

**TPB Paper No. 10552
For Consideration by the
Town Planning Board on 13.9.2019**

**REVIEW OF APPLICATION NO. A/H8/429
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**PROPOSED SHOP AND SERVICES (RETAIL SHOP)
IN “COMPREHENSIVE DEVELOPMENT AREA (2)” ZONE
AT G/F (PORTION), NORTH POINT VIEW MANSION, 54 KAI YUEN STREET, HONG KONG**

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Proposed Shop and Services (Retail Shop) at
G/F (Portion), North Point View Mansion, 54 Kai Yuen Street, Hong Kong

1. Background

1.1 On 15.1.2019, an application was received from the applicants, Mr. Kwan Man Fong and Ms. Pun Kwai Hing, both represented by Liu, Chan & Lam, Solicitors seeking planning permission under s.16 of the Town Planning Ordinance (the Ordinance) to use the application premises located on G/F (Portion) of North Point View Mansion, 54 Kai Yuen Street in North Point (the Premises) for shop and services (retail shop). The Premises falls within an area zoned “Comprehensive Development Area (2)” (“CDA(2)”) on the approved North Point Outline Zoning Plan (OZP) No. S/H8/26. According to the Notes of the OZP for “CDA(2)” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board).

1.2 On 8.3.2019, the Metro Planning Committee (MPC) of the Board decided to reject the application and the reason was:

there is no strong planning justification for the change of use in the area which is primarily for residential use. The approval of the application would set an undesirable precedent for other similar applications, the cumulative effect of approving such applications would result in change of a pure residential neighbourhood.

1.3 For Members’ reference, the following documents are attached:

- (a) MPC Paper No. A/H8/429 (Annex A)
- (b) Extract of the Minutes of the MPC Meeting held on 8.3.2019 (Annex B)
- (c) Secretary of the Board’s Letter dated 22.3.2019 (Annex C)

2. Application for Review

On 9.4.2019, the applicants applied, under section 17(1) of the Ordinance, for a review of the MPC’s decision to reject the application (Annex D). In support of the review, the applicants submitted the following documents:

- (a) Letter dated 9.4.2019 from the applicants applying for review (Annex D)
- (b) Letter dated 18.6.2019 from the applicants providing written representations for the review application (*Further information*) (Annex E)

accepted but not exempted from publication and recounting requirement)

3. **Justifications from the Applicant**

The justifications/responses put forward by the applicants in support of the review application are detailed in the applicants' letter at **Annex E**. They can be summarised as follows:

- (a) the Board has wrongly assumed that approval of the application would set an undesirable precedent as there is no evidence that there is any other owner in the neighbourhood who intends to make a similar application; and
- (b) the Board has overlooked the need of the ageing residents in the neighbourhood to have close access to a retail store for daily necessities without going down the very steep Kai Yuen Street to reach retail stores.

4. **The Section 16 Application**

The Premises and Its Surrounding Areas (Plans R-1 to R-3)

4.1 The situation and characteristics of the Premises and its surrounding areas at the time of the consideration of the s.16 application by the MPC were described in paragraph 8 of **Annex A**. There has been no material change of the situation since then.

Planning Intention

4.2 There has been no change to the planning intention of the "CDA(2)" zone, which was mentioned in paragraph 9 of **Annex A**.

Town Planning Board Guidelines

4.3 The Town Planning Board Guidelines for "Submission of Master Layout Plan (MLP) under section 4A(2) of the Town Planning Ordinance" (TPB PG-No. 18A) is not applicable to this application as it is specified in the Guidelines that submission of MLP and supporting information including various detailed assessments is not required for an application of change of use in an existing building within a "CDA" zone (irrespective of whether building works are undertaken) before completion of comprehensive development in the "CDA" zone, unless it is considered necessary by relevant government department.

Previous Applications

4.4 The Premises falls within a larger area zoned "CDA(2)" which was the subject of two previous applications (**Plan R-1**). Application No. A/H8/395 for a proposed comprehensive residential development was approved with conditions by the MPC on 4.12.2009. Application No. A/H8/401, which sought amendments to the previously approved scheme, was approved with conditions by the MPC on

12.2.2010. Details of the previous cases were mentioned in paragraph 6 and **Appendix II** of **Annex A**.

Similar Applications

4.5 There is no similar application for proposed shop and services (retail shop) use within the “CDA(2)” zone in the North Point OZP Planning Area.

5. Comments from Relevant Government Departments

5.1 Comments on the s.16 application made by relevant government departments were stated in paragraph 10 of **Annex A**.

5.2 For the review application, relevant government departments have been further consulted. The following government departments have no further comment on the review application and maintain their previous views/comments on the s.16 application which are recapitulated as follows:

Land Administration

5.2.1 Comments of the District Lands Officer/Hong Kong East, Lands Department (DLO/HKE, LandsD):

(a) the Premises falls within the private lot I.L. 2168 s.A ss.6 & Ext. (the Lot) which is held under Government Lease of I.L. 2168 dated 30.8.1917 as extended and modified by Conditions of Extension and Modification No. 5710 dated 21.3.1957 under M/N UB354050. The relevant extracts of the above lease conditions are as follows:-

(i) the building will comply with the following coverage limitation:

| <u>Height of Building</u> | <u>Max. roofed-over area</u> |
|---------------------------|--|
| 5 storeys | 45% of lot area (including extension area) |
| 6 storeys | 40% of lot area (including extension area) |

(ii) provision for car parking will be provided at a rate of not less than 1 car per flat. Car ports at Ground floor level will be permitted under the proposed building in addition to the number of storeys stated in (i) above;

(iii) the lot together with the extension area will be used for residential purpose only; and

(iv) offensive trades clause;

(b) the proposed shop and services use will contravene the lease conditions (i) to (iii) above. If the proposed shop and services use includes general restaurant use, the above mentioned lease condition (iv) will also be contravened; and

- (c) if planning permission from the Board is given for the proposed use, the owner needs to apply for modification of lease conditions to effect the approval. Given the modification involves modifying the development conditions of the lease governing the Lot and the subject Lot is now in multiple ownership, a modification letter should be entered into with all legal owners of the property in these circumstances. However, there is no guarantee that such lease modification application will be approved and if approved by LandsD acting in its capacity as the landlord at its discretion, it will be subject to such terms and conditions, including, among others, payment of premium and fees, as imposed by LandsD.

Traffic Aspect

5.2.2 Comments of the Commissioner for Transport (C for T):

having considered that the Premises is currently used for purpose other than car parking space and the traffic condition of Kai Yuen Street, no comment on the application from traffic engineering point of view.

Building Aspect

5.2.3 Comments of the Chief Building Surveyor/Hong Kong East & Heritage, Buildings Department (CBS/HKE&H, BD):

- (a) the proposed shop and services (retail shop) use at the ground floor should be accountable for gross floor area (GFA) calculation;
- (b) the domestic and non-domestic plot ratio (PR) calculations for the subject site should be re-assessed taking into account the GFA of the proposed shop and services (retail shop) use under regulation 21 of Building (Planning) Regulations (B(P)R);
- (c) the existing structure should be structurally adequate for the proposed change in use;
- (d) there should be adequate provision of means of escape and fire resisting construction for the proposed shop and services (retail shop) use so as to comply with the B(P)R 41(1) and Building (Construction) Regulation 90;
- (e) there should be adequate provision of access and facilities for persons with a disability for the proposed shop and services (retail shop) use so as to comply with B(P)R 72; and
- (f) detailed checking for compliance with Buildings Ordinance will be made at building plan submission stage.

Fire Safety Aspect

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

- (a) no objection in-principle to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction; and
- (b) detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.

5.3 The following government departments have no objection to or no comment on the application:

- (a) Director of Environmental Protection;
- (b) Chief Highway Engineer/Hong Kong, Highways Department;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Chief Engineer/Hong Kong & Islands, Drainage Services Department;
- (e) Director of Food and Environmental Hygiene;
- (f) Commissioner of Police; and
- (g) District Officer (Eastern), Home Affairs Department.

6. Public Comments Received During Statutory Publication Periods

6.1 On 26.4.2019 and 21.6.2019, the review application and its FI were published for public inspection respectively. During the first three weeks of the statutory publication periods which ended on 17.5.2019 and 12.7.2019 respectively, a total of 26 opposing public comments were received from a DC member (Mr. CHENG Tat Hung), the chairperson of the Hong Kong Island East District Branch of the Liberal Party (Ms. Pearl TSANG), two committee members from the North Point West Area Committee, Incorporated Owners (IOs) of 38-44 Kai Yuen Street, IOs of the Gily Garden House, IOs of Blocks A, B, C, D, E, E1 and F of the North Point View Mansion, IOs of the King's Court (Kai Yuen Street), a concern group (北角繼園街重建關注組) and a petition with signatures of 100 individuals. A full set of the public comments are at **Annex F** for members' reference.

6.2 The major grounds of the public comments are similar to that received during the s.16 stage and details are summarised as follows:

- (a) the proposed use is not in line with the planning intention of the "CDA(2)" zone;
- (b) the Premises is with illegal structures and illegal use;
- (c) the proposed use will increase road accident and fire risks, create security problem and affect emergency services and the proposed loading/unloading space will cause adverse traffic impact;
- (d) there is demand for car parking space instead of shop and services in the neighbourhood, and there are sufficient shops in the vicinity;

- (e) suspect the application is to increase the property value of the Premises and approval of the planning application will set a precedent for similar applications in the vicinity in the future; and
- (f) support the Board's decision on 8.3.2019 in rejecting the application.

6.3 At the s.16 planning application stage, a total of 64 public comments were received. Of which, there were 15 opposing comments and 49 comments with negative views as detailed in paragraph 11 of **Annex A** with a full set of the public comments at **Appendix III** of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The applicants apply for a review of the MPC's decision in rejecting the s.16 application for using the Premises for 'Shop and Services (Retail Shop)' use which is currently being used as a car repair workshop. In response to the MPC's rejection reasons, the applicant has argued that there is no evidence that similar application would be made by other owners in the neighbourhood and there is a need for a retail store to provide daily necessities for ageing residents in the neighbourhood.
- 7.2 Since the consideration of the s.16 application by the MPC on 8.3.2019, there has been no material change in planning circumstances of the case. While the applicant has provided responses to the MPC's rejection reasons, the planning consideration and assessment set out in paragraph 12 of **Annex A** should remain valid and hence there is no new planning consideration in addition to those submitted to and considered by the MPC resulting in its decision to reject the application.
- 7.3 Located on G/F of the North Point View Mansion, the Premises falls within an area zoned "CDA(2)" which is intended for comprehensive development/redevelopment primarily for residential uses (**Plans R- 1 & R-2**). According to the approved Building Plans of the subject building, the G/F level of North Point View Mansion including the Premises was designed for use as car park. The Premises is currently being used as a car repair workshop, while some of the G/F of the surrounding premises have also been illegally converted mainly to residential use (**Plan R-3**). There are however no retail shop on the G/F, and Kai Yuen Street remains primarily a residential neighbourhood (**Plan R-4**). The proposed retail shop is not in keeping with the residential character of the neighbourhood and no similar planning application for retail shop was previously approved by the Board. Should this application be approved, it would set an undesirable precedent for the other G/F premises to seek planning permission for retail or other 'Shop and Services' use. The cumulative impact of approving similar applications will result in a change to the residential neighbourhood at Kai Yuen Street.
- 7.4 Retail shops and shopping centres such as NSK Centre (Island Place) and Fitfort (Healthy Gardens) where supermarkets, restaurants and a variety of retail shops can be found along Tanner Road, Tsat Tsz Mui Road and Tin Chiu Street/King's Road (**Plan R-1**). As these shops are within walking distance (about 200m) from the North Point View Mansion, there is no strong planning justification for the

proposed change of use of the Premises, which is within a primarily residential neighbourhood, to retail use.

- 7.5 There are public comments objecting to the review application on various grounds including impacts on land use, traffic, fire safety, security and environment arising from the proposed use of the Premises. The assessment as set out in paragraphs 7.3 and 7.4 above and the comments from the relevant government departments in paragraph 5 above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessment made in paragraph 7 above and having taken into account the public comments mentioned in paragraph 6, given that there is no change in the planning circumstances since the consideration of the subject application by the MPC on 8.3.2019, PlanD maintains its previous view of not supporting the application for the following reason:

there is no strong planning justification for the change of use in the area which is primarily for residential use. The approval of the application would set an undesirable precedent for other similar applications, the cumulative effect of approving such applications would result in change of a pure residential neighbourhood.

- 8.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 13.9.2023 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 conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission and implementation of fire service installations and water supplies for fire-fighting proposals in the application premises before operation of the proposed use to the satisfaction of the Director of Fire Services or of the Town Planning Board; and
- (b) if the above planning condition (a) is not complied with, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory Clauses

The recommended advisory clauses are in **Annex G**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the MPC's decision and decide whether to accede to the application.

- 9.2 Should the Board decide to reject the application on review, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the application on review, 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.

10. Attachments

| | |
|-----------------|---|
| Plan R-1 | Location Plan |
| Plan R-2 | Site Plan |
| Plan R-3 | Site Photos |
| Plan R-4 | Existing Land Uses in the Surroundings |
| Annex A | MPC Paper No. A/H8/429 |
| Annex B | Extract of the Minutes of the MPC Meeting held on 8.3.2019 |
| Annex C | Secretary of the Board's Letter dated 22.3.2019 |
| Annex D | Applicants' Letter dated 9.4.2019 Applying for a Review of the MPC's Decision |
| Annex E | Applicants' Letter dated 18.6.2019 providing written representations for the review application |
| Annex F | Public Comments on the Review Application |
| Annex G | Advisory Clauses |

**PLANNING DEPARTMENT
SEPTEMBER 2019**