

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/986

<u>Applicant</u>	: Mr. Tsang Yun Ping (曾潤平)
<u>Premises</u>	: Workshop 10 (Part), Level L1, Wah Yiu Industrial Centre, 30-32 Au Pui Wan Street, Fo Tan, Sha Tin, N.T.
<u>Floor Area</u>	: About 20m ²
<u>Lease</u>	: (a) STTL No. 142 (New Grant No. 11611) (b) to be expired on 30.6.2047 (c) restricted to industrial and/or godown purposes or both
<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 20m², is located on the ground floor (i.e. Level L1) of Wah Yiu Industrial Centre abutting Au Pui Wan Street. It is the subject of a previous application (No. A/ST/932) submitted by the same applicant for the same use approved by the Rural and New Town Planning Committee (the Committee) with conditions on 22.9.2017. The planning permission was revoked on 22.3.2018 due to non-compliance of approval condition on the submission and implementation of the fire service installations. 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 with attachments on 11.5.2020 (**Appendix I**). The location plan and layout plan 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 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 the ground floor fronting Au Pui Wan Street with a valid food factory licence issued by Food and Environmental Hygiene Department;
- (b) the food is for consumption off the Premises which would not attract large number of persons to stay; and
- (c) the approval condition in the previous approval was not complied with due to miscommunication. Relevant documents in relation to the fire services installations have been submitted to support the application.

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 five previous applications (Nos. A/ST/214, A/ST/606 and A/ST/682, A/ST/702 and A/ST/932) (**Plan A-2 and Appendix II**). Application No. A/ST/214 for 'Restaurant' use was rejected by the Board upon review in 1993 mainly on the grounds of insufficient justifications for sacrificing the industrial ground floor space, exposure to fire and life risks, and setting an undesirable precedent for similar applications.
- 5.2 Application No. A/ST/606 for 'Retail Shop (Roasted Meat Shop)' use was approved with condition by the Committee in 2004 and the planning permission has lapsed as the applied use no longer exists. The other three Application Nos. A/ST/682, A/ST/702 and A/ST/932 for 'Shop and Services (Fast Food Shop)' were approved by the Committee between 2009 and 2017 with conditions on a temporary basis for a period of three years. The last application No. A/ST/932 submitted by the same applicant was approved on the considerations that the applied use was not incompatible with the industrial/industrial-related uses in the surroundings and complied with TPB PG-No. 25D. It was subsequently revoked due to non-compliance of approval condition on the submission and implementation of the fire service installations.

6. Similar Applications

- 6.1 Wah Yiu Industrial Centre is located on a sloping ground. The ground floor (i.e. Levels L1 and L2) of the building, where commercial floor spaces are found, are abutting Au Pui Wan Street, Sui Wo Road and Kwai Tei Street respectively. On the Level L1 of Wah Yiu Industrial Centre, there are eight similar applications for commercial uses, where seven applications were approved by the Committee in the past 10 years, and one was approved by the Committee in 2004 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 460m² 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 ²)	Date of Consideration
<i>Level L1</i>					
1	A/ST/588	9B	Wholesale Centre (Stationery)	25	9.1.2004
2	A/ST/953	6C	Shop and Services (Real Estate Agency)	8.42	1.6.2018
3	A/ST/973	7C	Shop and Services (Retail Shop and Fast Food Shop)	13.26	20.9.2019
Total:				46.68m²	

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 street level (Level L1) of Wah Yiu 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) 18 storeys in height bounded by Au Pui Wan Street, Sui Wo Road and Kwei Tei Street. Car parking and loading/unloading spaces are provided on Level L3 of the building with vehicular access from Kwei Tei Street; and
- (b) currently occupied by the following uses on various floors:

Floor	Current Uses
L1/F (Plans A-3a)	Application premises, workshop, canteens, wholesale centre (stationery), glass workshop, retail shops [^] , pharmacy [#] , money exchange [#] , fast food shops [@] , herbal tea shop [#] , real estate agency, vehicle repair workshop, pneumatics machinery wholesale [~] , locked and vacant premises
L2/F (Plans A-3a)	Godowns, vehicle repair workshop, vacant and locked premises
L3/F	Car park and loading/unloading
1/F to 15/F	Offices, godowns, workshops, vacant and locked premises

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

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

@ There is no record of planning approval granted for one fast food shop.
~ 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 600m from the subject industrial building; and
- (c) a centrally located commercial centre (Shatin Galleria) is about 200m 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):

- (a) the Premises is situated on Level 1 of Wah Yiu Industrial Centre erected on Sha Tin Town Lot No. 142 and is governed under New Grant No. 11611 (“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. A temporary waiver was granted by his office to the existing owner of the Premises to allow the use of Premises with an area of about 19.06m² for fast food shop purpose with a fixed term of 2 years and thereafter quarterly commencing from 1.12.2009 whereas the total floor area as specified in the current application is about 20m²; and
- (b) if the Board approves the current application, the term of the waiver may be revised or a new waiver application would be required.

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. 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) 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 also advised to engage an authorized 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) the fast food shop shall be sited at street level only and licensed as 'food factory';
 - (ii) fire service installations are provided to the satisfaction of his department. Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans or referral from licensing authority;
- (b) the subject proposal licensed and operated as a 'general restaurant' or 'light refreshment restaurant' will not be accepted;
- (c) the building is protected by a sprinkler system. The use of fast food shop does not count towards the maximum permissible commercial floor area of 460m²; and
- (d) regarding matters related to fire resisting construction of the Premises, the applicant is advised to comply with the "Code of Practice for Fire Safety in Buildings" which is administered by the Building Authority.

Food Licensing

9.1.4 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) the operation of the fast food shop should not cause sanitary nuisance to its surrounding environment;
- (b) the management(s), owner(s), operator(s) of the fast food shop should properly remove / arrange to remove and dispose of the waste / refuse including waste water generated from the operation of the fast food shop at their own expenses; and
- (c) the activities in the fast food shop and removal of waste / refuse should not cause any environmental nuisance to the surroundings.

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

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

10. Public Comment Received During Statutory Publication Period

On 19.5.2020, 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 (Level L1) of an existing industrial building with direct access to Au Pui Wan Street. 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 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 in principle to the application subject to approval conditions on provision of fire service installations and that the fast food shop is sited at street level only and licensed as food factory.

- 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 The previous application (No. A/ST/932) submitted by the same applicant for the same use was revoked on 22.3.2018 due to non-compliance with approval condition on fire service installations. In this connection, the applicant has submitted relevant documents in relation to the fire services installations to support the application. Shorter compliance period is proposed to monitor the progress of submission and implementation of fire service installations should the Committee decide to approve the application. Moreover, the applicant should be advised that should he fail to comply with the approval condition again resulting in the revocation of the planning permission, sympathetic consideration will not be given to any further application. There is no change in planning circumstances since the approval of the previous application.
- 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 10.7.2025. 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 3 months from the date of the approval to the satisfaction of the Director of Fire Services or of the Board by 10.10.2020;
- (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 applicants.

14. Attachments

Appendix I	Application form received on 11.5.2020
Appendix II	Previous applications at the Premises
Appendix III	Similar applications for 'Shop and Services' use at Level L1 of Wah Yiu Industrial Centre
Appendix IV	Recommended advisory clauses
Drawing A-1	Location Plan
Drawing A-2	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a to A-3b	Floor Plans
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JULY 2020**