

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/987

<u>Applicant</u>	:	Sunday Limited
<u>Premises</u>	:	Workshop G3 (Portion), LG/F, Valiant Industrial Centre, Nos. 2-12 Au Pui Wan Street, Fo Tan, Sha Tin, N.T.
<u>Floor Area</u>	:	8.39m 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>	:	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 8.39m², is located on the lower ground floor of Valiant Industrial Centre abutting Au Pui Wan Street and Wo Liu Hang Road. It is part of the subject of a previous application No. A/ST/741 submitted by the same applicant for ‘Shop and Services (Retail Shop)’ use approved by the Rural and New Town Planning Committee (the Committee) of the Board on a temporary basis for three years with conditions on 15.4.2011. The planning permission eventually lapsed. The subject fast food shop under application is currently operating without valid planning permission.
- 1.3 In support of the application, the applicant submitted the application form with attachments on 20.8.2020 (**Appendix I**). The floor 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 within 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 attachments at **Appendix I**. They can be summarized as follows:

- (a) the subject fast food shop is providing takeaway meals to nearby workers during office hours only without any dine-in services;
- (b) the operator has rented a unit in the same building for goods storage with raw materials of the food and drinks manufactured in Fo Tan. It helps minimise additional traffic load for transportation; and
- (c) Valiant Industrial Centre has loading and unloading parking bays to accommodate the operation of the subject fast food shop and hence there is no traffic and environmental implications.

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**

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.

5. Previous Applications

The Premises is part of the subject of two previous applications (Nos. A/ST/741 submitted by the same applicant and A/ST/834 submitted by a different applicant) (**Plan A-2** and **Appendix II**) for 'Shop and Services (Retail Shop)' use. They were approved with conditions by the Committee on 15.4.2011 and 17.1.2014 on a temporary basis for three years valid until 15.4.2014 and 17.1.2017 respectively. Both planning permissions have lapsed.

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 33 similar planning applications for commercial uses on the lower ground and ground floors of Valiant Industrial Centre in the past ten years, where 31 were approved and two were rejected by the Committee between 2010 and 2020 (**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:

No.	Application No.	Application Premises	Applied Use	Floor Area (About) (m ²)	Date of Consideration
<i>Lower Ground Floor</i>					
1	A/ST/970	B1-C	Shop and Services (Money Exchange)	25.732	3.5.2019
2	A/ST/983	G2	Shop and Services	51.45	15.5.2020
Total :				77.182m²	

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-4b)

7.1 The Premises is:

- (a) located on LG/F of Valiant Industrial Centre in Fo Tan Industrial Area;
- (b) part of the premises of a licensed factory canteen which does not require planning permission from the Board;
- (c) currently used as a fast food shop; and
- (d) 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, convenient store, 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/Shia Tin, Lands Department (DLO/ST, LandsD):

- (a) the Premises is situated on the Lower Ground 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; and
- (b) the current proposal to use the subject Premises as ‘Shop and Services (Fast Food Shop)’ is not permitted under the New Grants. If the current application is approved by the Board, owner of the Premises is required to apply for a waiver from LandsD to implement this proposal. 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.

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;
- (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 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) 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; 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 and LG/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 it 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 Buildings Department; 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.

Food Licensing

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

- (a) the applicant should obtain a suitable food business licence from DFEH if the subject fast food shop is proposed to serve members of the public;
- (b) the operation of the subject fast food shop should not cause sanitary nuisance to its surrounding environment;
- (c) the management(s), owner(s), operator(s) of the subject fast food shop should properly remove / arrange to remove and dispose of the waste / refuse including waste water generated from its operation at their own expenses; and
- (d) the activities of the subject 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 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 4.9.2020, the application was published for public inspection. During the statutory public inspection period, one comment was received from the general public objecting to the application on the grounds of environmental nuisance caused by the operation of the subject fast food shop. 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 lower ground floor of an existing industrial building with direct access to Au Pui Wan Street and Wo Liu Hang Road. 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 / lower ground floor of the subject industrial building (**Plan A2** 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 / lower ground floor. 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 condition on the provision of fire services installations and equipments.
- 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, traffic and environmental aspects. Relevant Government departments including FSD, BD, TD and FEHD have no objection to or adverse comment on the application.
- 11.5 The subject Premises is part of the subject of two previous applications (Nos. A/ST/741 and 834) for ‘Shop and Services (Retail Shop)’ use approved by the Committee on a temporary basis for a period of three years on 15.4.2011 and 17.1.2014 respectively. Both planning permissions have lapsed. There is no change in planning circumstances since the approval of the previous applications.
- 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 Regarding the public comment received objecting to the application on the grounds of environmental nuisance caused by the operation of the subject fast food shop, the comments from DFEH and planning assessment above are relevant.

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 9.10.2025. 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 6 months from the date of approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 9.4.2021; 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 20.8.2020

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	Public Comment
Appendix V	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
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2020**