehicles repair workshops or any of them excluding any petrol filling station or offensive trade;
- (b) the proposal under the application to use the Premises as ‘Shop and Services (Retail Shop)’ purpose is not permitted under the New Grant. If the 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; and
- (c) besides, during the site inspection, a movable staircase was found in front of the Premises falling on the adjoining Government land. The owner of the Premises shall remove the staircase as soon as possible to rectify the unauthorised occupation of Government land or the Government will take appropriate land control action. If any staircase or ramp is required for implementation of the present application, such staircase or ramp shall be provided within the Premises.

### **Building Matters**

9.1.2 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. 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 premises shall not be adversely affected;

- (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 the Buildings Ordinance to co-ordinate the building works, if any; and
- (c) the applicant is advised to engage an authorised person to co-ordinate the building 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 subject to:
  - (i) fire service installations and equipment being provided to the satisfaction of his department. Detailed fire safety 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 460m<sup>2</sup> 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 Building 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.

#### 9.2 The following Government departments have no objection to/ comment on the application:

- (a) Commissioner for Transport; and
- (b) District Officer/Shu Tin, Home Affairs Department.

## 10. Public Comment Received During Statutory Publication Period

On 13.9.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, a public comment was received from the Owners' Corporation of the Fo Tan Industrial Centre (the Corporation) which stated that the Corporation has no objection to the application provided that the Premises does not involve food manufacturing and eating place uses. Details of the public comment are at **Appendix IV**.

## 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. The proposed 'Shop and Services (Retail 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 metal/hardware shop, electrical accessories shop, real estate agencies and bicycle shop have been approved on the ground floor of the subject industrial building (**Plan A-2** and **Appendix III**).
- 11.3 The subject industrial building is subject to a maximum permissible limit of 460m<sup>2</sup> 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 265m<sup>2</sup>. If the floor area of the Premises (40m<sup>2</sup>) is included, the aggregate commercial floor area will be 305m<sup>2</sup>, which is within maximum permissible limit of 460m<sup>2</sup>. D of FS has no in-principle objection to the application subject to approval conditions on provision of fire safety measures.
- 11.4 The proposed 'Shop and Services (Retail 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 Regarding the public comment received, it should be noted that the current application is for proposed 'Shop and Services (Retail Shop)' use.

## 12. Planning Department's Views

12.1 Based on the assessment made in paragraph 11 above and having taken into account the public comment mentioned in paragraph 10 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 1.11.2024. The following approval conditions and advisory clauses are suggested for Members' reference:

### Approval Conditions

- (a) the submission and implementation of the fire safety measures to the satisfaction of the Director of Fire Services or of the Board before operation of the use; 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 4.9.2019
Appendix II	Previous application at the Premises
Appendix III	Similar applications for 'Shop and Services' use at G/F of Fo Tan Industrial Centre
Appendix IV	Public Comment
Appendix V	Recommended advisory clauses
Drawing A-1	Floor Plan



Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a and A-3b	Floor Plans
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2019**