

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/983

<u>Applicant</u>	:	The Dairy Farm Company Limited represented by Centaline Surveyors Limited
<u>Premises</u>	:	Workshop G2, LG/F, Valiant Industrial Centre, Nos. 2-12 Au Pui Wan Street, Fo Tan, Sha Tin, N.T.
<u>Floor Area</u>	:	51.45m ² (about)
<u>Lease</u>	:	(a) STTL Nos. 62, 63 and 64 (New Grant Nos. 11288, 11289 and 11291) (b) to be expired on 30.6.2047 (c) restricted to industrial and/or godown purposes, excluding offensive trades
<u>Plan</u>	:	Approved Sha Tin Outline Zoning Plan (OZP) No. S/ST/34
<u>Zoning</u>	:	“Industrial” (“I”)
<u>Application</u>	:	Renewal of Planning Approval for Temporary Shop and Services for a Period of Three Years

1. The Proposal

- 1.1 On 19.3.2020, the applicant sought renewal of the planning approval under application No. A/ST/919 for temporary ‘Shop and Services’ use for a period of three years at the application premises (the Premises) (**Plan A-1**) 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 is the subject of three previous applications Nos. A/ST/713, A/ST/846 and A/ST/919 submitted by the same applicant for the same use. The last application was approved by the Rural and New Town Planning Committee (the Committee) of the Board with conditions on 28.4.2017 on a temporary basis for a period of three years up to 13.6.2020. The applicant has complied with all the approval conditions.
- 1.3 The Premises, with a floor area of about 51.45m², is located on the lower ground floor of Valiant Industrial Centre abutting Au Pui Wan Street and Wo Liu Hang Road. The floor plan and layout plan of the Premises submitted by the applicant

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

are shown in **Drawings A-1 and A-2**. There is no change in the development scheme compared with the last approved application No. A/ST/919.

- 1.4 In support of the application, the applicant has submitted the application form and attachments (**Appendix I**).

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 attachments at **Appendix I**. They can be summarized as follows:

- (a) the Premises falls within the “I” zone of the approved Sha Tin OZP No. S/ST/34. According to the Notes of the OZP, ‘Shop and Services’ is under Column 2 use and in line with the planning intention of the “I” zone. Planning permission was granted for such use and the applicant proposes to continue running the business in future;
- (b) due to the change in economic environment, the demand for industrial floor spaces is declining. As there are only a small number of shops scattered in the surrounding area and a high occupancy rate is observed at the ground floor shops in the vicinity, it is considered that the demand for retail shops in the locality is relatively high. In view of this, the changing of the Premises into general retail use is considered a more viable option, which allows maximum flexibility in using an existing industrial building and provides employment opportunities;
- (c) the locality is predominantly occupied by industrial buildings. Most ground floor portion of the buildings in the locality has been used for general retail purpose, especially fast food shop. Therefore, the current retail use is considered in line with the surrounding uses;
- (d) the current use is targeted to provide retail services to the people from the buildings in the vicinity. Thus, it is not expected to attract many customers from other districts. There is no traffic pressure to the area and the impact is minimal;
- (e) the Premises has direct access to the corner of Au Pui Wan Street and Wo Liu Hang Road. There are sufficient lightings along all exit routes. Sufficient means of escape have been provided in terms of fire safety; and
- (f) there are similar planning applications for shop and services uses (including money exchange, real estate agency and retail shop) approved in the vicinity in recent years.

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 consent. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

4.1 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.

4.2 The 'Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development' (TPB PG-No. 34C) is relevant to this application. The relevant assessment criteria are summarized as follows:

- (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
- (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);

- (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
- (d) whether the approval period sought is reasonable; and
- (e) any other relevant considerations.

Under normal circumstances, the approval period for renewal should not be longer than the original validity period of the temporary approval. In general, the Board is unlikely to grant an approval period exceeding three years unless there are strong justifications and the period is allowed for under the relevant statutory plans. Depending on the circumstances of each case, the Board could determine the appropriate approval period, which may be shorter than the time under request.

5. Previous Applications

- 5.1 Part of the Premises is the subject of an application (No. A/ST/695) (**Plan A-2 and Appendix II**) submitted by the same applicant for 'Shop and Services' use. It was approved by the Committee on 5.3.2010 on a temporary basis for three years. The planning permission was revoked on 5.9.2010 as the approval condition (a) on submission of fire safety measures had not been complied with.
- 5.2 The Premises is also the subject of three applications (Nos. A/ST/713, A/ST/846 and A/ST/919) (**Plan A-2 and Appendix II**) submitted by the same applicant for the same use. The applications were approved with conditions by the Committee between 2010 and 2017 on similar considerations that the proposed use was not incompatible with the industrial-related uses in the vicinity and generally in compliance with TPB PG-No. 25D. The last application No. A/ST/919 was approved with conditions by the Committee on a temporary basis for a period of three years up to 13.6.2020 and the approval conditions on fire safety measures has been complied with.

6. Similar Applications

- 6.1 Valiant Industrial Centre is located on a sloping ground. The lower ground floor and ground floor of the building, where commercial floor spaces are found, are abutting Au Pui Wan Street, Wo Liu Hang Road and Min Fong Street respectively. There are 34 similar planning applications for commercial uses on the lower ground and ground floors of Valiant Industrial Centre in the past ten years, where 32 were approved and two were rejected by the Committee between 2010 and 2019 (**Plan A-2 and Appendix III**). The following application is still valid and should be counted towards the maximum permissible limit of 460m² for aggregate commercial floor area on the lower ground and ground floors 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/970	B1-C	Shop and Services (Money Exchange)	25.732	3.5.2019	Approved with conditions on a temporary basis of 5 years
Total :			25.732m²		

6.2 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. 51.45m²) be included, the aggregated commercial floor area will be 77.182m², which is within the maximum permissible limit of 460m².

7. The Premises and Its Surrounding Areas (Plans A-1 to A-4c)

7.1 The Premises is:

- (a) located on LG/F of Valiant Industrial Centre in Fo Tan Industrial Area;
- (b) currently used as a convenience store; and
- (c) with direct access to Au Pui Wan Street and Wo Liu Hang Road.

7.2 The subject industrial building is:

- (a) a 14-storey industrial building bounded by Au Pui Wan Street, Min Fong Street and Wo Liu Hang Road. Car parking spaces are provided on ground and lower ground floors of the building with vehicular access from Min Fong Street; and
- (b) currently occupied by the following uses on various floors:

Floor	Current Uses
LG/F (Plans A-3a and A-3b)	Application premises , car park, photocopy shop, godowns, vehicle repair workshops, real estate agencies+~, restaurants#, fast food shops*, canteens, money exchanges@, offices, pet supplies store#, florist#, locked and vacant premises
G/F (Plan A-3c)	Car park, real estate agency^, pet supplies store#, laundry, locked and vacant premises
1/F to 12/F	Offices, godowns, workshops, showroom#, locked and vacant premises

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

* The planning approval for such use has expired for three fast food shops.

+ The planning approval for such use has expired for one real estate agency.

~ There is no record of planning approval granted for one real estate agency.

@ There is no record of planning approval granted for one money exchange.

^ The planning approval for such use has expired.

- 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 300m from the subject industrial building; and
 - (c) a centrally located commercial centre (Shatin Galleria) is about 300m 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/Shatin, Lands Department (DLO/ST, LandsD):

the Premises is situated on the LG/F Floor of Valiant Industrial Centre erected on Sha Tin Town Lot Nos. 62, 63 and 64 and are governed under New Grant Nos. 11288, 11289 and 11291 (“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. A temporary waiver was granted by LandsD to the existing owner of the Premises to allow the use of Premises with area of 51.45m² for ‘Shop and Services’ purpose with a fixed term of 2 years and 6 months and thereafter quarterly commencing from 29.3.2012. Thus, he has no adverse view on the application.

Building Matters

- 9.1.2 Comments of the Chief Building Surveyor/New Territories West Section, 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 workshop shall not be adversely affected; 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 the Buildings Ordinance 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. However, since the FSI certificate has expired, the following condition should be imposed if the Board approves the application:
 - fire service installations and equipment being provided to the satisfaction of Fire Services Department. Detailed fire services requirements will be formulated upon receipt of formal submission of general building plans
- (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 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 27.3.2020, the application was published for public inspection. During the statutory public inspection period, one comment was received. The Sha Tin West One Area Committee has no comment on the application.

11. Planning Considerations and Assessments

- 11.1 The Premises is located on the lower ground floor of an existing industrial building with direct access to Au Pui Wan Street and Wo Liu Hang Road. This is a renewal application to continue the existing shop and services use at the Premises, which was approved with conditions on a temporary basis for three years until 13.6.2020 under application No. A/ST/919. The applicant has complied with all the approval conditions, i.e. on the submission and implementation of fire safety measures to the satisfaction of D of FS.
- 11.2 The current application is the same as the previously approved application in terms of use and area of the Premises and there has been no material change in planning circumstances since the previous temporary approval was granted. There is no adverse planning implication arising from the renewal of the planning approval. The approval period of three years sought is also not longer than the original validity period of the temporary approval, which is considered reasonable to allow the Committee to monitor the supply and demand of industrial floor space in the area. As such, the proposed renewal application complies with the TPB PG-No.34C for renewal of planning approval.
- 11.3 The ‘Shop and Services’ use under application is considered not incompatible with the industrial and industrial-related uses in the subject industrial building and the surrounding developments. Similar applications for ‘Shop and Services’ use have previously been approved for other units on the lower ground and ground floor of the subject industrial building (**Plan A-2**).
- 11.4 The ‘Shop and Services’ use under application generally complies with the relevant considerations set out in the TPB PG-No. 25D including the fire safety and traffic aspects. D of FS has no in principle objection to the application subject to approval conditions on provision of fire service installations. Relevant Government departments including BD and TD have no objection to or adverse comment on the application.
- 11.5 No adverse public comment has been 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 three 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 further period of three years from 14.6.2020 to 13.6.2023. The following condition of approval and advisory clauses are also suggested for Members’ reference:

Approval Condition

- (a) the submission and implementation of the proposal for provision of fire service installations and equipment within 6 months from the date of commencement of the renewed planning approval to the satisfaction of the

Director of Fire Services or of the Town Planning Board by 14.12.2020;
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 for renewal of the planning 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 19.3.2020
Appendix II	Previous applications at the Premises
Appendix III	Similar applications for shop and services at G/F and LG/F of Valiant Industrial Centre
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
Plans A-3a to A-3c	Floor Plans
Plan A-4a to A-4b	Site Photos