

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/978

<u>Applicant</u>	:	All Land International Enterprises Limited
<u>Premises</u>	:	Unit B2 (Portion), G/F, Block 2, Kin Ho Industrial Building, 14-24 Au Pui Wan Street, Fo Tan, Sha Tin, N.T.
<u>Floor Area</u>	:	48m ² (about)
<u>Lease</u>	:	(a) STTL 65 and 66 (New Grant Nos. 11268 and 11269 respectively) (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 (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 48m², is located on the ground floor of Kin Ho Industrial Building abutting Au Pui Wan Street. The subject fast food shop is currently operating without valid planning permission.
- 1.3 In support of the application, the applicant submitted the application form on 16.10.2019 (**Appendix I**). The floor and layout plans of the Premises submitted by the applicant are shown in **Drawings A-1 and A-2**.

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 and attachment at **Appendix I**. They can be summarised as follows:

- (a) the fast food shop is located on ground floor fronting Au Pui Wan Street. There are parking and loading/unloading facilities in the subject industrial building. The fast food shop will not generate any environmental and traffic impact to the surroundings; and
- (b) the fast food shop is for selling take away food to nearby offices and workers in Fo Tan area during office hours. There is no eat-in service and the food is for consumption off the Premises. The opening hours are from Mondays to Saturdays 6:00am to 7:00pm.

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 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 the subject of a previous application No. A/ST/225 for building materials shop use which was approved by the Committee in 1992 on the consideration that the proposed developments were not incompatible with the industrial/industrial-related uses in the surroundings; and the relevant departments had no adverse comment. The planning permission granted under application No. A/ST/225 has lapsed as the applied use had ceased operation (**Plan A-2** and **Appendix II**).

6. Similar Applications

6.1 The ground floor of Blocks 1 and 2 of Kin Ho Industrial Building, where commercial floor spaces are found, abuts Au Pui Wan Street, Min Fong Street Shek Lau Tung Street and Tsung Tau Ha Road respectively. On the ground floor, there are 17 similar applications for commercial uses approved by the Committee in the past 10 years (**Plan A-2** and **Appendix III**).

6.2 The following two 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
A/ST/949	Block 2 B1 (Portion)	Proposed Shop and Services (Retail Shop)	51	18.5.2018
A/ST/951	Block 1 C5 (Portion)	Renewal of Planning Approval for Temporary 'Shop and Services (Real Estate Agency and Retail Shop)' for a Period of 3 Years	33	18.5.2018
Total:			84m²	

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:

- (a) located on the ground floor of Block 2 of Kin Ho Industrial Building; and
- (b) with direct access to Au Pui Wan Street.

7.2 The subject industrial building is:

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

Floor	Current Uses
G/F (Plan A-3)	Application premises , restaurants [#] , godowns, loading/unloading areas, fast food shops ^{~^} , real estate agency, retail shops ^{*@} , canteen, locked and vacant premises
1/F to 3/F	Carpark, godowns and locked premises
4/F to 17/F	Godowns, workshops, offices, canteen and locked premises

[#] Such use is not allowed in an industrial building.

[~] The planning approval for such use was revoked for one fast food shop.

^{*} The planning approval for one retail shop has expired.

[@] There is no record of planning approval granted for one retail shop.

[^] There is no record of planning approval granted for four fast food shops.

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 150m 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/Shu Tin, Lands Department (DLO/ST, LandsD):

- (a) the Premises is situated on Sha Tin Town Lot Nos. 65 and 66 and are governed under New Grant No. 11268 and 11269 (collectively '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; and
- (b) the proposal under the application to use the Premises as 'Shop and Services (Fast Food Shop)' purpose is not permitted under the New Grants. If the application is approved by the Board, 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, the payment of waiver fee and administrative fee as may be imposed by LandsD.

Building Matters

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

he has no objection in-principle to the application provided that:

- (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. Building safety requirements will be formulated upon receipt of food premises licence application, where appropriate and the means of escape 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 Buildings Ordinance/ Building (Minor Works) Regulation. The applicant should engage a registered building professional under Buildings Ordinance to co-ordinate the buildings works, if any; and
- (d) the applicant is also 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 provided that:
 - (i) fire service installations and equipment being provided to the satisfaction of Fire Service 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 the maximum permissible aggregate commercial floor area on G/F is 460m² in accordance with TPB PG-No.25D. The applied use should not be counted up to the aggregate commercial floor area if the proposed use is akin to a fast food counter;
- (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) Director of Food and Environmental Hygiene;
- (b) Commissioner for Transport; and
- (c) District Officer/Shia Tin, Home Affairs Department.

10. Public Comment Received During Statutory Publication Period

On 16.10.2019, 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 real estate agency and retail shop 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 safety measures.
- 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 13.12.2024. 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 13.6.2020; 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 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 16.10.2019
Appendix II	Previous application at the Premises
Appendix III	Similar applications for 'Shop and Services' use at ground floor of Blocks 1 and 2 of Kin Ho Industrial Building
Appendix IV	Recommended advisory clauses
Drawing A-1	Floor Plan
Drawing A-2	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