

REVIEW OF APPLICATION NO. A/K7/120
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed School (Tutorial School)
in “Residential (Group B)” zone
at G/F, Block H, 268B Prince Edward Road West, Ho Man Tin, Kowloon

1. Background

- 1.1 On 27.7.2020, the applicant, Speak and Spell English Learning Centre, sought planning permission under s.16 of the Town Planning Ordinance (the Ordinance) for a proposed school (tutorial school) use at the application premises (the Premises). The Premises falls within an area zoned “Residential (Group B)” on the approved Ho Man Tin Outline Zoning Plan (OZP) No. A/K7/24 and is subject to a 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 (**Plan R-1a**). 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 On 18.9.2020, the Metro Planning Committee (the MPC) of the Board decided to reject the application for the following reasons:
- (a) the proposed tutorial school would cause disturbance or nuisance to the residents of the same residential building as there was no separate access to the proposed tutorial school; and
 - (b) approval of the application would set an undesirable precedent for other similar applications for tutorial schools within residential buildings in the area with no separate access.
- 1.3 For Members’ reference, the following documents are attached:
- (a) MPC Paper No. A/K7/120 (Annex A)
 - (b) Extract of minutes of the MPC meeting held on 18.9.2020 (Annex B)
 - (c) Secretary of the Board’s letter dated 9.10.2020 (Annex C)

2. Application for Review

On 16.10.2020, the applicant, under s.17(1) of the Ordinance, submitted a letter enclosing a written representation (**Annex D**) to apply for a review of the MPC’s decision to reject the application.

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in the written representation (**Annex D**) and are summarised as follows:

Response to Rejection Reason (a)

- (a) According to the MPC Paper No. A/K7/120, various Government departments have no objection to or comments on the application.
- (b) The tutorial school would not cause disturbance or nuisance to the residents. There are about 12 units in the subject residential building. Except for the unit at G/F of 268A Prince Edward Road West and the Premises, there are only 10 residential units in the subject building, hence the number of residents that will share the common lobby and main gate of the subject building is limited. Three letters signed by residents in the same block were submitted who indicated that the tutorial school would not create nuisance to the residents and welcomed the tutorial school (Appendix II of **Annex D**).
- (c) The operation hours of the school are 10:00a.m. to 7:00p.m. from Monday to Friday, and 9:00a.m. to 6:00p.m. on Saturdays, with approximately 8 students coming in and out of the school each hour. The tutorial school is for teaching English language which would not emit any noises exceeding statutory levels.

Response to Rejection Reason (b)

- (d) Speak and Spell English Learning Centre is already a registered day and evening school originally operated at G/F, Front, 270 Prince Edward Road West (PERW)¹ (**Plan R-4**). Speak and Spell English Learning Centre has already been operating in the original location for a long time, and the site is less than two-minute walk from the previous premises. This distinguishes the current application from any future applications for tutorial schools within residential buildings in the area with no separate access, and the application would not set an undesirable precedent for similar applications.
- (e) On 22.9.2000, the MPC approved an application (No. A/K7/39) for a tutorial school at Flat B, G/F, 272B PERW, which was also situated at the rear portion of a residential building and shared common access and main gate with the same residential building. The current application should be considered in the same manner and be approved.

4. The Section 16 Application

The Premises and its Surrounding Areas

4.1 The situation of the Premises and its surrounding areas at the time of consideration

¹ The previous premises of the school in the front portion of the abutting block with direct access to PERW is the subject of a planning application (A/K7/61) for tutorial school use which was approved with conditions by the MPC of the Board on 25.7.2003. The previous school premises (at no. 270 PERW) and the Premises (at no. 268B PERW) are on G/F of different blocks within the same building lot (i.e. KIL 2135 S.A ss.5) (**Plan R-3**).

of the s.16 application by the MPC are described in paragraph 7 of **Annex A**. There has been no material change of the situations since then, except that the proposed tutorial school use has commenced operation at the Premises without planning permission (nor school registration) based on site inspection conducted on 30.10.2020 (**Plan R-8**).

Planning Intention

- 4.2 There has been no change in the planning intention of the “R(B) zone, that is primarily for medium-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.

Town Planning Board Guidelines

- 4.3 The Town Planning Board 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 review 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 loading/unloading 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.

Previous and Similar Applications

- 4.4 There has been no change in the previous application covering the Premises (paragraph 5 of **Annex A**) and similar applications within the “R(B)” zone in the Boundary Street/Prince Edward Road West neighbourhood on the Ho Man Tin OZP (paragraph 6 of **Annex A**).

5. Comments from Relevant Government Bureaux/Departments

- 5.1 Comments on the s.16 application made by relevant Government Bureaux/Departments are stated in paragraphs 9.1 and 9.2 of **Annex A**.
- 5.2 For the review application, the relevant Government departments have been further consulted. The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 9.1 of **Annex A**. Their previous views are briefly recapitulated below:

Land Administration

- 5.2.1 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 (KIL 2135 S.A ss.5/“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 Lessee 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 others, the payment of premium and administrative fee as may be imposed by LandsD.

Education

5.2.2 Comments of the Secretary for Education (SED):

- (a) 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.
- (b) SED advised that registration has not been granted for the school currently operating at the Premises.

Traffic

5.2.3 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 Premises 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

5.2.4 Comments of the DEP:

- (a) He has no objection to the application.
- (b) 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

5.2.5 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 provided 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

5.2.6 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.

5.3 The following Government departments maintain their previous views of having 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;
- (d) Chief Engineer/Mainland South, Drainage Services Department; and
- (e) District Officer (Kowloon City), Home Affairs Department.

6. Public Comments Received During Statutory Publication Period

- 6.1 The review application was published for public inspection on 30.10.2020. During the first three weeks of the statutory public inspection period, which ended on 20.11.2020, 13 public comments were received from individuals (4 of them are living in the same building), all objecting to the application (**Annex E**). The major views are summarised as follows:
- (a) the tutorial school will cause disturbance to residents e.g. from past experience there were children running around creating noise, people smoking and causing nuisance to the residents of the residential building. The subject building does not have a security guard, the wandering of strangers would create security and safety problems to the residents;
 - (b) the proposed pick-up and drop-off activities of children in the nearby street would create adverse traffic impact in the area; and
 - (c) the building is aged and was built for residential purpose. There are concerns whether the tutorial school would comply with the fire, safety and health requirements of the government departments.
- 6.2 At the s.16 stage of the application, no public comment was received.

7. Planning Considerations and Assessments

- 7.1 The application is for a proposed tutorial school at G/F (Rear Part) of an existing 3-storey residential building in “R(B)” zone, which is currently operating without planning permission (nor school registration).
- 7.2 On 18.9.2020, MPC rejected the application for two reasons, including (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. The applicant has submitted a written representation (**Annex D**) to support the review.

Nuisance and Disturbance to Residents

- 7.3 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 (**Plans R-4 to R-6**), which is shared by residents of the same residential building. Taking into consideration of TPB PG-No. 40 as mentioned in paragraph 4.3 above, Members considered at the MPC meeting that as there was no separate stairways and/or lifts/escalators exclusively serving the tutorial school, the current access arrangement would cause disturbance or nuisance to the residents living in the same residential building and that was one of the rejection reasons.
- 7.4 In the written representation of the applicant to support the review application (**Annex D**), the applicant has not provided practical and implementable proposals to demonstrate that the proposed tutorial school would not create nuisances to the

residents and that the amenities of the local residents would not be affected. The applicant has submitted three standard letters claimed to be signed by residents in the same building which indicated that they did not consider the school would bring inconvenience or nuisance to them. However, it should be noted that 13 public comments (including 4 submitted by residents in the same building) objected to the application as summarized in paragraph 6.1 above. It may be noted that no public comment was received at the s16 stage, when the school had not commenced operation.

- 7.5 It is considered that the applicant has failed to address the access arrangement for operating the tutorial school at the Premises which would cause nuisance to residents in the same building. Our assessment that the tutorial school which is currently in operation without planning permission at the Premises does not comply with the relevant considerations in TPB PG-No. 40 as mentioned in paragraphs 4.3(b) and (c) above remain valid.
- 7.6 The applicant had previously operated a tutorial school at G/F of 270 PERW before relocation to the Premises, the previous premise was approved for such use under Application No. A/K7/61 in 2003. That approved premises is located with dedicated direct access to PERW, 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.

Undesirable Precedent

- 7.7 The Board promulgated TPB PG-No. 40 in February 2008 to set out clearly the assessment criteria for application for tutorial schools as highlighted in paragraph 4.3 above. Amongst other criteria is the need to provide separate access exclusively serving the tutorial school so that the school will not create nuisance for the residential portion.
- 7.8 Before promulgation of TPB PG-No.40, the Board has rejected 3 applications for tutorial school use, which had no separate access to the application premises and were required to share access with the residential developments within the same building as in the Premises (**Appendix III of Annex A and Plans R-1a**).
- 7.9 Since the promulgation of TPB PG-No. 40, the MPC has approved 8 applications for 'School (Tutorial School)' use in Ho Man Tin area, all the which had separate access exclusively serving the proposed tutorial schools, and the other 5 applications without separate access (including the previous application at the Premises) were all rejected by the MPC or by the Board on review (**Appendix III of Annex A and Plan R-1b**).
- 7.10 The previous application (No. A/K7/85) for proposed tutorial school at the Premises, submitted by a different applicant, was rejected by the Board upon review on 16.5.2008, taking account of TPB PG-No. 40, 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.

- 7.11 The applicant's written representation (**Annex D**) mentioned that the MPC had approved an application (No. A/K7/39) on 22.9.2000 for tutorial school at Unit B, G/F (Rear), 272B PERW, which shared the same common gate and side lane with the residential units in the same building and with no separate access. However, it should be noted that Application No. A/K7/39 was approved in 2000 (**Plan R-1a**), before the promulgation of TPB PG-No. 40 in February 2008. Application No. A/K7/39 is therefore considered not a relevant reference for consideration of the subject application having regard to TPB PG-No. 40.
- 7.12 In view of the above, our assessment that approval of the current 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 remains valid.

Public Comments

- 7.13 The 13 public comments objecting to the application are mainly on grounds of nuisance and disturbance to residents and adverse traffic impact. The planning assessments above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7 above and having taken into account the public comments in paragraph 6, and given that there has been no change in the planning circumstances since the consideration of the subject application by the MPC on 18.9.2020, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (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.
- 8.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 15.1.2025, 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 **Annex F**.

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

Annex A	MPC Paper No. A/K7/120
Annex B	Extract of minutes of the MPC meeting held on 18.9.2020
Annex C	Secretary of the Board's letter dated 9.10.2020
Annex D	Applicant's letter dated 16.10.2020 applying for a review of MPC's decision
Annex E	Public Comments
Annex F	Suggested Advisory Clauses
Plans R-1a and R-1b	Location plans with similar applications before and after promulgation of TPB PG-No. 40
Plans R-2 and R-3	Site plans
Plans R-4 to R-8	Site photos

**PLANNING DEPARTMENT
JANUARY 2021**