

REVIEW OF APPLICATION NO. A/K12/41
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed Two Houses
in “Government, Institution or Community” zone
Lots 1636 S.A and 1636 RP in S.D. 2, 57 Ngau Chi Wan Village, Kowloon

1. Background

- 1.1 On 21.6.2018, the applicant, Mr. LAU Ming represented by Giority Star Engineering & Consultants Limited, sought planning permission to build two houses on the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Government, Institution or Community” (“G/IC”) on the approved Ngau Chi Wan Outline Zoning Plan (OZP) No. S/K12/16 (**Plan R-1**).
- 1.2 On 17.8.2018, the Metro Planning Committee (MPC) rejected the application on the following grounds:
- (a) the proposed house development is not in line with the planning intention of the “G/IC” zone which is intended primarily for the provision of government, institution or community (GIC) facilities serving the needs of the residents in the area/district, and it will frustrate the planning and development of the planned community hall;
 - (b) the proposed development does not comply with the Town Planning Board (TPB) Guidelines for “Application for Development/Redevelopment within “G/IC” Zone for Uses other than GIC Uses” in that the Site is still required for its designated GIC uses, and the proposed development will adversely affect the provision of GIC facilities in the area in the long term; and
 - (c) approval of the application will set an undesirable precedent for other similar applications in the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) MPC Paper No. A/K12/41 (Annex A)
 - (b) Extract of minutes of the MPC meeting held on 17.8.2018 (Annex B)
 - (c) Secretary, TPB’s letter dated 7.9.2018 (Annex C)

2. Application for Review

On 28.9.2018¹, the applicant applied, under section 17(1) of the Ordinance, for review of the MPC's decision to reject the application (**Annex D-1**). On 10.10.2018, the applicant submitted supplementary information in support of the review (**Annex D-2**).

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in the applicant's written representation at **Annexes D-1** and **D-2**. They can be summarised as follows:

- (a) the applicant realizes that the proposed development seems to be not in line with the planning intention of "G/IC" zone but considers it a relief of Government's burden if the applicant, who is an old man, uses his own effort to build two houses in his private land and live with his children who agree to take care of him for the rest of his life;
- (b) the applicant is willing to surrender his private land and houses if the Government acquires his land for public interest in the future and agrees not to cause any hindrance to the Government's land acquisition. The above commitment would not set a precedent for the rest of land in Ngau Chi Wan;
- (c) the applicant reinstates the details of the development in the subject application. For Members' reference, the detailed development parameters are as follows:

Site Area	: 151.5m ²
No. of Blocks	: 2
Total Domestic Floor Area	: 244.896m ²
Total Plot Ratio	: 1.62
Site Coverage	: 53.88% (equivalent to about 81.63m ²)
No. of Storeys	: 3
Building Height	: 8.23m

- (d) in addition, the applicant indicates that they would accept 2 concrete houses with 2 storeys as an alternative.

4. The Section 16 Application

The Site and Its Surrounding Areas (**Plans R-1 to R-5**)

¹ The applicant's letter dated 27.9.2018 was received by the TPB on 28.9.2018.

- 4.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by the MPC are described in paragraph 8 of the MPC Paper in **Annex A**. There has been no material change since then, except that an existing tree at the south-western corner of the Site has been removed (**Plan R-5**).

Planning Intention

- 4.2 There has been no change to the planning intention of the concerned “G/IC” zone, which is mentioned in paragraph 9 of the MPC Paper in **Annex A**.

Background

- 4.3 Ngau Chi Wan Village is located to the east of Choi Hung Estate, and comprises mainly of low-rise village houses and temporary structures. In the 1970s, the Village was mainly zoned “Village Type Development” (“V”) on the OZP. In the 1980s, a Layout Plan for Ngau Chi Wan Village was prepared to resite the southern part of the Village for the construction of the Mass Transit Railway Choi Hung Station, and to provide the planning and development framework for the northern part of the Village with a view to improving the environmental conditions. The then Wong Tai Sin District Board (WTSDB) and the local communities were consulted on the Layout Plan in 1986, and considered the land use proposals acceptable. The Layout Plan was adopted by the then Development Progress Committee on 11.4.1988, and the proposals were then incorporated into the Ngau Chi Wan Outline Development Plan (ODP) in the same year. According to the ODP, the resited village in the south is zoned “V”, while the northern part is rezoned to residential, open space, a community hall and road. It aims to enhance the environment and provide supporting recreation and community facilities.
- 4.4 Subsequently, the proposals in the ODP were incorporated into the Ngau Chi Wan OZP. The area to the north of the “V” zone was proposed to be rezoned to “Residential (Group B)” (“R(B)”), “Open Space”, “G/IC” and area shown as ‘Road’. Among others, the “G/IC” zone (covering the Site) is intended for development of a community hall and open-air public vehicle park. The then WTSDB, the then Ngau Tsuen Area Committee, Ngau Chi Wan Rural Committee and the local communities were consulted on the rezoning proposals in late 1989 and they indicated no objection to the proposals. In particular, the majority of land owners and tenants had indicated their support to the proposals as it would result in general improvement to the environment of the area. The view of the local communities had been taken into account in the plan making process prior to gazetting of the OZP in 1990. The zonings of the Village including the Site remain unchanged since then (**Plan R-1**). Over the years, some of the “R(B)” zones have been developed for residential use (including Bayview Garden, Fortune Garden, Wealth Garden and Fire Services Department Married Quarters) and portion of the planned road leading to these developments (i.e. Wing Ting Road) have been completed (**Plans R-1 to R-4**).

- 4.5 On the draft Ngau Chi Wan ODP No. D/K12/D (**Plan R-2**), the northern part of the Site falls within a “Government” site designated for ‘Community Hall’, and the southern part is within an area reserved for open-air public vehicle park. The proposed elevated road passing through the Site as shown on the ODP is obsolete and has been replaced by an alternative proposal outside the site boundary. At present, the Wong Tai Sin District Office (DO/WTS) reconfirms there is demonstrated need for the proposed community hall but there is no implementation programme; and Commissioner for Transport (C for T) has recently advised that the area reserved for public vehicle park can be released for other uses.

Previous Applications

- 4.6 The Site is the subject of two previous s.16 planning applications (No. A/K12/20 and A/K12/35) and a s.12A rezoning application (No. Y/K12/1) (**Plan R-3**). Details of the applications are set out and summarized at paragraph 6 and Appendix IV of the MPC Paper in **Annex A** respectively.
- 4.7 Both Applications No. A/K12/20 and A/K12/35 for the development of a house/two houses, submitted by the same applicant, were rejected by the MPC and the TPB upon review on 22.12.2000 and 15.6.2007 respectively mainly on the grounds of being not in line with the planning intention of the “G/IC” zone, not complying with the TPB Guidelines in that the site was still required for GIC purposes and setting of an undesirable precedent.
- 4.8 Application No. Y/K12/1 to rezone the application site (same site as the subject application) from “G/IC” to “V” for construction of two houses was submitted by the same applicant. The application was not agreed by the MPC on 14.9.2016 mainly on the grounds that rezoning in a piecemeal manner would jeopardize the comprehensive development of the “G/IC” zone to provide the required GIC facilities for the area and setting of an undesirable precedent.

Similar Applications

- 4.9 There are two similar applications (No. A/K12/13 and A/K12/39) for proposed house at the middle part and northern corner of the same “G/IC” zone of the OZP (**Plan R-3**). Details of the applications are set out and summarized at paragraph 7 and Appendix V of the MPC Paper in **Annex A** respectively. Since then, no similar application has been considered by the TPB.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 10 of the MPC Paper in **Annex A**.

- 5.2 For the review application, relevant Government departments have been further consulted and their views on the review application are summarized as follows:

Land Administration

5.2.1 Comments of DLO/KE, LandsD:

- (a) it is noted from paragraph 3 of the applicant's letter dated 27.9.2018 (**Annex D-1**) that the applicant was willing to surrender his private land if the Government acquires his land for public purpose in the future;
- (b) land resumption of private land for implementation of a public project would be processed according to the established statutory mechanism under the respective ordinance no matter the land owner of the concerned private land is willing to surrender or not;
- (c) he maintains his previous views on the s.16 application which are recapitulated below:

No objection to the application subject to the following comments:

- (i) the Site falls within Lots 1636 S.A and 1636 RP in Survey District No. 2 ('the Lot'), which is held under the Block Government Lease dated 18.3.1905. The total area of the Lot is 0.04 acre of which 0.02 acre (871.2 ft² or equivalent to about 80.94m²) is building land and 0.02 acre (871.2 ft²) is agricultural land;
- (ii) the building area (53.88% or equivalent to about 81.63m²) as proposed by the applicant has exceeded the area permitted (i.e. 0.02 acre or equivalent to about 80.94m²) under the Lease and is in breach of the lease conditions. If the planning application is approved, the applicant is required to apply to his Office for lease modification to give effect to the proposal. However, there is no guarantee at this stage that the lease modifications would be approved. If the application for lease modification is approved by LandsD in the capacity as landlord at his sole discretion, it will be subject to such terms and conditions including the payment of premium and fee as considered appropriate by LandsD; and
- (iii) other than the above, the floor area of the premises and other details submitted by the applicant have not been verified and the applicant is required to demonstrate the dimensions and calculation of the floor area when the lease modification application is submitted.

Landscape

5.2.2 Comments of the Chief Town Planner/Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) with reference to the aerial photo (**Plan R-4**), the Site is located in an area of urban landscape character dominated by low to medium rise residential buildings and adjoining a pedestrian footpath (Lung Chi Path). The proposed house development is not incompatible with the landscape character of the surrounding environment. According to site photo (**Plan R-5**), the Site is partly vacant land with wild grown grassland and partly hard paved area;
- (b) it is noted that an existing tree at the Site has been removed recently. In view of administrative control of tree works, such as felling and pruning, and/or other requirements under land lease/grant, advice from LandsD should be sought for matters concerning the lease when necessary;
- (c) in view of the above, she has no objection to the application from landscape planning point of view; and
- (d) due to the lack of available space within the Site, meaningful implementation of quality landscape planting (including further tree planting) within the Site is not practicable. It is considered not necessary to impose any landscape-related condition should the application be approved by the TPB.

5.3 The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application in paragraph 10 of the MPC Paper in **Annex A**. The main views are recapitulated as follows:

Provision of Community/Government Facilities

5.3.1 District Officer (Wong Tai Sin) (DO/WTS):

- (a) no adverse comment on the application;
- (b) there is still a demonstrated need for a community hall in the area as the Ngau Chi Wan, King Fu and Choi Hung areas, with a total population of around 53,100, do not have a community hall and no similar facilities in the area can cater for the hosting of various types of community activities. It is anticipated that the demand will only grow stronger with the increasing population brought by different residential development projects in the vicinity. It is a community wish that a community hall be constructed and locals are well aware that a site has been reserved for the development of a

community hall and have high expectation that it could be delivered; and

- (c) despite the strong community wish, there is currently no development programme for the reserved community hall.

5.3.2 Comments of the Director of Social Welfare (DSW):

- (a) no comment on the application; and
- (b) the following list of welfare facilities at Ngau Chi Wan Village covering the Site was proposed in 2012 and are to be reviewed should there be firmer development programme:
- Residential care home of the elderly
 - Subvented urban hostel for single persons
 - Hostel for moderately mentally handicapped persons
 - Hostel for severely physically handicapped persons
 - Integrated vocational rehabilitation services centre
 - Supported hostel
 - Care and attention home for severely disabled persons
 - Day activity centre
 - Hostel for severely mentally handicapped persons

Building Matters

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

no objection to the application and detailed comments under the Buildings Ordinance can only be formulated at the building plan submission stage.

Traffic

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

from traffic engineering point of view, the public vehicle park and associated extension of Wing Ting Road may be required if there is a development at the “G/IC” site and adjacent area. Since the land of the public vehicle park is occupied by other existing developments, the parking facilities should be contingent upon the adjacent development. Alternatively, the car parking spaces required could be provided within the future adjacent development to cater for the parking demand of the development itself. As such, the land for public vehicle park could be released for other use.

Housing

5.3.5 Comments of the Director of Housing (D of H):

- (a) located in a “G/IC” zone next to Bayview Garden and Wealth Garden, the Site falls within an area which can be considered for public housing development. However, the implementation of public housing development at this Site hinges on rezoning, land resumption and clearance by the relevant Government departments;
- (b) the formulation of scheme for the Ngau Chi Wan site has not been commenced. While the need to provide the community hall would be taken into account, he cannot confirm at this stage on whether the facilities would be provided in stand-alone or integrated setting; and
- (c) the Site falls within an area which can be considered for public housing development and its exclusion would affect the development scale and flexibility of the area in future.

Environment

5.3.6 Comments of the Director of Environmental Protection (DEP):

- (a) no objection to the application from environmental perspective as adverse environmental impacts and sewerage impact associated with the proposed developments are not anticipated; and
- (b) should the application be approved, the following approval condition is recommended:

‘the implementation of the sewerage connection from the Site to the public sewerage manhole to the satisfaction of the Director of Drainage Services or of the Town Planning Board.’

Drainage

5.3.7 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

- (a) no comment on the application from drainage point of view; and
- (b) the nearest public sewerage manhole is located near Choi Hung Villa (**Plan R-3**). The Sewerage Infrastructure Group of Environmental Protection Department shall be consulted if sewerage connection from the proposed houses will be made.

Fire Safety

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

- (a) no comment on the application subject to fire service installation and water supplies for firefighting being provided to the satisfaction of his department. Detailed Fire Services requirement will be formulated upon receipt of formal submission of general building plans; and
- (b) the arrangement of emergency vehicular access shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 which is administered by the BD.

Urban Design

5.3.9 Comments of the Chief Town Planner/Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD):

while accommodation of the proposed houses in the area may not affect the character of the neighbourhood, given the setting of the Site which is almost in the middle of the “G/IC” zone, the compatibility of the proposed houses with respect to the planned land-use context would be a concern.

5.4 The following Government departments maintain their previous views of having no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Highway Engineer/Kowloon, Highways Department;
- (c) Commissioner of Police; and
- (d) Director of Food and Environmental Hygiene;

6. Public Comments Received During Statutory Publication Period

- 6.1 On 12.10.2018, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 2.11.2018, one comment was received (**Annex E**) from the same individual objecting to the s.16 application. She maintains her objection to the review application reiterating the need for reservation of sites for provision GIC facilities which are constantly hindered by lack of sites.
- 6.2 One public comment was received at the s.16 application stage and is set out in paragraph 11 of the MPC Paper in **Annex A**.

7. Planning Considerations and Assessment

- 7.1 The applicant sought planning permission to construct two 3-storey houses with a site area of 151.5m² and a total domestic floor area of 244.896m² at the Site within the “G/IC” zone. The applicant also indicates that they would accept 2 concrete houses with 2 storeys as an alternative.
- 7.2 On 17.8.2018, the MPC rejected the application for the reasons that : (a) the proposed development is not in line with the planning intention of the “G/IC” zone; (b) it does not comply with the TPB Guidelines for “Application for Development/Redevelopment within “G/IC” zone for Uses other than GIC Uses” in that the Site is still required for its designated GIC uses, and it will adversely affect the provision of GIC facilities in the area in the long term; and (c) the approval of the application would set an undesirable precedent for similar applications in the area.
- 7.3 In response to rejection reason (a), the applicant indicates that the proposed development seems to be not in line with the planning intention of the “G/IC” zone but considers it a relief of Government’s burden if an old man uses his own effort to build two houses in his private land and live with his children who agree to take care of him for the rest of his life. Notwithstanding that, it is not a planning consideration to justify the deviation from the planning intention of the “G/IC” zone.
- 7.4 In response to rejection reasons (b) and (c), the applicant indicates in the s.17 review submission that he is willing to surrender his private land and houses whenever Government wants to acquire his land for public interest and agrees not to cause any hindrance to Government’s land acquisition. In this connection, DO/WTS, HAD has reiterated the need for a community hall but there is currently no development programme for the facility. D of H has also advised that the Site falls within an area which can be considered for public housing development and the need for a community hall can be taken into account in the development. However, a scheme for such development would need further study. DLO/KE, LandsD advises that land resumption of private land for implementation of a public project would be processed according to the established statutory mechanism under the respective ordinance.
- 7.5 The proposed development does not comply with the TPB Guidelines for “Application for Development/Redevelopment within “G/IC” Zone for Uses other than GIC Uses” (TPB PG-No. 16) in that the Site is still required for GIC purposes. In this regard, relevant Government departments are further consulted on the review application. DO(WTS) has no further comment and maintains that there is a demonstrated need for a community hall in the area with the increasing population as the concerned area does not have a community hall. The locals are well aware that a site has been reserved for community hall development and have high expectation that it could be delivered, although there is currently no programme for its development. DSW also has no further comment and indicates there is

local demand for welfare facilities. Meanwhile, TD maintains his previous advice that the land for the proposed public vehicle park as shown on the ODP (**Plan R-2**) could be released for other uses as the required parking spaces could be provided within the future adjacent development to cater for the parking demand of the development itself. Nevertheless, as the Site is located in the central part of the “G/IC” zone, approval of the application would frustrate the comprehensive planning for the “G/IC” zone for provision of the planned GIC uses and would affect the provision of GIC facilities in the district.

- 7.6 The Site is covered by two previous s.16 applications (No. A/K12/20 and A/K12/35) for proposed house development in 2000 and 2007 and a previous s.12A application No. Y/K12/1 for rezoning from “G/IC” to “V” to facilitate house development in 2016 (**Plan R-3**). Both s.16 applications were rejected by the MPC/TPB on review mainly on the grounds of being not in line with the planning intention of “G/IC” zone, not complying with the TPB Guidelines and setting of an undesirable precedent, while the s.12A application was not agreed by the MPC mainly on the grounds that rezoning in a piecemeal manner would jeopardise the comprehensive development of the “G/IC” zone and that it would set an undesirable precedent. With no material change in planning circumstances, there is no ground to deviate from the previous decisions of the MPC and the TPB.
- 7.7 While a similar application (No. A/K12/39) (**Plan R-3**) was allowed by the Town Planning Appeal Board (TPAB) in 2013, that appeal site is partly zoned “G/IC” and located at the corner of the “G/IC” zone and the TPAB’s decision was based on site-specific circumstances. As the Site located in the central part of the subject “G/IC” zone is crucial for the comprehensive planning and development of the zone and there are a considerable amount of private lots with similar land status as the Site within the same “G/IC” zone, approval of the application would set an undesirable precedent for other similar applications in the area.
- 7.8 One public comment received objects to the review application mainly on the ground that there is a need for reservation of sites for provision GIC facilities which are constantly hindered by lack of sites. The planning considerations and assessments as mentioned in the above paragraphs are relevant.

8. Planning Department’s Views

- 8.1 Based on the assessment made in paragraph 7, having taken into account the public comment mentioned in paragraph 6 and given that there is no change in the planning circumstances since the consideration of the subject application by the MPC, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the proposed house development is not in line with the planning intention of the “Government, Institution or Community” (“G/IC”)

zone which is intended primarily for the provision of government, institution or community (GIC) facilities serving the needs of the residents in the area/district, and it will frustrate the planning and development of the planned community hall;

- (b) the proposed development does not comply with the Town Planning Board Guidelines for “Application for Development/ Redevelopment within “G/IC” Zone for Uses other than GIC Uses” in that the Site was still required for its designated GIC uses, and the proposed development will adversely affect the provision of GIC facilities in the area in the long term; and
- (c) approval of the application will set an undesirable precedent for other similar applications in the area.

8.2 Alternatively, should the TPB decide to approve the application, it is suggested that the permission shall be valid until 14.12.2022, 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 provision of fire service installation and water supplies for firefighting to the satisfaction of the Director of Fire Services or of the Town Planning Board; and
- (b) the implementation of the sewerage connection from the Site to the public sewerage manhole to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are at **Annex F**.

9. Decision Sought

- 9.1 The TPB is invited to consider the application for a review of the MPC’s decision and decide whether to accede to the review application.
- 9.2 Should the TPB decide to reject the review application, Members are invited to advise what reasons for rejection should be given to the applicant.
- 9.3 Alternatively, should the TPB decide to approve the review application, Members are invited to consider the approval conditions and advisory clauses, 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/K12/41
Annex B	Extract of minutes of the MPC meeting held on 17.8.2018
Annex C	Secretary of the TPB's letter dated 7.9.2018
Annexes D-1 and D-2	Letter dated 27.9.2018 from the applicant applying for a review of the MPC's decision (received by the TPB on 28.9.2018) and email dated 10.10.2018
Annex E	Public Comment
Annex F	Recommended Advisory Clauses
Plan R-1	Location plan
Plans R-2 and R-3	Site plans
Plan R-4	Aerial photo
Plan R-5	Site photos

**PLANNING DEPARTMENT
DECEMBER 2018**