

FURTHER CONSIDERATION OF APPLICATION NO. A/H15/277
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

Massage Establishment
Room 1-2, 7/F, Goodview Centre, 12 Wu Pak Street, Aberdeen

1. Background

1.1 On 11.10.2018, the applicant sought planning permission for 'Massage Establishment' use at the entire 7/F floor of the existing 23-storey commercial/office building, namely Goodview Centre, at 12 Wu Pak Street, Aberdeen (the Premises) (**Plans FA-1 to FA-3**). The Premises falls within an area zoned "Residential (Group A)2" ("R(A)2") on the approved Aberdeen & Ap Lei Chau Outline Zoning Plan (OZP) No. S/H15/33. According to the Notes of the OZP for the "R(A)2" zone, 'Massage Establishment' use is under Column 2 which requires planning permission from the Town Planning Board (the Board). According to the application, the Premises has a total floor area of 71m² with 8 partitioned massage rooms and 2 toilets (**Drawing A-1 in F-Appendix Ia**). The Premises was under renovation at the time of application (**Plans A-4 to A-5 in F-Appendix Ia**).

1.2 On 7.12.2018, the Metro Planning Committee (the Committee) of the Board considered the captioned application. Members raised the following concerns regarding the application:

Compatibility

- (a) there were insufficient information on the operation detail of the applied use, schools and religious institutions in the subject building;
- (b) concerned about the application in term of its compatibility with other non-domestic uses in the same building;

Licensing Requirement

- (c) possible use of advertisement signage/LED light on the window might cause nuisance to the surrounding residents; and
- (d) whether there was authority to monitor the operation of the applied use upon approval.

After deliberation, the Committee decided to defer a decision on the application, pending submission of Further Information (FI) by the applicant and the Planning Department (PlanD) on (i) the operation details of the proposed use; (ii) operation details of other non-domestic uses in the same building; (iii) background of the applicant and (iv) detailed licensing requirements. A copy of the MPC Paper No. A/H15/277 and the extract of minutes of the Committee's meeting are provided at **F-Appendices Ia and Ib** respectively.

2. Further Information Submitted by the Applicant

- 2.1 On 27.2.2019, the applicant submitted FI (**F-Appendix II**) (*exempted from publication and recounting requirements*) in response to the Committee's concerns as raised at the meeting, which can be summarised as follows:
- (a) The applicant is the tenant of the Premises and the current owner of the massage establishment. The massage establishment is an independent business operation which has been in operation at the Premises for over 10 years without the need for a Massage Establishment Licence. There are about 6-7 people employed as staff of the massage establishment. According to the applicant, the massage establishment under application mainly serves residents in the neighbourhood including young adults and elderly. No flickering LED light boards will be installed outside the Premises or window.
 - (b) Renovation works for the Premises had been completed and the business has been in operation for 2 months (**Plan FA-4**). One of the partitioned rooms is for staff lounge and the remaining rooms are for massage, pain therapy, lymphatic massage and breast treatment. The door of each room is installed with a 10-inch window with blinds (**Plan FA-5**). The blinds could be rolled up to provide unobstructed view for other staff outside the room, if the staff intends to serve clientele of opposite sex.
 - (c) Fire services installations have been completed. Each massage room, toilets, corridor and the lobby are equipped with fireman's switches such as light boxes, fire sprinkler and exit signage. A fire certificate has been issued.
 - (d) 2 roll-up banners are placed at the entrance of the Premises (**Plan FA-4**) and one poster (40cm x 40cm) is affixed to a wall on G/F.

3. Supplementary Information

- 3.1 On 11.12.2018 and 7.3.2019, PlanD conducted floor surveys in the building to obtain details of operation. The findings of the surveys are summarised as follows:
- (a) The current business at the Premises, which occupies the entire 7/F floor, provides foot massage and facial services (Fung Foot City) but not body massage services. There is no other uses on the same floor.
 - (b) The Premises is located within a commercial/office building occupied by a mix of commercial uses including educational and religious institution uses (predominant), office and clinics. The majority of educational institutions in the building provide tutorial and language classes as well as interest courses for primary and secondary school students aged 6-12 and 12-19 respectively. Classes would be mainly conducted during evening and night time from Mondays to Fridays as well as whole day during weekends with a group size ranging from 1 to 10 students per class.
 - (c) The religious institutions at 14/F and 21/F are mainly supporting office and premises designated as an ad-hoc activity room and place for monthly

fellowship gathering. No church services would be held at those premises. Most religious institutions are not the registered owners of the premises.

- (d) No educational nor religious institution shares the same floor with the massage establishment under application. Details of the current uses of the subject building by floors are illustrated as follows:

| Floor | Current Uses | Potential Students (Tutorial School) |
|--------------|--|---|
| G/F | Lobby | N/A |
| | Eating Places | N/A |
| | Clinic | N/A |
| 1/F | Office | N/A |
| 2/F | Clinic | N/A |
| | Tutorial School | Primary and Secondary |
| 3/F | Clinic | N/A |
| | Language School | Primary and Secondary |
| 4/F | Locked Unit, Clinic | N/A |
| 5/F | Clinic | N/A |
| | Tutorial School | Primary and Secondary |
| 6/F | Tutorial School | Primary and Secondary |
| 7/F | Massage Establishment (the Premises) | N/A |
| 8/F | Beauty Parlour | N/A |
| 9/F | Locked Unit | N/A |
| | Language/ Arts School | Primary and Secondary |
| 10/F | Dance School | Kindergarten, Primary and Secondary |
| 11/F | Tutorial School | Secondary |
| | Vacant Unit | N/A |
| 12/F | Locked Unit | N/A |
| | Shop and Services/Workshop | N/A |
| 13/F | Clinic | N/A |
| | Locked Unit | N/A |
| 14/F | Religious Institution | N/A |
| | Religious Institution | N/A |
| 15/F | Language & Tutorial School | Primary and Secondary |
| | Vacant Unit | N/A |
| 16/F | Office | N/A |
| | Physiotherapy Clinic | N/A |
| 17/F | Language School | Primary and Secondary |
| | Tutorial School | Primary and Secondary |
| 18/F | Vacant Units | N/A |
| 19/F | Locked Unit, Vacant Unit | N/A |
| 20/F | Shop and Services | N/A |
| | Office | N/A |
| 21/F | Religious Institution | N/A |
| | Locked Unit | N/A |
| 22/F | Shop and Services | N/A |
| | Tutorial School | Primary and Secondary |

4. Comments from Relevant Government Departments

4.1 The following government departments have been consulted and their views on the applicant's FI and the findings of PlanD are summarized as follows:

Licensing

4.1.1 Comments of the Commissioner of Police (C of P):

- (a) no comment on the application;
- (b) his officers were deployed to conduct the premises licence check on 22.2.2019. During the inspection, the licensee (the applicant) produced a valid Business Registration Certificate for inspection. The business nature is to provide foot massage and facial to customers currently which is not subject to the licence conditions under Massage Establishment Ordinance, Cap. 266. The Premises was checked with neither irregularities nor offence observed;
- (c) upon the previous inspection, only poster affixed inside the notice board was observed. No advertisement signage which will cause possible nuisance was observed. The Premises was situated at the 7/F with 6 rooms and one lobby. Each room has one transparent and colourless window but unfulfilled the requirement of item 6 of the conditions of licence in Massage Establishment Ordinance, Cap. 266. The operation hour is between 11:00 a.m. and 11:00 p.m. everyday;
- (d) in any event the application is approved, the Premises will be subjected to the conditions listed under Massage Establishment Ordinance, Cap. 266. List of the conditions are provided at **F-Appendix III**; and
- (e) according to his record, no crime report record or adverse finding related to the Premises were observed in the past 12 months.

Fire Safety

4.1.2 Comments of the Director of Fire Services (D of FS):

- (a) he has no objection in principle to the massage establishment subject to fire service installations being provided to his satisfaction;
- (b) detailed Fire Services requirements will be formulated upon receipt of formal submission of general building plans or referral from the licensing authority;
- (c) no valid fire certificate FS251 for the Massage Establishment has been received by his Department for counterchecking; and
- (d) no record of FSI submission regarding the operation of the subject Massage Establishment at the Premises was located.

Building Matters

4.1.3 Comments of the Chief Building Surveyor/ Hong Kong West, Buildings Department (CBS/HKW, BD):

- (a) the permitted use of the Premises is “office for non-domestic use” under Occupation Permit (OP) No. H96/96; and
- (b) the proposed layout in the application does not tally with the latest approved plan from his record. Detailed comments on the proposal could only be made at formal building plans submission stage.

District Officer’s View

4.1.4 Comments of the District Officer (Southern), Home Affairs Department (DO(S), HAD):

He understands that some objections to the proposal have been received. He has also learned from other sources that the Premises had once been occupied by a foot massage establishment and the police took actions against the operation of body massage business without a licence. Moreover, there are a number of education related institutes in the subject building.

5. Planning Considerations and Assessments

5.1 The planning application is for ‘Massage Establishment’ use at the Premises with a total floor area of 71m². The Premises is located at 7/F floor of an existing commercial/office building. In responses to the concerns raised by the Committee on 7.12.2018, as detailed in paragraph 1.2 above, the applicant has submitted FI to provide background and operation details of the applied use, including services to be provided, provision of fire services installations, size of windows in massage rooms and location of the posters. Meanwhile, PlanD has also conducted on-site surveys in the building to obtain operation details of non-domestic uses, in particular tutorial schools in terms of their target users and usages of the religious institutions.

Compatibility

5.2 Regarding compatibility of the applied use with other non-domestic uses in the same building, the Premises is located at the entire 7/F of the subject building and would not share the same floor with any religious or educational institutions. According to the findings of the surveys mentioned in paragraph 3.1 above, there would be overlapping of the operation hours between the massage establishment under application and other tutorial schools. However, it should be noted that the subject building is for non-domestic uses according to the Occupation Permit. All relevant government departments including CBS/HKE&W, BD and D of FS have no objection to the applied use subject to imposition of relevant approval condition on the provision of fire services installations. Hence, the applied use is considered not incompatible with other non-domestic uses within the same building.

Licensing Requirement

- 5.3 Concerning possible nuisance generated by advertisement signage/LED light on the window, as advised by the applicant, no flickering LED light boards will be installed outside the Premises or window. Only banners and poster are observed to be placed outside the Premises on 7/F. C of P has also conducted a site visit on 22.2.2019 and advises that there were neither irregularities nor offence observed.
- 5.4 Regarding the monitoring of the operation of the massage establishment upon approval, C of P advises that if the proposed massage establishment is approved, the Premises will be subject to the conditions listed under Massage Establishment Ordinance.
- 5.5 In view of the above, the application meets the assessment criteria (a), (b), (c), (e) and (f) of TPB PG-No. 14B, as set out in paragraph 4 of **F-Appendix Ia**.

6. Planning Department's Views

- 6.1 Based on the assessments made in paragraph 5 above, PlanD maintains its previous view of having no objection to the application.
- 6.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 12.4.2023, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following approval condition and advisory clauses are also suggested for Members' reference:

Approval Condition

- (a) the submission and implementation of fire services installations proposal within six months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 12.10.2019; and
- (b) if the above approval 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 immediately without further notice.

Advisory Clauses

The recommended advisory clause is attached at **F-Appendix IV**.

- 6.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (a) the proposed use is considered not compatible with other non-domestic uses in the same building and the residential neighbourhood; and
- (b) approval of the application would set an undesirable precedent for similar applications of massage establishment within "R(A)2" zone.

7. Decision Sought

- 7.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 7.2 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 date when the validity of the permission should expire.
- 7.3 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.

Attachments

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| F-Appendix Ia | MPC Paper No. A/H15/277 |
| F-Appendix Ib | Extract of the minutes of the MPC meeting held on 7.12.2018 |
| F-Appendix II | Further Information submitted by the applicant on 27.2.2019 |
| F-Appendix III | Conditions listed under Massage Establishment Ordinance, Cap 266 |
| F-Appendix IV | Advisory Clauses |
| Plan FA-1 | Location plan |
| Plan FA-2 | Site plan |
| Plans FA-3 to FA-5 | Site photos |

**PLANNING DEPARTMENT
APRIL 2019**