

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K4/72

| | |
|---------------------------|--|
| <u>Applicant</u> | Mr. Har Man Fai represented by LANBASE Surveyors Limited |
| <u>Site</u> | 10 Peony Road, Kowloon Tong, Kowloon |
| <u>Site Area</u> | About 594m ² |
| <u>Lease</u> | <p>New Kowloon Inland Lot (NKIL) No. 4620</p> <p>(a) restricted to one detached or semi-detached private residence of European type with or without a private garage</p> <p>(b) height restriction of 35ft (about 10.67m)</p> |
| <u>Plan</u> | Approved Shek Kip Mei Outline Zoning Plan (OZP) No. S/K4/29 |
| <u>Zoning</u> | <p>“Residential (Group C) 1” (“R(C)1”)</p> <p>(a) maximum plot ratio (PR) of 1.65, site coverage (SC) of 55% and building height (BH) of 10.67m, or the PR, SC and BH of the existing building, whichever is the greater</p> <p>(b) minor relaxation of the PR, SC and BH restrictions may be considered by the Town Planning Board (the Board) on application based on individual merits of a development or redevelopment proposal</p> |
| <u>Application</u> | Proposed Minor Relaxation of BH Restriction for Permitted Residential Development |

1. The Proposal

- 1.1 The applicant seeks planning permission for minor relaxation of BH restriction from the existing BH of 10.66m to the proposed BH of 13.97m (+3.31m or +31%) for redevelopment of a house at the application site (the Site). The Site is zoned “R(C)1” on the approved Shek Kip Mei OZP No. S/K4/29 (**Plan A-1**). According to the Notes of the OZP, ‘House’ use is always permitted within the “R(C)1” zone and minor relaxation of BH restriction may be considered by the Board upon application under section 16 of the Town Planning Ordinance (the Ordinance).
- 1.2 The Site is currently occupied by an existing 4-storey building (with 3 storeys of residential floors over 1 storey of lower-ground carport) with PR of 1.9978, SC

of 66.59% and BH of 10.66m (34.95mPD at main roof)¹. The applicant proposes to redevelop the existing building to a 4-storey house (including 1 storey of basement accommodating 3 car parking spaces, 1 motorcycle parking space and plant rooms) with proposed PR of 1.944, SC of 66.56% and BH of 13.97m (35.57mPD at main roof) (Proposed Scheme) (**Drawings A-1 to A-7**). The proposed floor-to-floor heights range from 3.2m to 4.2m, which are higher than the range of 2.42m to 2.75m of the existing building. Since the height of the proposed redevelopment exceeds that of the existing building, planning application for minor relaxation of BH restriction is required. According to the Proposed Scheme, an open yard with area of about 109.66m² (about 18.5% of site area) would be provided on G/F while the main entrance and vehicular access would remain on Peony Road (**Drawing A-2**).

1.3 Major development parameters of the Proposed Scheme are as follows:

| Development Parameters | Proposed Scheme |
|---------------------------|---|
| Site Area | about 594m ² |
| PR | about 1.944 |
| Gross Floor Area (GFA) | about 1,154.75m ² |
| SC | about 66.56% |
| BH | 13.97m (35.57mPD at main roof) |
| No. of Storeys | 4 (including 1 storey of basement at level of 21.6mPD) |
| No. of Parking Spaces | 3 for private cars (including 1 for the disabled/visitor); and 1 for motorcycle |
| Landscaping/Tree Proposal | Open yard of about 109.66m ² (about 18.5% of site area) with no tree planting proposed |

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

- (a) Application form received on 29.1.2021 (**Appendix I**)
- (b) Supplementary Planning Statement (SPS) received on 29.1.2021 (**Appendix Ia**)
- (d) Further information (FI) received on 9.3.2021 (**Appendix Ib**)
providing responses to departmental comments

¹ According to the building plans approved on 8.6.1983 for the existing building, the site area, SC and BH are 594m², 395.573m², and 10.66m (34.95mPD at main roof) respectively. The lower-ground carport is at the level of 24.28mPD. The PR of 1.9978 for the existing building is indicated in the set of building plans approved on 5.1.2021.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the SPS and the FI at **Appendices Ia** and **Ib** respectively and are summarised as follows:

In Line with Planning Intention

- (a) The Proposed Scheme would allow 1 storey of basement beneath the 3-storey house development at the Site (**Drawing A-4**). The basement car park and E&M facilities would not change the residential nature of the Site and the BH profile of the surrounding, and is in line with the planning intention of the subject zone.

Compatibility with Surrounding

- (b) The Site is located in Yau Yat Tsuen dominated by low-rise and low-density residential developments. The proposed development is considered compatible with the surrounding environment in terms of land use and building bulk.

Similar Applications

- (c) There were planning applications for minor relaxation of BH restriction for car parking and/or ancillary plant rooms approved by the Board in “R(C)1” zone on the adjoining Kowloon Tong OZP. The subject application would not set an undesirable precedent in the area.

Environmental Benefit

- (d) Placing the car parking spaces and plant rooms at the basement can release space at ground level for gardening and landscaping to improve amenity and streetscape in the area (**Drawings A-1, A-2, A-6 and A-7**). It could minimise disturbance to the occupants, the adjoining residents and the pedestrians. It is proposed that planning condition on landscape proposal can be imposed.

No Adverse Impacts

- (e) The BH is 10.67m measured from the proposed ground floor level (at 24.9mPD), which is the same as the existing building (measured from the existing lower-ground level at 24.28mPD). The proposed building is compatible with the surrounding developments with no adverse visual impact anticipated. The proposed minor relaxation would not impose adverse traffic impact to the surrounding road network. It is proposed that planning condition on transport provision and traffic arrangement can be imposed.

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. Background

The Site is within Yau Yat Tsuen Garden Estate, which was first zoned “R(C)1” on the draft Shek Kip Mei OZP No. S/K4/4 exhibited on 24.12.1993. In order to maintain the character of the area as a low-rise ‘garden city suburb’, developments and redevelopments in Yau Yat Tsuen Garden Estate are restricted to a maximum PR of 1.65, a maximum SC of 55% and a maximum BH of 10.67m, or the PR, SC and BH of the existing building, whichever is the greater, as stipulated in the Notes of the OZP.

5. Previous Application

There is no previous application on the application site.

6. Similar Application

There is a similar application (No. A/K4/52) for minor relaxation of BH restriction from 10.67m to 13.2m (+2.53m or +23.7%) for a 4-storey residential development (3 storeys of residential floors over 1 storey of carpark on G/F) at No. 16 Osmanthus Road in Yau Yat Tsuen within the “R(C)1” zone on the Shek Kip Mei OZP considered by the Metro Planning Committee (the Committee) of the Board (**Plan A-1**). The application No. A/K4/52 was rejected by the Committee on 2.11.2007 on the grounds of no design merits and insufficient information to justify the proposed relaxation of BH restriction and setting an undesirable precedent for other similar applications.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2 and site photos on Plans A-3 and A-4)

7.1 The Site is:

- (a) located at the junction of Peony Road and Wistaria Road within the Yau Yat Tsuen Garden Estate; and
- (b) occupied by an existing 4-storey building with 3 storeys of residential floors over 1 storey of lower-ground carport completed in 1983. There are building works on site with hoarding and propping erected, and the building structure remains at the Site.

7.2 The surrounding area has the following characteristics:

- (a) amidst the low-rise Yau Yat Tsuen Garden Estate area with houses of 2 to 4 storeys; and
- (b) to the west of the Site across Cassia Road is Yau Yat Tsuen Garden City Club zoned “Other Specified Uses” annotated “Sports and Recreation Club” and subject to a maximum BH of 10.67m.

8. Planning Intention

- 8.1 The planning intention of the “R(C)” zone is primarily for low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.
- 8.2 The Explanatory Statement (ES) of the OZP states that each application for minor relaxation of BH restriction will be considered on its own merits and the relevant criteria for consideration of such relaxation are as follows:
- (a) amalgamating smaller sites for achieving better urban design and local area improvements;
 - (b) accommodating the bonus PR granted under the Buildings Ordinance (BO) in relation to surrender/dedication of land/area for use as public passage/street widening;
 - (c) providing better streetscape/good quality street level public urban space;
 - (d) providing separation between buildings to enhance air and visual permeability; and
 - (e) other factors such as site constraints, need for tree preservation, innovative building design and planning merits that would bring about improvements to townscape and amenity of the locality, provided that no adverse landscape and visual impacts would be resulted from the innovative building design.

9. Comments from Relevant Government Departments

- 9.1 The following government departments have been consulted and their views on the application are summarised as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Kowloon West, Lands Department (DLO/KW, LandsD):

- (a) no objection to the application;
- (b) the Site falls within NKIL No. 4620 (the Lot) which is governed by the Government Lease dated 21.3.1969. The Lot is restricted to be used for one detached or semi-detached private residence of European type with or without a private garage and is subject to a height restriction of 35ft (about 10.67m); and
- (c) the proposed development is not in compliance with the lease condition of the Lot. If the planning application is approved by the Board, the lot owner has to apply to LandsD for a lease modification. However, since the Lot falls within the Yau Yat Chuen Garden Estate which comprises a building scheme, lease

modification would only be considered where consents of all estate owners have been obtained. Moreover, there is no guarantee that the lease modification will be approved. Such application, if received by LandsD, will be considered by LandsD acting in the capacity of Landlord at its sole discretion. In the event any such application is approved, it would be subject to such terms and conditions including, amongst others, the payment of premium and administrative fee as imposed by LandsD.

Traffic

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

he has reservation on the application as the applicant has not provided sufficient details to address the concerns on provision of loading/unloading (L/UL) bay for goods vehicles; headroom for parking spaces, L/UL bay and driveway; maneuvering, width and gradient of vehicular access and driveway; and any adverse impact such as queueing on public road.

Building Matters

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

- (a) no objection to the application subject to that all proposed building works should comply with the BO;
- (b) according to the building plans of the existing building approved on 8.6.1983, there is no record of GFA calculations. SC and BH are 395.573m² and 10.66m respectively;
- (c) no comment on PR and SC calculations for the existing building on the Site provided by the applicant;
- (d) under Regulation 72(4)(a) of Building (Planning) Regulations, the requirements of barrier free access including accessible parking spaces are not applicable to the proposed single family house with BH less than 13m above ground level; and
- (e) detailed comments under the BO can only be formulated at the formal building plan submission stage. The proposed building works should in all aspect comply with the BO and its allied regulations.

Environment

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

- (a) no objection to the application;

- (b) provided that the proposed development will connect and discharge to public sewerage, it is considered that no insurmountable problem arising from the proposed development is anticipated from sewerage infrastructure planning perspective; and
- (c) it is noted that there were two construction noise complaints received by Environmental Protection Department (EPD) in November 2020, which were related to noise from demolition works and noise on Sunday. In view of the complaints received, the following advisory clause is recommended:

the applicant is reminded to implement the relevant recommended pollution control measures during construction works to minimise the environmental impacts. The “Recommended Pollution Control Clauses for Construction Contracts” is available on EPD’s website:

https://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/guide_ref/rpc.html.

Urban Design and Landscape

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

Urban Design and Visual Aspects

- (a) the proposed minor relaxation of BH to accommodate a basement for parking facilities and plant rooms will unlikely cause any significant adverse effects on the visual character of the surrounding townscape; and
- (b) the applicant may consider further design improvement with a view to enhancing the streetscape.

Landscape Aspect

- (c) no objection to the application from landscape planning perspective;
- (d) the Site is situated in an area of low-rise residential urban landscape character, dominated by low rise residential buildings. It is currently occupied by a domestic building without significant landscape resource. Existing road-side trees outside the Site are observed. The proposed development is considered not incompatible with the surrounding environment. Significant adverse landscape impact arising from the proposed development is not anticipated;
- (e) in view that the proposed landscape area on G/F is enclosed by solid fence wall, the applicant may review whether the statement that open space at ground level for gardening and landscaping

purposes would further improve the streetscape in the surrounding as claimed in the submission is applicable;

- (f) there are no details and annotations on the submitted plans to illustrate the proposed landscape treatment. It seems that vertical greening is proposed on the solid fence wall and the building facade, and the applicant should provide information on the type and design of the proposed vertical greening to demonstrate its viability; and
- (g) the applicant is reminded of the long-term commitment in providing proper maintenance to the vertical green wall for healthy and sustainable plant growth and that the approval of the planning application by the Board does not imply approval of the SC of greenery requirements under PNAP APP-152. The SC of greenery calculation should be submitted separately to BD for approval.

9.1.6 Comments of the Chief Architect/Central Management Division 2, Architectural Services Department (CA/CMD2, ArchSD):

it is noted that the proposed development consists of one 3-storey block above 1-storey basement car park with BH of 35.57mPD, which is slightly higher than 34.95mPD of the existing development. It may not be incompatible with the adjacent residential developments with 2 to 3 storeys.

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

- (a) Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD);
- (b) Project Manager (South), Civil Engineering and Development Department (PM(S), CEDD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Chief Highway Engineer/Kowloon, Highways Department (CHE/K, HyD);
- (e) Director of Electrical and Mechanical Services (DEMS);
- (f) Director of Fire Services (D of FS);
- (g) Commissioner of Police (C of P); and
- (h) District Officer (Sham Shui Po), Home Affairs Department (DO(SSP), HAD).

10. Public Comments Received During Statutory Publication Period

During the statutory publication period, a total of three public comments were received (**Appendix II**). The two supporting comments were from the Vice-Chairman of Sham Shui Po East Area Committee and an individual. While the former did not provide any particular comments, the latter commented that the BH in the area should be reviewed after relocation of the airport, and the application could facilitate the provision of facility for the disabled. The Incorporated Owners of Jade Court (the neighbouring development at No. 12 Peony Road) strongly objected to the proposed basement floor as it might cause damage to the adjacent buildings and the underground utility installations.

11. Planning Considerations and Assessments

- 11.1 The application seeks planning permission for minor relaxation of BH restriction from the existing BH of 10.66m to the proposed BH of 13.97m (+3.31m or +31%) for redevelopment of a permitted house at the Site zoned “R(C)1”. ‘House’ use is in line with the planning intention of the zone which is primarily for low-density residential developments. In order to maintain the character of the area as a low-rise ‘garden city suburb’, developments and redevelopments in Yau Yat Tsuen Garden Estate are restricted to a maximum PR of 1.65, a maximum SC of 55% and a maximum BH of 10.67m, or the PR, SC and BH of the existing building, whichever is the greater. The proposed 4-storey house is with PR of 1.944, SC of 66.56% and BH of 13.97m. While the PR and SC do not exceed those of the existing building (i.e. 1.9978 and 66.59% respectively), planning application for minor relaxation of BH restriction is required.
- 11.2 According to the applicant, the Proposed Scheme would have 1 storey of basement beneath the 3-storey house development (**Drawing A-4**), and placing the car parking spaces and plant rooms at the basement could release space at ground level for gardening and landscaping (**Drawings A-1, A-2, A-6 and A-7**). The applicant also suggested that this proposal could minimise disturbance to the occupants, the adjoining residents and the pedestrians. However, there is only insignificant reduction in SC from the existing 66.59% to the proposed 66.56% and that only an open yard with area of about 109.66m² (about 18.5% of site area) is proposed on ground floor (**Drawings A-2 and A-6**). As such, it is considered that there is insufficient information to demonstrate the innovative building design and planning merits of the proposed development. CTP/UD&L, PlanD also comments that the applicant may consider further design improvement with a view to enhancing the streetscape.
- 11.3 Currently, there is no existing tree observed within the Site. While significant adverse landscape impact arising from the proposed development is not anticipated by CTP/UD&L, PlanD, there is insufficient information submitted by the applicant to illustrate the proposed landscape treatment and to demonstrate the viability of the proposed greening. There is no tree planting proposal provided by the applicant. As such, the applicant has yet to demonstrate that the proposed development would bring about improvements to amenity of the locality.

- 11.4 The Site is subject to a height restriction of 35ft (about 10.67m) under lease. DLO/KW, LandsD advises that since the subject lot falls within the Yau Yat Chuen Garden Estate, which comprises a building scheme, lease modification would only be considered where consents of all estate owners have been obtained.
- 11.5 While the applicant claims that the proposed minor relaxation would not impose adverse traffic impact to the surrounding road network, C for T indicates reservation on the application as the applicant has not provided sufficient details to address the concerns on provision of L/UL bay for goods vehicles; headroom for parking spaces, L/UL bay and driveway; maneuvering, width and gradient of vehicular access and driveway; and any adverse impact such as queueing on public road. On the other technical aspects, concerned departments including EPD, BD, DSD, CEDD, WSD, HyD, EMSD and FSD have no adverse comments on the application.
- 11.6 The Committee has previously rejected a similar application (No. A/K4/52) for minor relaxation of BH restriction within the “R(C)1” zone on the Shek Kip Mei OZP on the grounds of no design merits and insufficient information to justify the proposed relaxation of BH restriction and setting an undesirable precedent for other similar applications. Rejecting this application is consistent with the Committee’s previous decision.
- 11.7 Regarding the public comments received, the planning assessments above and the departmental comments in paragraph 9 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department does not support the application for the following reason:

the applicant fails to demonstrate that there are planning and design merits and strong planning justifications for the proposed relaxation of building height restriction.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 26.3.2025, 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 condition of approval and advisory clauses are also suggested for Members’ reference:

Approval condition

the design and provision of vehicular access, car parking spaces and loading/unloading space for the proposed development to the satisfaction of the Commissioner for Transport or of the Town Planning Board.

Advisory clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.

Attachments

| | |
|----------------------------|---|
| Appendix I | Application form received on 29.1.2021 |
| Appendix Ia | SPS received on 29.1.2021 |
| Appendix Ib | FI received on 9.3.2021 |
| Appendix II | Public comments |
| Appendix III | Advisory clauses |
| Drawings A-1 to A-3 | Layout plans submitted by the applicant |
| Drawing A-4 | Sections submitted by the applicant |
| Drawing A-5 | Elevations submitted by the applicant |
| Drawing A-6 | Landscape plan submitted by the applicant |
| Drawing A-7 | Rendering submitted by the applicant |
| Plan A-1 | Location plan |
| Plan A-2 | Site plan |
| Plans A-3 and A-4 | Site photos |

**PLANNING DEPARTMENT
MARCH 2021**