

APPLICATION FOR PLANNING PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TWW/123

Applicant : Salisbury 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 695 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”)

[Subject to the following restrictions:

- 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;
- maximum building heights (BHs) of 30, 120 and 100 metres above Principal Datum (mPD);
- 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; and
- in determining the maximum domestic 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 : Proposed Minor Relaxation of Maximum Non-domestic GFA Restriction for Permitted Temporary School (Tutorial Service) for a Period of Five Years

1. The Proposal

- 1.1 The application premises (the Premises) is located at portion of Level 5 of the existing Bellagio Mall, Bellagio¹, Sham Tseng (**Plans A-1 and A-2**), with a total non-domestic GFA of about 694.95m². It 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. It has been reserved for kindergarten as required by the Government and was exempted from the GFA calculation in accordance with the Notes for the “R(A)3” zone under the OZP. The subject temporary tutorial school is classified as ‘School’ use, which according to the Notes of the OZP, is always permitted in the purpose-designed non-residential portion of an existing building² within “R(A)3” zone. In view of that there is no provision for the GFA exemption for tutorial school, the applicant seeks planning permission for proposed minor relaxation of maximum non-domestic GFA restriction to facilitate the operation of the temporary tutorial school for a period of five years at the Premises in order to comply with the OZP.
- 1.2 The Premises is currently being used as a tutorial school on a temporary basis for three years until 24.6.2022 under Application No. A/TWW/118³ for minor relaxation of the non-domestic GFA restriction, and was previously covered by Application Nos. A/TWW/98, 104 and 111 for the same reasons since 20.11.2009.
- 1.3 The layout of the Premises is shown on **Drawing A-1**. The Premises under the relevant approved general building plans (GBPs) is for kindergarten use with a GFA of 694.951m². Taking into account the lease requirement⁴, the applicant applies for minor relaxation of non-domestic GFA of 670m² under the OZP with the remaining GFA of 24.951m² counted towards the non-domestic GFA permitted under the OZP. 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/118).

¹ 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 Levels 1, 3 and 5) and subject to a BH restriction of 30mPD.

² Excluding floors containing wholly or mainly car parking, loading/unloading bays and/or plant room.

³ Application No. A/TWW/118, submitted by the same applicant, was for renewal of planning approval (No. A/TWW/111) for minor relaxation of maximum non-domestic GFA restriction for permitted temporary school (tutorial service) for a period of three years. The application was approved with conditions by the Metro Planning Committee on 21.6.2019, valid until 24.6.2022.

⁴ According to comment from DLO/TWK&KT, LandsD (please refer to paragraph 9.1.1), the Special Condition (29) 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.

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

- (a) Application form and letter received on 3.5.2022 (Appendix I)
- (b) Supporting Planning Statement (SPS) (Appendix Ia)
- (c) Applicant's letter received on 5.5.2022 providing clarifications regarding the Premises (Appendix Ib)

2. **Justifications from the Applicant**

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

No change in planning circumstances

- (a) there has been no material change in planning circumstances and surrounding land uses in the Sham Tseng area since the approval of previous application No. A/TWW/118. The approval of the current application will be consistent with the Town Planning Board (the Board)'s previous decision;

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

- (b) according to the Notes of the OZP, 'School' use is always permitted at the Premises. The reason for minor relaxation of non-domestic GFA is to replace the previous kindergarten (non-accountable for non-domestic GFA) by the temporary tutorial school. 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 tutorial school would not be incompatible with other uses within Bellagio Mall 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. In addition, approval conditions for the implementation of fire service installations at the Premises under the previous planning approval have been complied with to the satisfaction of Fire Services Department (FSD). Hence, the application is in line with the Town Planning Board Guidelines for Application for Tutorial School under Section 16 of the Town Planning Ordinance (TPB PG-No. 40);

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 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;

- (e) the proposal will not involve any construction of new floor space or increase in building bulk;

Providing the much needed tutorial services to students in need

- (f) the Premises has been operated as a tutorial school providing tutorial services and leisure hobby classes to students for over 10 years. No complaint from the public and Government departments has been received; and
- (g) the maximum capacity of the Premises is about 80 students, while the total number of enrolled students is about 350. Approval of the application will enable the continuous provision of tutorial services to the students for a further period of five years.

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

The Town Planning Board Guidelines for Application for Tutorial School under Section 16 of the Town Planning Ordinance (TPB PG-No. 40) is 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; and
- (e) 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.

5. **Previous Applications**

- 5.1 The Premises was the subject of four previous applications (Nos. A/TWW/98, A/TWW/104, A/TWW/111 and A/TWW/118) submitted by the same applicant, all for minor relaxation of maximum non-domestic GFA restriction (i.e. 670m²) for permitted temporary school (tutorial service) for a period of three years each. The planning approvals were valid until 20.11.2012, 20.11.2015, 24.6.2019 and 24.6.2022 respectively. Details of the previous applications, including approval conditions imposed and the compliance status are set out at **Appendix II**.
- 5.2 The latest application (No. A/TWW/118) was approved with conditions on the consideration that the proposed use was not incompatible with the surrounding land use; the proposed use complied with TPG PG-No. 40; and the relevant departments had no adverse comment on the proposed use on a temporary basis for three years.

6. **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 the Tsuen Wan West area.

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

7.1 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 mall; and
- (d) has an alternative public access via escalator from the main entrance of the mall to Level 3 and then staircase to Level 5 (**Plan A-5**).

7.2 The subject mall:

- (a) is a 3-storey purpose-designed commercial block abutting Castle Peak Road – Sham Tseng located at the northern portion of Bellagio;
- (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 as recorded during site visit on 10.5.2022 are summarised as follows:

Level	Current Uses (Photographs at Plan 5)
1 (Street level)	Real estate agencies and public transport terminus
3	Tutorial school, supermarket, clinic, retail shop, hair salon and fast food shop
5	The Premises , nursery school and children and youth centre
6 (Roof)	Outdoor tennis courts for residents

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

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

- (a) to the east is the Garden Co. Ltd. (zoned “Residential (Group E)”), and Ocean Pointe which is a residential development zoned “R(A)2”;
- (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 zoned “R(A)1” with retail shops on the street level and a 6-classroom kindergarten.

8. **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.

9. **Comments from Relevant Government Bureau and Departments**

9.1 The following Government bureau and departments (B/Ds) have been consulted and their views on the application are summarised as follows:

Land Administration

9.1.1 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 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) following the Board's previous approval in 2009 (i.e. A/TWW/98), a temporary waiver letter dated 17.1.2011 was issued permitting the Premises for use as a school for tutorial service for a fixed 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; and
- (c) as the application is covered by a valid waiver letter, she has no objection to the planning application from lease point of view.

Fire Safety

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

- (a) has no specific comment on the application; and
- (b) it is suggested to keep the approval condition “the existing fire service installations implemented at the application premises shall be maintained in efficient working order at all times during the approval period”.

9.2 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) Commissioner for Transport;
- (c) Secretary for Education (SED);
- (d) District Officer (Tsuen Wan), Home Affairs Department;
- (e) Director of Environmental Protection; and
- (f) Government Property Administrator.

10. Public Comments Received During Statutory Publication Period

On 10.5.2022, the application was published for public inspection. During the three-week statutory public inspection period, which ended on 31.5.2022, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The current application is seeking planning permission for minor relaxation of the maximum non-domestic GFA restriction on the OZP for a permitted tutorial

school at the Premises which is proposed for a temporary basis for a period of five years at portion of Level 5 of an existing free-standing commercial block of a residential development at Sham Tseng.

- 11.2 The Premises has been reserved for kindergarten use under lease and approved GBPs, and exempted from GFA calculation under the OZP. According to the Notes of the OZP, tutorial school is subsumed under ‘School’, which is always permitted in the purpose-designed non-residential portion of an existing building within “R(A)3” zone. However, as there is no provision to exempt the tutorial school from GFA calculation under the OZP, the conversion of the Premises from kindergarten to tutorial school would involve additional non-domestic GFA, resulting in total non-domestic GFA in excess of the maximum restriction of 2,872m² under the OZP. Planning permission for minor relaxation of such restriction is therefore required.
- 11.3 The proposed minor relaxation of non-domestic GFA restriction of 670m² for the temporary tutorial school will not result in any actual increase in the development bulk as the Premises involved is physically existed in Level 5 of the subject free-standing commercial block. In terms of land use compatibility, the school is considered not incompatible with the nursery school and children and youth centre on the same floor, as well as other commercial uses in the lower floors within the commercial block. Also, the proposed minor relaxation of non-domestic GFA restriction to allow the tutorial school at the Premises is only on a temporary basis for five years and is considered not unacceptable. All concerned B/Ds 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 in respect of compatibility with other uses within the same building, no disturbance or nuisance to local residents will be caused and compliance with fire and building safety requirements for the tutorial school.
- 11.4 The Premises was the subject of four previous applications (Nos. A/TWW/98, A/TWW/104, A/TWW/111 and A/TWW/118) for 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 each between 2009 and 2019. The approval conditions under the latest application No. A/TWW/118 including the compliance with fire and building safety requirements have been complied with. There is no change in planning circumstances since the approval of the latest application. The proposed minor relaxation of the non-domestic GFA restriction for the temporary tutorial school for a period of five years, instead of three years as previously applied, is considered not unacceptable.
- 11.5 According to the Hong Kong Planning Standards and Guidelines requirement⁵, there is a surplus of two planned kindergarten/nursery classrooms to meet the future demand in the Tsuen Wan West planning scheme area. Since the application is on a temporary basis for five years, it will unlikely jeopardise the long-term planned kindergarten at the Premises serving the local community. SED has no comment on the application to use the Premises originally reserved as

⁵ According to HKPSG, the standard provision of kindergarten/nursery class is 34 classrooms per 1,000 children aged 3 to under 6.

kindergarten for temporary tutorial school. The demand of kindergarten would be reviewed should further application be submitted upon expiry of the temporary approval.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 above, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of five years until 24.6.2027. The following approval conditions and advisory clause are suggested for Members' reference:

Approval conditions

- (a) the existing fire service installations implemented at the application premises 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.

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

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 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.
- 13.3 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.

14. Attachments

Appendix I	Application Form and Letter received on 3.5.2022
Appendix Ia	Supporting Planning Statement
Appendix Ib	Applicant's letter received on 5.5.2022 providing clarifications regarding the Premises
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

**PLANNING DEPARTMENT
JUNE 2022**