

APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TWW/118

Applicant : Salisburgh Company Limited represented by Kenneth To & Associates Limited

Premises : Level 5 (Part), Bellagio Mall, Bellagio, 33 Castle Peak Road – Sham Tseng, Sham Tseng, Tsuen Wan

Total Floor Area of Premises : About 694.95 m²

Lease : Lot 269 RP in D.D. 390
(a) New Grant No. 7133 dated 7.9.2001;
(b) Restricted to non-industrial purposes excluding godown, office, hotel and petrol filling station;
(c) Subject to a maximum domestic gross floor area (GFA) of 257,234m² and a maximum non-domestic GFA of 2,872m²; and
(d) To provide and maintain a kindergarten with a total GFA of not less than 670m².

Temporary Waiver dated 17.1.2011

For the purpose of a school for tutorial services from 23.6.2010 to 20.11.2012 and thereafter quarterly.

Plan : Approved Tsuen Wan West Outline Zoning Plan (OZP) No. S/TWW/19

Zoning : “Residential (Group A) 3” (“R(A)3”)

[No new development, or addition, alteration and/or modification to or redevelopment of an existing building shall result in a total development and/or redevelopment in excess of a maximum domestic GFA of 257,234m² and a maximum non-domestic GFA of 2,872m² or the GFA of the existing building, whichever is the greater, and the maximum building height in terms of metres above Principal Datum (mPD) as stipulated on the OZP. In addition, a day nursery, a children and youth centre cum study/reading room, a kindergarten consisting not less than five classrooms and a public transport terminus should be provided. In determining the maximum domestic GFA or non-domestic GFA, any floor space that is constructed or intended for use solely as day nursery,

children and youth centre cum study/reading room, kindergarten consisting not less than five classrooms and transport terminus, as required by the Government, may be disregarded.]

Application : Renewal of Planning Approval for Minor Relaxation of Maximum Non-domestic GFA Restriction for Permitted Temporary School (Tutorial Service) for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for minor relaxation of maximum non-domestic GFA restriction for a permitted school (tutorial service) for a period of three years at portion of Level 5 of Bellagio Mall, Bellagio, 33 Castle Peak Road – Sham Tseng, Sham Tseng, Tsuen Wan (the Premises) (**Plans A-1 and A-2**). The previous application (No. A/TWW/111) was approved with conditions by the Metro Planning Committee (the Committee) of the Town Planning Board (the Board) on 24.6.2016 for a period of three years and the planning permission will expire on 24.6.2019.
- 1.2 The Premises, with a total GFA of about 694.95m², falls within an area zoned “R(A)3” on the approved Tsuen Wan West OZP No. S/TWW/19 subject to a maximum domestic GFA of 257,234m² and non-domestic GFA of 2,872m² or the GFA of the existing building, whichever is the greater. ‘Tutorial School’ is a use subsumed under ‘School’ which according to the Notes of the OZP, is always permitted in the purpose-designed non-residential portion of an existing building excluding floors containing wholly or mainly car parking, loading/unloading bays and/or plant room within “R(A)3” zone. In determining the maximum domestic GFA or non-domestic GFA, any floor space that is constructed or intended for use solely as day nursery, children and youth centre cum study/reading room, kindergarten consisting not less than five classrooms and transport terminus, as required by the Government, may be disregarded. The Premises has been reserved for kindergarten required by the Government and was exempted from the GFA calculation on the OZP. Same as previously approved planning application, if the Premises is converted to school (tutorial services) use, the relevant floor area should be GFA accountable and would result in exceedance of the non-domestic GFA restriction of the “R(A)3” zone by 670m² (about 23.33%). Planning permission for minor relaxation of the GFA restriction from the Board is therefore required.
- 1.3 Bellagio is a comprehensive residential and commercial development completed by phase in 2003 to 2006. The non-domestic portion, namely Bellagio Mall is located at Castle Peak Road – Sham Tseng, which is a 3-storey high free-standing purpose-designed commercial block, including Level 1, Level 3 and Level 5¹. The Premises occupies portion of the Level 5 of the building, shared the same level with a nursery school and a children and youth centre. The Premises is being used as a tutorial school with valid planning permission under Application No. A/TWW/111 for minor relaxation of the non-domestic GFA restriction.

¹ Levels 2 and 4 are omitted in the floor numbering of the 3-storey commercial block.

- 1.4 The layout of the Premises is shown on **Drawing A-1**. The Premises under the relevant approved building plans is for kindergarten use with a GFA of 694.951m². The applicant applies for minor relaxation of non-domestic GFA of 670m² under the OZP. The remaining GFA of 24.951m² should be included in the non-domestic GFA calculation under the OZP², which should not exceed 2,872m². There is no change in total floor area of the Premises and the GFA applied for minor relaxation compared with the approved scheme under previous application (No. A/TWW/111).
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 29.4.2019 (Appendix I)
 - (b) Supporting Planning Statement (SPS) (Appendix Ia)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the SPS at **Appendix Ia**. They are summarized as follows:

No change in planning circumstances

- (a) There is no material change in planning circumstances in the Sham Tseng Area since the approval of previous planning application for the minor relaxation of maximum non-domestic GFA restriction for the permitted temporary school (tutorial service) at the Premises. No amendments have been made to the approved Tsuen Wan West OZP, i.e. no change in the land uses of the surrounding areas since the previous temporary planning approval was granted. Hence, the approval of the current application will be consistent with the Board's previous decision.

Continue to meet the planning intention of the "R(A)" zone

- (b) The Premises is located in area zoned "R(A)3" zone with planning intention of "primarily for high-density residential developments". It is also stated that "commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building". According to the Notes of the OZP, the temporary school (tutorial service) is always permitted. The reason for the minor relaxation of non-domestic GFA is the replacement of the previous kindergarten (non-accountable for non-domestic GFA) by the temporary school (tutorial service). Therefore, the proposal conforms to the planning intention of the "R(A)" zone.

In-line with Town Planning Board Guidelines No. 40

- (c) The proposed use is in-line with Town Planning Board Guidelines for Application for Tutorial School under Section 16 of the Town planning Ordinance (TPB PG-No. 40). The proposed use would not be incompatible with other uses within

² According to comment from DLO/TWK&KT, LandsD (please refer to para. 10.1.1), the Special Condition (29)(b) of the lease specifies that regardless the size of the kindergarten, only a maximum of 670m² can be excluded from GFA calculation under lease. The remaining GFA of 24.951m² should be included in the non-domestic GFA calculation under the OZP, which should not exceed 2,872m².

the same building and no disturbance or nuisance to the local residents would be resulted as it is located in the purpose-designed non-residential portion of Bellagio and the entrance to the Premises is separated from the domestic portion of Bellagio. The approval condition on provision of fire service installations and water supplies for fire-fighting at the Premises attached to the previous planning approval was satisfactorily complied with.

Suitability of the proposed use at the Premises

- (d) The Premises was the subject of various planning applications for temporary school (tutorial service) use since 2009 and it has always been considered compatible with other uses including school (nursery school), shop and services, eating places and social welfare facilities uses at Bellagio Mall.

Accessibility

- (e) The Premises is located at part of Level 5 of Bellagio Mall which is easily accessible by residents from various residential developments in Sham Tseng. Bellagio Mall is also accessible by various public transport modes running along Castle Peak Road – Sham Tseng.

Providing the much needed tutorial services to students in need

- (f) The Premises has been operated as a school (tutorial service) for 10 years and is well received by the students and their parents. It has been providing tutorial services and leisure hobby classes including musical instruments, dancing, arts and crafts, playgroup, and languages to students. No complaint from the public and Government departments has been received. The approval of the current application will enable the continuous provision of this much needed tutorial services to the students.

The proposal will not result in increasing in building bulk

- (g) The existing temporary school (tutorial service) is located at the Premise that is physically existed at part of Level 5 (2/F) of Bellagio Mall. The proposal will not involve any construction of new floor space. Thus, there will not be any increase in building bulk.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

4.1 Town Planning Board Guidelines for Application for Tutorial School under Section 16 of the Town Planning Ordinance (TPB PG-No. 40) are relevant to this application. The relevant assessment criteria are summarised as follows:

- (a) The proposed tutorial school should not be incompatible with other uses within the same building.

- (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 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 minimise any disturbance to the residents in the same building.
- (d) The views of the public on the proposed tutorial school will be taken into account by the Board in the consideration of the application.
- (e) The Fire Services Department 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.

4.2 Town Planning Board Guidelines on Renewal of Planning Approval and Extension of time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C) are also relevant to the current application. The relevant assessment criteria are summarised as follows:

- (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
- (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
- (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
- (d) whether the approval period sought is reasonable; and
- (e) any other relevant considerations.

5. **Background**

5.1 Bellagio was zoned “Comprehensive Development Area” (“CDA”) for comprehensive redevelopment of the ex-San Miguel Brewery site on the first Tsuen Wan West OZP No. S/TWW/1 published on 3.2.1989. According to the planning brief of the “CDA” zone to guide the redevelopment, a kindergarten should be provided within the development.

- 5.2 The site was the subject of various planning applications for comprehensive residential and commercial development. Since the first approved planning application (No. A/TWW/39), it was proposed to have a kindergarten within the development. On the building plans approved by the Building Authority in 2001, the Premises was reserved as a 5-classroom kindergarten.
- 5.3 On the draft Tsuen Wan West OZP No. S/TWW/13 gazetted on 13.12.2002, Bellagio was rezoned from "CDA" to "R(A)3" subject to the same restrictions stated in paragraph 1.2 above. To reflect the approved development shown on the Master Layout Plan and the lease conditions, the requirement of provision of a kindergarten was incorporated in the Remarks of the "R(A)3" zone. The zoning and restrictions remain unchanged since then and the requirement of the kindergarten retains in the extant OZP.

6. Previous Applications

- 6.1 The Premises was the subject of three previous applications (Nos. A/TWW/98, A/TWW/104 and A/TWW/111) submitted by the same applicant for minor relaxation of the maximum non-domestic GFA restriction for permitted school (tutorial service) (**Appendix II** and **Plan A-1**).
- 6.2 Application No. A/TWW/98 was approved by the Committee on 20.11.2009 on a temporary basis for a period of three years up to 20.11.2012. On 21.9.2012, Application No. A/TWW/104 for renewal of the planning approval under Application No. A/TWW/98 was approved with conditions by the Committee on a temporary basis for a further period of three years up to 20.11.2015.
- 6.3 The planning permission under Application No. A/TWW/104 expired on 20.11.2015. Subsequently, Application No. A/TWW/111 for minor relaxation of the maximum non-domestic GFA restriction for permitted school (tutorial service) was made and approved with conditions by the Committee on 24.6.2016 on a temporary basis for a period of three years of which the planning permission will expire on 24.6.2019. The approval condition on the provision of fire service installations and water supplies for firefighting has been complied with.

7. Similar Application

There is no similar application for minor relaxation of GFA or plot ratio restriction for permitted Government, institution and community use within the "R(A)" zone in Tsuen Wan West.

8. The Premises and its Surrounding Areas (Plan A-2 and Site Photos on Plans A-3 to A-5)

- 8.1 The Premises:
- (a) is at Level 5 of Bellagio Mall (**Plan A-3**);

- (b) is currently used as a tutorial school (**Plans A-3 and A-4**). The two common staircases (**Drawing A-1**) connecting the Premises to the street level are also included in the Premises;
- (c) is directly accessible by a lift shared with other floors within the building; and
- (d) has an alternative public access via escalator from the main entrance of Bellagio Mall to Level 3 and then staircase to Level 5 (**Plan A-5**).

8.2 The subject building of Bellagio Mall:

- (a) is a 3-storey purpose-designed commercial block abutting Castle Peak Road – Sham Tseng located at the northern part of the site (**Plans 1 and 2**);
- (b) Level 1 at the street level is a transport terminus of bus and minibus with taxi stand; and
- (c) the current uses by level of the subject building as recorded during site visits on 10.5.2019 are summarised as follows:

Level	Current Uses (Photographs at Plan 5)
1 (Street level)	Shop and services (real estate agencies) and public transport terminus
3	School (tutorial service), shop and services (supermarket, clinic, retail shop and hair salon), eating place (fast food shop)
5	The Premises , school (nurse school) and social welfare facility (children and youth centre)
6 (Roof)	Place of recreation, sports or culture (outdoor tennis courts for residents)

Remarks: Levels 2 and 4 are omitted in the floor numbering.

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

- (a) to the east is the Garden Co. Ltd., and Ocean Pointe which is a residential development;
- (b) to the south across an internal road is the residential towers of Bellagio;
- (c) to the west is Sham Tseng Catholic Primary School zoned “Government, Institution or Community”; and
- (d) to the north across Castle Peak Road – Sham Tseng is Rhine Garden, a residential development with retail shops on the street level and a 6-classroom kindergarten.

9. Planning Intention

The “R(A)3” zone is intended primarily for high-density residential developments. Commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building.

10. Comments from Relevant Government Bureau and Departments

10.1 The following Government bureau and departments have been consulted and their views on the application are summarized as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/Tsuen Wan and Kwai Tsing, Lands Department (DLO/TW&KT, LandsD):

- (a) The Premises is situated in the non-domestic portion of the buildings on Lot 269 RP in D.D. 390 governed by New Grant No. 7133 dated 7.9.2001 for non-industrial (excluding godown, office, hotel and petrol filling station) purpose. The maximum gross floor area (GFA) allowed for the non-industrial portions other than private residential purposes on the lot is 2,872m². Besides, under Special Condition No. 29, the Grantee of the lot shall provide and maintain a kindergarten with a total GFA of not less than 670m². Regardless the size of the kindergarten being provided, only a maximum GFA of 670m² can be excluded from GFA calculation under lease.
- (b) The Premises under the relevant approved building plans are for kindergarten use with a GFA of 694.951m². Following the Board's previous approval in 2009 (i.e. A/TWW/98), a temporary waiver letter dated 17.1.2011 was issued by this office permitting the premises for use as a school for tutorial service for a term commencing on 23.6.2010 and expiring on 20.11.2012 and thereafter quarterly for a waiver area of about 578m² (internal floor area) which does not include two common staircases as shown on **Drawing A-1**. The waiver letter also contains a condition requiring the waivee to obtain valid planning permission from time to time. Thus, a planning approval for the subject application is required for the waiver to be remained valid.
- (c) As the application is covered by a valid waiver letter, he has no objection to the planning application.

Education Aspect

10.1.2 Comments of the Secretary for Education (SED):

He has no comment on the application.

Fire Safety

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

He has no specific comment on the application subject to the existing Fire Services Installations implemented on the site should be maintained in efficient working order at all times.

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

- (a) Chief Building Surveyor/New Territories West, BD (CBS/NTW, BD);
- (b) Comments of the Commissioner for Transport
- (c) District Officer (Tsuen Wan), Home Affairs Department;
- (d) Director of Environmental Protection; and
- (e) Government Property Administrator.

11. Public Comments Received During Statutory Publication Period

On 10.5.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 31.5.2019, no public comment was received.

12. Planning Considerations and Assessments

12.1 The current application is seeking renewal of planning approval under Application No. A/TWW/111 for minor relaxation of the maximum non-domestic GFA restriction on the OZP for the permitted temporary school (tutorial service) at the Premises for a period of three years.

12.2 The Premises was previously reserved as kindergarten, which is exempted from GFA calculation on the OZP. According to the Notes of the OZP, 'Tutorial School' as a use subsumed under 'School', is always permitted in the purpose-designed non-residential portion of an existing building excluding floors containing wholly or mainly car parking, loading/unloading bays and/or plant room within "R(A)3" zone. However, as the conversion of the Premises to school (tutorial service) would result in additional non-domestic GFA, which will in turn exceed the maximum non-domestic GFA restriction of 2,872m² on the OZP, planning permission is therefore required.

12.3 The proposed minor relaxation of non-domestic GFA restriction of 670m² (+23.33%) of the OZP for the temporary tutorial school will not result in any actual increase in the development bulk as it involves the Premises which is physically existed in Level 5 of the commercial block. In terms of land use compatibility, the school is considered not incompatible with the nursery school and children and youth centre at the same floor, as well as other commercial uses in the lower floors within the subject free-standing commercial block. Also, the

proposed minor relaxation of non-domestic GFA restriction to allow the temporary tutorial school is only on a temporary basis for three years and is considered not unacceptable. All concerned Government bureau and departments consulted including SED, CBS/NTW, BD and D of FS have no objection to/no comment on the application. The application is considered in line with the TPB PG-No. 40. To respond to the D of FS's comment, an approval condition on maintenance of fire service installations implemented is recommended in paragraph 13.2 below.

- 12.4 The Premises was the subject of three previous applications (Nos. A/TWW/98, A/TWW/104 and A/TWW/111) for the minor relaxation of the maximum non-domestic GFA restriction for the same temporary use and same amount of relaxation of floor area which were approved by the Committee on a temporary basis for a period of three years between 2009 and 2016. The current application complies with the assessments criteria in TPB PG-No. 34C as mentioned in paragraph 4.2 above in that there is no material change in planning circumstances since the previous temporary planning approval (No. A/TWW/111) granted; there is no adverse planning implication arising from the renewal of the planning approval; and the planning conditions under the previous approval have been complied with.
- 12.5 There is adequate kindergarten classroom to meet the future demand in Tsuen Wan West according to the Hong Kong Planning Standards and Guidelines. In this regard, SED has no comment on the application to use the Premises originally reserved as kindergarten for tutorial school. The proposed minor relaxation of the GFA restriction for the temporary school for a further period of three years is considered not unacceptable. Since the application is on temporary basis for three years, it will unlikely jeopardize the long-term planned kindergarten at the Premises serving the local community. Moreover, the demand of kindergarten can be further reviewed upon expiry of the temporary approval.
- 12.6 There is no public comment received on the application.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 above, the Planning Department has no objection to the application.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a further period of three years and be renewed from 25.6.2019 to 24.6.2022. The following approval conditions and advisory clause are suggested for Members' reference:

Approval conditions

- (a) the existing fire services installations implemented on the site shall be maintained in efficient working order at all times during the approval period; and

- (b) if the above planning condition is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory clauses

To note the comments of DLO/TW&KT, LandsD that regardless the size of the kindergarten, only a maximum of 670m² can be excluded from gross floor area calculation under lease.

- 13.3 There is no strong planning reason to recommend rejection of the application.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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 period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for the rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form received on 29.4.2019
Appendix Ia	Supporting Planning Statement
Appendix II	Previous Applications
Drawing A-1	Layout plan of the Premises
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3 to A-5	Site Photos