

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/K7/120**

- Applicant** : Speak and Spell English Learning Centre
- Premises** : G/F, Block H, 268B Prince Edward Road West, Ho Man Tin, Kowloon
- Floor Area** : About 61m<sup>2</sup>
- Lease** : Located at Sub-Section 5 of Section A of Kowloon Inland Lot (KIL) No. 2135:
- (a) Lease term to be expired on 30.6.2047
  - (b) Lessee shall not make any additions or alternations to such buildings on the Lot without the written consent of the Director
  - (c) Restricted to –
    - (i) detached or semi-detached houses of an European type;
    - (ii) offensive trade clause; and
    - (iii) other conditions as contained in the lease.
- 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** : Proposed School (Tutorial School)

**1. The Proposal**

- 1.1 The applicant seeks planning permission for a proposed tutorial school at the application premises (the Premises), which is zoned “R(B)” on the OZP (**Plans A-1 & A-2**). 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).

1.2 The Premises is located on the ground floor (G/F) (Rear Part) of a 3-storey residential building<sup>1</sup> at 268B Prince Edward Road West (**Plans A-2 and A-3**). According to the submission, the proposed tutorial school has a floor area of about 61m<sup>2</sup> and is planned to accommodate not more than 25 students, teachers and staff in total. The operation hours of the tutorial school will be from 10am to 7pm from Mondays to Fridays, and 9am to 6pm on Saturdays (**Drawing A-1**). The access to the Premises is from the common main gate abutting Prince Edward Road West, after entering the gate is a common side lane leading to the entrance of the Premises at the rear of the building sharing the same lobby and stairways with domestic uses at the 1/F and 2/F of the subject building (**Plans A-3 to A-6**). No parking space and loading/unloading (L/UL) facility are proposed. The layout plan of the proposed tutorial school submitted by the applicant is at **Drawing A-1**.

1.3 In support of the application, the applicant has submitted the following documents:

- (a) Application form and supplementary information received on 27.7.2020 (**Appendix I**)
- (b) Further Information (FI) received on 17.8.2020 clarifying the operation hours and mode of transport of students of the proposed tutorial school (**Appendix Ia**)
- (c) FI received on 18.8.2020 providing a revised floor plan of the proposed tutorial school (**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 and supplementary information (**Appendices I to Ib**). They are summarized as follows:

- (a) Speak and Spell English Learning Centre is a registered day and evening school.
- (b) Due to the unforeseen impact of the coronavirus and the significant costs of lease rental, the applicant intends to move his existing tutorial school at the G/F, Front, 270 Prince Edward Road West<sup>2</sup> (**Plan A-4**) to the Premises.
- (c) The mode of transport of the students for attending and leaving the school is approximately 70% by foot, 25% by public transport and 5% by private cars. This is based on the students' mode of transport at the applicant's existing tutorial school located at G/F, 270 Prince Edward Road West, Kowloon. A majority of the students are living in the same neighbourhood and/or study full-time at schools near the tutorial school, and so they are able to visit the tutorial school on foot.

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<sup>1</sup> The subject building is a semi-detached house located at 268 to 268C Prince Edward Road West. The semi-detached house comprising four blocks (i.e. Blocks E to H) (**Drawing A-2**). The Premises is located at Block H, which is known as 268B Prince Edward Road West (**Plan A-3**).

<sup>2</sup> The existing school premises is the subject of a planning application (A/K7/61) for tutorial school use which was approved with conditions by the Metro Planning Committee of the Board on 25.7.2003. The existing school premises (Block B) and proposed premises (Block H) are on G/F of different blocks within the same building lot (**Drawing A-2**).

**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 from the registered landowner. 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 BA 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 L/UL facilities should be provided in accordance with the requirements stipulated in the Hong Kong Planning Standards and Guidelines (HKPSG) 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/K7/85) submitted by a different applicant for proposed tutorial school with a maximum capacity of 14 students and 4 staffs (**Plan A-1 and Appendix II**). The application was rejected by the Metro Planning Committee (the Committee) and the Board upon review on 2.11.2007 and 16.5.2008 respectively for the reasons that there were insufficient information in the application to demonstrate that the tutorial school would not cause nuisances to the existing residential premises within the same development, and approval of the application would set an undesirable precedent for other similar applications for tutorial schools within residential buildings in the area which had no separate access to the application premises. Details of the application are summarized at **Appendix II** for Member's reference.

## 6. Similar Applications

6.1 Since 2000, there are 40 similar planning applications for tutorial school use under "R(B)" zone in the Boundary Street/Prince Edward Road West neighbourhood (**Plan A-1**). Among them, 32 applications were approved with/without conditions by the Committee mainly for the reasons that the proposed tutorial 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. Applications No. A/K7/61 and A/K7/80, situated within the same buildings as the subject application at 268-270 Prince Edward Road West but with direct access at Prince Edward Road West, were approved by the Committee on 25.7.2003 and 2.2.2007 respectively<sup>3</sup>, prior to the promulgation of the TPB PG No. 40 in February 2008. One approved application (No. A/K7/114) was subsequently revoked due to non-compliance with an approval condition. 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 from public road, absence of separate exclusive access to the premises located at the inner part of the residential buildings, 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 to A-3 and site photos on Plans A-4 to A-7)

7.1 The Premises:

- (a) is located on the G/F (Rear Part) of an existing 3-storey residential building, i.e. 268-268C Prince Edward Road West, completed in 1957 (**Plan A-3**). According to the Occupation Permit (OP), the building comprising 268

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<sup>3</sup> The Committee considered that the proposed uses (a) were not incompatible with the subject building and the surrounding developments; (b) nuisance problem was unlikely as there was direct separate access to the subject premises and a separate entrance for the residents of the building; and (c) TD had no objection to the application regarding the traffic issue.

and 270 Prince Edward Road West, is for domestic use.

- (b) Based on site inspection conducted on 25.8.2020, the Premises is under renovation for the proposed tutorial school use but has not commenced operation. The existing floor uses of 268-270C Prince Edward Road West are summarized as follows:

Floors	Uses
G/F	The Premises (Rear Part), domestic units, hair salon (Rear Part) <sup>#</sup> and tutorial schools (facing Prince Edward Road West)*
1/F	Domestic units
2/F	Domestic units

\* The tutorial schools on the G/F of 268A and 270 Prince Edward Road West were approved by the Committee on 2.2.2007 and 25.7.2003 under Applications No. A/K7/80 and A/K7/61 respectively (**Plans A-3 and A-4**).

# The tutorial school at G/F of 270A Prince Edward Road West and hair salon at G/F of 270C Prince Edward Road West are operating without planning permission

7.2 The surrounding areas have the following characteristics (**Plans A-1 and A-2**):

- (a) the subject building is located in an area mainly with low to medium-density residential developments. Some non-domestic uses, such as tutorial schools, learning centres, barber shop, real estate agency and chapel, etc. can be found in some premises of the residential developments (some without planning permission);
- (b) demolition and redevelopment of nearby residential buildings are in progress, including 264-266 Prince Edward Road West abutting the west of the Site, and 128 Waterloo Road to the northwest of the Site; and
- (c) the area is well-served by various modes of public transport including buses and minibuses.

## **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 summarized as follows:

### **Land Administration**

#### 9.1.1 Comments of the District Lands Officer/Kowloon East, Lands Department (DLO/KE, LandsD):

- (a) The Premises is located at Sub-Section 5 of Section A of Kowloon Inland Lot No. 2135 (“the Lot”) which is subject to a lease term having been extended up to 30.6.2047. Pursuant to the lease governing the Lot, the Leasee will not erect any building other than detached or semi-detached houses of an European type which is subject to offensive trade clause and other conditions as contained in the lease. It is further specified in the lease that the Lessee shall not make any additions or alternations to such buildings on the Lot without the written consent of the Director.
- (b) The proposal submitted by the applicant is not in conflict with the lease conditions governing the Premises.
- (c) In the event of any additions or alternations to the Premises, the applicant has to apply to LandsD for a consent. Such application, if received by LandsD, will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event of any such consent be given, it may be subject to such terms and conditions including, among other, the payment of premium and administrative fee as may be imposed by LandsD.

### **Education**

#### 9.1.2 Comments of the Secretary for Education (SED):

For school registration procedures, registration of schools 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 proposed school premises, in addition, the Premises should be suitable for school use in terms of fire safety and building safety as confirmed by the D of FS and CBS/K, BD respectively.

### **Traffic**

#### 9.1.3 Comments of the Commissioner for Transport (C for T):

As the applicant anticipated the number of students is only 25 and most of the students will be coming to the Site on foot, he has no comment on the application from traffic engineering point of view provided that the proposed school would not generate additional traffic and parking demand in the lot.

### **Environment**

#### 9.1.4 Comments of the DEP:

- (d) He has no objection to the application.
- (e) It is noted that the proposed school on the G/F of the subject building is sandwiched between existing buildings which do not have noise sensitive façade directly facing busy roads. Adverse environmental impacts on the proposed school is not anticipated.

### **Fire Safety**

#### 9.1.5 Comments of the Director of Fire Services (D of FS):

- (a) He has no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provide to his satisfaction.
- (b) Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans or referral from Licencing Authority.

### **Building Matters**

#### 9.1.6 Comments of the Chief Building Surveyor/Kowloon, Buildings Department (CBS/K, BD):

- (a) He has no in-principle objection to the application.
- (b) All building works and change of use shall in all aspects comply with the Buildings Ordinance (BO) and its allied regulations.
- (c) 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)R);
  - (ii) adequate means of escape should be provided to the Premises in accordance with B(P)R 41(1) and the 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 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.
- (d) The proposed school is required to comply with the building safety and other relevant requirements as may be imposed by the school registration /licensing authorities.
- (e) According to the building plans approved on 2.4.1957, the Premises are indicated for domestic use showing “Liv & Din”, “Bed Rm”, “Bath”, “Kit”, “Ser” and “W.C.” on plans.
- (f) Detail comments on the proposal under the BO can only be formulated at the approval stage under the building regime.

### **District Officer’s Comments**

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

He has no comment on the application. He noted that the interested Kowloon City District Council (KCDC) members, concerned Lung Tong Area Committee (LTAC), Owners’ Corporations (OCs), Mutual Aid Committees (MACs), management committees of buildings near the Premises have been notified and invited to make comments to the Board. The Board should take into account their comments gathered in the consultation exercise.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Commissioner of Police;
- (c) Chief Highway Engineer/Kowloon, Highways Department; and
- (d) Chief Engineer/Mainland South, Drainage Services Department.

## **10. Public Comments Received During Statutory Publication Period**

- 10.1 The application was published for public inspection on 4.8.2020. During the first three weeks of the statutory public inspection period, which ended on 25.8.2020, no public comment was received.

## **11. Planning Considerations and Assessments**

- 11.1 The application is for proposed tutorial school use at G/F (Rear Part) of an existing 3-storey residential building in “R(B)” zone. The planning intention of the “R(B)” zone is primarily intended for medium-density residential developments where commercial uses serving the residential neighbourhood may be permitted

on application to the Board. There are tutorial schools approved by the Committee in the vicinity, including the tutorial schools located on the G/F within the front side of the same building with direct access to Prince Edward Road West, (Applications No. A/K7/61 and A/K7/80) (**Plan A-1**). The proposed tutorial school is considered not totally incompatible with the existing surrounding land uses.

- 11.2 Access to the proposed tutorial school is from the common main gate and side lane at the western boundary of the subject site and the entrance to the Premises is at the lobby and stairways to/from the upper floors (**Plan A-3**), which is shared by residents of the same residential building. As there is no separate stairways and/or lifts/escalators exclusively serving the tutorial school, the current access arrangement may cause disturbance or nuisance to the residents living in the same residential building. Hence, it is considered that the tutorial school at the application premises does not comply with the relevant considerations in the TPB PG-No. 40 as mentioned in paragraphs 4(b) and (c) above. The applicant is currently operating an existing tutorial school at G/F of 270 Prince Edward Road West, which was approved for such use under Application No. A/K7/61. That approved premises is located with dedicated direct access to Prince Edward Road West, and residents of the building had separate entrance that was not shared with the tutorial school. Hence, Application No. A/K7/61 was approved based on different considerations as the subject application.
- 11.3 The Premises is the subject of a previous application (No. A/K7/85) for proposed tutorial school submitted by a different applicant, which was rejected by the Board upon review on 16.5.2008 for the reasons of potential nuisances to the existing residential premises within the same development, and undesirable precedent for other similar applications for tutorial schools within residential buildings in the area which had no separate access to the application premises from public roads. Rejection of the current application is in line with the previous decision of the Committee.
- 11.4 Other than the previous application mentioned above, the Committee has rejected 7 other similar applications for tutorial school use, which have no separate access to the application premises and are required to share access with the residential developments within the same building as in the Premise (**Appendix II**). Approval of the application will set an undesirable precedent for other similar applications for tutorial schools within residential buildings in the area which have no separate access to the application premises.
- 11.5 There was no public comment received on the application.

## 12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 above, the Planning Department does not support the application.
- 12.2 Should the Committee decide to reject the application, the following reasons for rejection are suggested for Member's reference:

- (a) the proposed tutorial school will cause disturbance or nuisance to the residents of the same residential building as there is no separate access to the proposed tutorial school; and
- (b) approval of the application will set an undesirable precedent for other similar applications for tutorial schools within residential buildings in the area with no separate access.

12.3 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 18.9.2024, 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 advisory clauses are also suggested for Members' reference:

Advisory Clauses

The recommended advisory clauses are attached at **Appendix IV**.

**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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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.

**14. Attachments**

<b>Appendix I</b>	Application form and supplementary information received on 27.7.2020
<b>Appendix Ia</b>	FI received on 17.8.2020
<b>Appendix Ib</b>	FI received on 18.8.2020
<b>Appendix II</b>	Previous application at the Premises
<b>Appendices III</b>	Similar applications for school (tutorial school) use within "R(B)" zone in the vicinity
<b>Appendix IV</b>	Recommended advisory clauses
<b>Drawing A-1</b>	Layout plan
<b>Drawing A-2</b>	Location plan submitted by the applicant
<b>Plan A-1</b>	Location plan with similar applications in the vicinity
<b>Plans A-2 and A-3</b>	Site plans
<b>Plans A-4 to A-7</b>	Site photos