

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K7/114

- Applicant** : Ms. YAU Shuk Kau
- Premises** : Shops 2 & 3, G/F, 126 Waterloo Road, Kowloon
- Floor Area** : About 54.5m²
- Lease** : (a) Kowloon Inland Lot No. 2135 s.A ss.4 s.A
- (b) 75 years commencing from 3.9.1928 and renewable for a further term of 75 years
- (c) Main restrictions include:
- residential use;
 - building height not exceeding 35 feet;
 - minimum one car parking space per flat;
 - front and range clause;
 - standard “no offensive trade” clause;
 - design of the exterior elevation plans and disposition subject to special approval; and
 - non-building area of 20 feet from Prince Edward Road West.
- Plan** : Approved Ho Man Tin Outline Zoning Plan (OZP) No. S/K7/24
- Zoning** : “Residential (Group B)” (“R(B)”)
- [Maximum plot ratio (PR) of 5 and maximum building height (BH) of 80mPD, or the PR and BH of the existing building, whichever is the greater]
- Application** : School (Tutorial School)

1. The Proposal

- 1.1 The applicant seeks planning permission for a tutorial school at the application premises (the Premises), which is zoned “R(B)” on the OZP (**Plan A-1**). According

to the Notes of the OZP, 'School' not in a free-standing purpose-designed building is a Column 2 use in the "R(B)" zone and requires planning permission from the Town Planning Board (the Board/TPB). The Premises is currently used for the applied use without valid planning permission.

- 1.2 The Premises is located on the ground floor (G/F) of a 3-storey residential development at 126 Waterloo Road (**Plan A-2**). According to the submission, the tutorial school has a floor area of about 54.5m² and comprises 4 classrooms, a washroom, an ancillary office/a reception area with a maximum capacity to accommodate 22 students and 4 teachers/staff. The layout plan of the tutorial school submitted by the applicant is at **Drawing A-1**. The operation hours of the tutorial school are from 10:30am to 7:30pm from Mondays to Fridays, 9:30am to 6:30pm on Saturdays, and there is no operation on Sundays and public holidays. The entrance of the Premises on G/F abuts Waterloo Road (**Plan A-2**) and is separated from the entrance to the upper floors (**Plan A-3**). No parking space and loading/unloading facility has been proposed.
- 1.3 In support of the application, the applicant has submitted the following documents:
 - (a) Application form and supplementary plans received (**Appendix I**) by the Board on 1.3.2018
 - (b) Supplementary information submitted by the applicant on 2.3.2018 (**Appendix Ia**)
 - (c) Further information (FI) dated 29.3.2018 providing responses to comments of the Director of Environmental Protection (DEP) and Commissioner for Transport (C for T) (**Appendix Ib**)

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are provided in the application form, supplementary information and FI (**Appendices I, Ia** and **Ib**). They are summarized as follows:

- (a) the applied use, providing non-formal curriculum and tutorial/interest courses, is in line with the planning intention of "R(B)" zone of the relevant OZP. Most of the students attend school/live in the nearby area, and they would walk to/from the Premises without generating additional parking demand. Moreover, the Premises is equipped with an air conditioning system and does not rely on opened window. Hence, the applied use would not incur adverse impacts on traffic, environmental and other aspects; and
- (b) the Premises could accommodate a maximum of 22 students at the same time. The estimated total numbers of students attending courses per day during school terms on weekdays and Saturdays are 30-35 and 45-50 respectively. The application will not involve any alteration to the building.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is not the “current land owner” but has complied with the requirements as set out in the TPB 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 of concerned current land owners. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The TPB Guidelines No. 40 for “Application for Tutorial School under Section 16 of the Town Planning Ordinance” (TPB PG-No. 40) promulgated in February 2008 is relevant to this application. The relevant main assessment criteria are summarized as follows:

- (a) the proposed tutorial school should not be incompatible with other uses within the same building. In assessing the compatibility with other uses within the same building or surrounding development, consideration will normally be given only to the permitted uses within the building(s);
- (b) to avoid causing disturbance or nuisance to the local residents, tutorial school will normally not be permitted within a residential building or the domestic portion of a composite commercial/residential building unless the proposed access to the application premises will not cause disturbance or nuisance to the local residents;
- (c) the proposed access (entrance) to the tutorial school of a residential building or the domestic portion of a composite building must be separated from that of the domestic portion of the building by way of separate stairways and/or lifts/escalators exclusively serving the tutorial school so as to minimize any disturbance to the residents in the same building. Unless an applicant can come up with practical and implementable proposals to demonstrate the proposed tutorial school would not create nuisances to the residents, access to the tutorial school through the common area of the residential development is generally not supported as the amenities of the local residents will be affected. Proposed access should not affect the existing means of escape provisions of the building. Otherwise, approval of Building Authority should be obtained. For tutorial schools of a considerable scale, i.e. with 120 or more students attending classes at the same time, proper parking and loading/unloading facilities should be provided in accordance with the requirements stipulated in the Hong Kong Planning Standards and Guidelines for primary or secondary schools;
- (d) the views of the public on the proposed tutorial school will be taken into account by the Board in consideration of the application; and
- (e) the Fire Services Department (FSD) and the Buildings Department (BD) should be satisfied with the proposals to comply with the fire and building safety requirements for the proposed tutorial school.

5. Previous Application

The Premises is the subject of a previous application (No. A/K7/79) submitted by a different applicant for proposed school (tutorial centre). The application was approved with conditions by the Metro Planning Committee (the Committee) on 17.11.2006 for the reasons that the applied use was not incompatible with the other uses in subject building and surrounding areas; and significant adverse impacts to the traffic and environmental qualities of the area were not anticipated. The approved use had not commenced within the validity period and the planning permission lapsed on 17.11.2010. Details of the application are summarized at **Appendix II** for Members' reference.

6. Similar Applications

- 6.1 Since 2000, there are 35 similar planning applications for tutorial school under "R(B)" zone in the Boundary Street/Prince Edward Road West neighbourhood (**Plan A-1**). Among them, 27 applications were approved with/without conditions by the Committee mainly for the reasons that the proposed school use was not incompatible with the other uses within the same building and the surrounding areas, and was not expected to generate adverse impacts on the surrounding areas. Eight applications were rejected mainly on the grounds of causing nuisance and security concerns to the local residents, lack of separate access to the Premises, aggregation of traffic congestion at Prince Edward Road West, and setting of undesirable precedents.
- 6.2 Details of the similar applications are summarized at **Appendix III** for Members' reference.

7. The Premises and Its Surrounding Areas

(Plans A-1 and A-2 and photos on Plans A-3 and A-4)

7.1 The Premises:

- (a) is currently used as tutorial school without valid planning permission;
- (b) is located at G/F of an existing 3-storey residential building abutting Waterloo Road. The entrance to the Premises is via Waterloo Road and separated from the entrance to the upper floors (**Plan A-3**); and
- (c) has a rear door leading to the internal courtyard of the development. According to the applicant, it is usually locked and would not be used by the occupier.

7.2 The subject building was completed in 1955. According to the Occupation Permit of the building, the building is for domestic use. The existing uses of the building by

floor (as at 9.3.2018) are summarized as follows:

Floors	Uses
G/F	The Premises , Tutorial schools/learning centres ^[1] and vacant
1/F	Domestic units
2/F	Music studio ^[1] and tutorial school/learning centre ^[1]

[1] There is no record of planning permission for such uses.

7.3 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) the subject building is located in an area mainly with low to medium-density residential developments. Some non-residential uses, such as tutorial schools, learning centres and kindergartens, etc. can also be found in the area;
- (b) to the north across Boundary Street is Maryknoll Convent School. A number of primary and secondary schools are located in the area. To the west across Waterloo Road are St. Teresa's Church and Caritas Social Centre; and
- (c) the area is well-served by various modes of public transport.

8. Planning Intention

The "R(B)" zone is intended primarily for medium-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.

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/Kowloon East, Lands Department (DLO/KE, LandsD):

The use of the Premises as a school (tutorial school) is in breach of the lease conditions. If the application is approved by the Board, the owner(s) will need to apply for temporary waiver of the lease restriction or lease modification under lease for the applied use. However, there is no guarantee that the application shall be approved, and if approved by LandsD in the capacity of a landlord, it shall be subject to such terms and conditions, including the payment of premium, as may consider appropriate by LandsD.

Building Matters

9.1.2 Comments of the Chief Building Surveyor/Kowloon, BD (CBS/K, BD):

- (a) He has no in-principle objection to the applied use under the Buildings Ordinance (BO).
- (b) The applicant is advised to appoint an Authorized Person to co-ordinate all building works in accordance with the BO, in particular-
 - (i) the plot ratio and site coverage of the building shall not exceed that specified in the First Schedule of Building (Planning) Regulations (B(P)Rs);
 - (ii) adequate means of escape should be provided to the Premises in accordance with B(P)R 41(1) and Code of Practice for Fire Safety in Buildings 2011 (FS Code);
 - (iii) the Premises should be separated from the remaining portion of the building by fire barriers of adequate fire resistance rating pursuant to Building (Construction) Regulation 90 and the FS Code; and
 - (iv) access and facilities for persons with a disability should be provided in accordance with B(P)R 72 and Design Manual: Barrier Free Access 2008.
- (c) The applicant is required to comply with the building safety and other relevant requirements as may be imposed by school registration/licensing authorities.
- (d) According to the building plans approved on 23.3.1955, the Premises is indicated for domestic use showing “Study”, “Bed Rm.”, “Bath”, “Trunk” and “Lav.” on plans.
- (e) His detailed comments would be subject to submission of more detailed plans or application for the approval plans under the BO.

Traffic

9.1.3 Comments of C for T:

As the applicant has clarified that the students would walk to/from the tutorial school and the applied use would not generate additional parking demand in the lot nor cause further traffic congestion, he has no objection to the application from traffic engineering point of view.

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

- (a) He has no comment on the applied use.
- (b) According to his record, no relevant complaint file was recorded relating to 126 Waterloo Road. Three traffic-related reports (i.e. traffic congestion, vehicle obstruction and illegal parking) were received at the subject location in the past six months, but no penalty tickets had been issued. Therefore, no adverse traffic impact is anticipated at the subject location.

Environment

9.1.5 Comments of DEP:

- (a) He has no objection to the application from the environmental perspective.
- (b) Based on the information provided by the applicant, it is noted that all classrooms and office at the Premises are equipped with air conditioning system and do not rely on opened windows for ventilation. In this connection, he concurs with the applicant's view that adverse noise impact to the applied use is not anticipated.
- (c) The applicant is advised to follow the relevant requirements of Hong Kong Planning Standards and Guidelines (HKPSG) regarding the environmental perspective.

Fire Safety

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

- (a) He has no specific comment on the application subject to fire service installations being provided to the satisfaction of his Department. Detailed fire services requirements will be formulated upon receipt of formal submission of general building plans or referral from the licensing authorities.
- (b) As no details of the emergency vehicular access (EVA) have been provided, comments could not be offered by his Department at the present stage. Nevertheless, the applicant is advised to observe the requirements of EVA as stipulated in Section 6, Part D of the FS Code which is administrated by BD.

Education

9.1.7 Comments of the Secretary for Education (SED):

- (a) According to section 3(1) of the Education Ordinance (Cap. 279), a “school” means an institution, organization or establishment which provides for 20 or more persons during any one day or 8 or more persons at any one time, any nursery, kindergarten, primary, secondary or post-secondary education or any other educational course by any means, including correspondence delivered by hand or through the postal services. Section 10(1) of the Ordinance also requires every school to be registered or provisionally registered. Any institution, organization or establishment which provides educational courses and falling within the above definition of “school” is required to be registered/provisionally registered.
- (b) The School Registration and Compliance Section, Education Bureau (EDB) has not received any application for registration of school at the Premises. Based on the information provided by the applicant about the estimated total number of students per day and at any one time, the applicant has to apply for the license.
- (c) For school registration procedures, registration of school is granted in accordance with the stipulated requirements under the Education Ordinance (Cap. 279) and relevant Guidelines. Clearance from the Board and LandsD should be obtained in respect of the applied use at the Premises. In addition, the Premises should be suitable for school use in terms of fire safety and building safety as confirmed by FSD and BD respectively. The applicant should also submit the documentary proof of the right to use the Premises, Occupation Permit (for premises design and constructed as a school), the proposed curriculum, courses and fees information, etc., for consideration of the application.

District Officer’s Comments

9.1.8 Comments of the District Officer (Kowloon City), Home Affairs Department (DO(KC), HAD):

He noted that both the local residents and the concerned Kowloon City District Council (KCDC) Members have all along been concerned about the traffic congestion problem along Waterloo Road. The Board should consider their views/comments gathered in the consultation exercise.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Highway Engineer/Kowloon, Highways Department; and

- (c) Chief Engineer/Mainland South, Drainage Services Department.

10. Public Comments Received During Statutory Publication Period

On 9.3.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 3.4.2018, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for tutorial school use at two G/F units of an existing residential development in “R(B)” zone, which is primarily intended for medium-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. The Premises is currently being used for a tutorial school without valid planning permission. With a maximum capacity of 22 students and 4 teachers/staff, the tutorial school comprises mainly 4 classrooms and an ancillary office. No parking spaces and loading/unloading facility has been proposed.
- 11.2 The tutorial school is considered in compliance with TPB PG-No.40 in the following aspects:
- (a) the Premises is located on the G/F of a 3-storey residential building. The tutorial school is considered not incompatible with other uses within the same building, and the surrounding developments comprising schools and residential developments with G/F commercial uses including tutorial schools;
 - (b) the main entrance/exit to the Premises at Waterloo Road is separated from the entrance of domestic portion of the building. Since the tutorial school can be accessed directly from the main road without the need to route through common areas of the subject building, disturbance or nuisance to the residents of the development is not anticipated; and
 - (c) D of FS and CBS/K of BD have no in-principle objection to/adverse comment on the application from fire and building safety viewpoints.
- 11.3 While DO(KC), HAD advised that the local residents and the concerned KCDC Members have all along been concerned about the traffic congestion problem along Waterloo Road, C for T and C of P have no objection to/comment on the application. The applicant has clarified that most of their students attend schools/live in the nearby area and would walk to/from the Premises, and no additional parking demand would be generated.
- 11.4 As all classrooms and office at the Premises are equipped with air conditioning system and do not rely on opened windows for ventilation, DEP considers that adverse noise

impact to the applied use is not anticipated. Government departments consulted, including SED, DLO/KE, LandsD and those mentioned above have no objection to/comment on the application.

- 11.5 A previous application (No. A/K7/79) for the same use at the Premises was approved by the Committee on 17.11.2006. The approved use had not commenced within the validity period and the planning permission lapsed on 17.11.2010. Since 2000, 27 similar applications for tutorial school within “R(B)” in the locality were approved by the Committee for reasons that the applied use was considered not incompatible with the other uses within the same building and the surrounding areas, and was not expected to impose adverse impacts on the surrounding areas. Approval of the application is not inconsistent with the previous decisions of the Committee.
- 11.6 No public comment was received during the statutory publication period.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, no time clause for commencement for the development is proposed as the school (tutorial school) use under application is already in operation. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the submission and implementation of fire service installations within six months from the date of approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 20.10.2018; and
- (b) if the above planning condition (a) 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 planning reason to recommend rejection of the application.

13. Decision Sought

The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

- 13.1 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.
- 13.2 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 and supplementary plans received by the Board on 1.3.2018
Appendix Ia	Supplementary information submitted by the applicant on 2.3.2018
Appendix Ib	FI dated 29.3.2018
Appendix II	Previous application covering the Premises
Appendix III	Similar applications for school (tutorial school) use within “R(B)” zone in the vicinity
Appendix IV	Recommended advisory clauses
Drawing A-1	Layout plan
Plan A-1	Location plan with previous and similar applications
Plan A-2	Site plan
Plans A-3 and A-4	Site photos

**PLANNING DEPARTMENT
APRIL 2018**