

# **TOWN PLANNING BOARD**

**TPB Paper No. 10723  
For Consideration by the  
Town Planning Board on 19.3.2021**

**REVIEW OF APPLICATION NO. A/H6/90  
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**PROPOSED SHOP AND SERVICES  
IN “RESIDENTIAL (GROUP B)” ZONE  
SHOP B3, G/F, 16 TAI HANG ROAD, HONG KONG**

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Shop B3, G/F, 16 Tai Hang Road, Hong Kong**

**1. Background**

1.1 On 16.10.2020, the applicant, CHU Wai Lim, William represented by Prosper Consultant Engineering Company Limited, sought planning permission for shop and services use at the application premises (the Premises) under s.16 of the Town Planning Ordinance (the Ordinance). The Premises falls within an area zoned “Residential (Group B)” (“R(B)”) on the approved Causeway Bay Outline Zoning Plan (OZP) No. S/H6/17 (**Plan R-1**). According to the Notes of the OZP for “R(B)” zone, ‘Shop and Services’ is a column 2 use which requires planning permission from the Town Planning Board (the Board).

1.2 On 4.12.2020, the Metro Planning Committee (MPC) of the Board decided to reject the application and the reason was:

There is no strong planning justification for the change of uses in the area which is primarily for residential uses. The approval of the application would set an undesirable precedent for other similar applications. The cumulative effect of approving such applications would result in changing the residential character of the neighbourhood.

1.3 For Members’ reference, the following documents are attached:

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|---|-----------|
| (a) MPC Paper No. A/H6/90                                   | (Annex A) |
| (b) Extract of minutes of the MPC meeting held on 4.12.2020 | (Annex B) |
| (c) Secretary of the Board’s letter dated 18.12.2020        | (Annex C) |

**2. Application for Review**

On 5.1.2021, the applicant applied under section 17(1) of the Ordinance for a review of the MPC’s decision to reject the application with a written submission in support of the review application (**Annex D**).

**3. Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in his submission at **Annex D** and summarised as follows:

- (a) It is noted that the Owners' Corporations (the OC) and the Management Company have no objection to his application for installation of three-phase electrical power and did not express their objection or comments during the renovation of the Premises. The applicant believe that the OC objected to the planning application as OC could not settle the issue of adjusting the management fee with the owner of the Premises.
- (b) The proposed shop would serve the needs of the nearby residents, especially the elderly. Shops selling drinks and snacks are only located at Lai Tak Tsuen (which is about 300m from the Premises) or at area around Wun Sha Street (which could only be accessed by a long stairs).
- (c) In response to the public concerns on traffic impact and pedestrian safety issue at s.16 planning application stage, the Premises could accommodate 6 to 8 customers at a time and would not cause blockage of pedestrian walkway. The common jaywalking on the Tai Hang Road is caused by the distant location of the pedestrian crossing facilities from the minibus stops instead of the proposed food business.
- (d) The proposed food business will not emit cooking fumes and will follow the Public Health and Municipal Services Ordinance regulated by the Food and Environmental Hygiene Department. It will not cause hygienic nuisances to both inside and outside the Premises.
- (e) The nearby shops have been used for provision of various shop and services for over 30 years, including laundry, electrical appliance and equipment shop, convenience store and real estate agency, etc.
- (f) The proposed food business will not adversely affect the existing character of the neighbourhood.

#### **4. The Section 16 Application**

##### **The Premises and its Surrounding Areas (Plans R-1 to R-3)**

- 4.1 The Premises is situated on the ground floor of an existing 5-storey building in Tai Hang Road. The ground floor of the subject building comprises of some shops (including the Premises) which have no valid planning permissions, while the upper floors are residential flats. The Premises has been renovated for the proposed use.
- 4.2 The situations of the Premises and its surrounding areas at the time of the consideration of the s.16 application by the MPC are described in paragraph 6 of **Annex A**. There has been no material change of the situation since then.

##### **Planning Intention**

- 4.3 The planning intention of the "R(B)" zone is primarily for medium-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.



Previous Application

- 4.4 There is no previous application in respect of the Premises.

Similar Application

- 4.5 There is no similar application for 'Shop and Services' use within the "R(B)" zone on the OZP.

**5. Comments from Relevant Government Departments**

- 5.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 8 of **Annex A**.
- 5.2 For the review application, the following government departments have no further comment and maintain their previous views on the s.16 application as stated in paragraph 8.1 of **Annex A**. The main views are recapitulated as follow:

Land Administration

- 5.2.1 Comments of the District Lands Officer/Hong Kong East, Lands Department (DLO/HKE, LandsD):

- (a) The Premises is located within Sub-section 1 of Section B of Inland Lot No. 3454 (i.e. IL 3454 s.B ss.1). According to the relevant Conditions of Sale No. 3275 for IL 3454 with lease term commenced on 23.5.1932, the lot is restricted for houses of a European Type or a Free School and Buddhist Church or Temple. The proposed shops and services use does not conflict with the lease conditions governing the Premises.
- (b) With regard to the public comments concerning the deed of mutual covenant (DMC), in general the DMC is a private contractual agreement among the owners, manager and developer of a building, to stipulate the rights and obligations of the parties to the agreement. The Government is not a party to that DMC. The applicant may need to take into consideration any possible implication of the relevant DMC for the proposed change of use of the Premises to a use permitted under the planning permission.

Building Aspect

- 5.2.2 Comments of the Chief Building Surveyor/Hong Kong East and Heritage, Buildings Department (CBS/HKE&H, BD):

- (a) Means of escape for the shop and services use in compliance with regulation 41(1) of the Building (Planning) Regulations (B(P)R) should be demonstrated.

- (b) Adequate fire separation between the proposed shop and services use and the rest of the building in compliance with regulation 90 of the Building (Construction) Regulation should be demonstrated.
- (c) Access and facilities for persons with a disability should be provided in compliance with regulation 72 of the B(P)R.
- (d) Sanitary fitments should be provided in compliance with the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations.
- (e) Detailed comments on compliance with the Buildings Ordinance will be given upon formal building plans submission.

#### Traffic Aspect

##### 5.2.3 Comments of the Commissioner for Transport (C for T).

On the ground that there was no previous requirements on the parking provision in the available record (building plans and occupation permit) and the anticipated traffic impact arising from the application is minimal, he has no comment on the application from traffic point of view.

#### Highways Maintenance Aspect

##### 5.2.4 Comments of the Chief Highway Engineer/Hong Kong, Highways Department (CHE/HK, HyD):

He has no comment on the application from the highways maintenance viewpoint, as it would not affect any public road and slope under the maintenance of his office.

#### Fire Safety Aspect

##### 5.2.5 Comments of the Director of Fire Services (D of FS):

- (a) He has no in principle objection to the application subject to fire service installations (FSI) and water supplies for firefighting being provided to his satisfaction.
- (b) As no details of the emergency vehicular access (EVA) have been provided, comments could not be offered at the present stage. Nevertheless, the applicant is advised to observe the requirements of EVA as stipulated in Section 6, part D of the Code of Practice for Fire Safety in Building 2011 which is administered by BD.
- (c) Detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.



Others

5.2.6 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) Proper licence/permit issued by her department is required if there is any food business/catering service/activities regulated by DFEH under the Public Health and Municipal Services Ordinance (Cap.132) and other relevant legislation for the public.
- (b) No environmental nuisance should be generated to the surroundings. The applicant should arrange proper disposal of any waste generated from the commercial/trading activities at their own expenses.

5.3 The following government departments maintain their previous views of having no objection to or no comment on the application:

- (a) Director of Environmental Protection (DEP);
- (b) Commissioner for Police (C of P);
- (c) Chief Engineer/Construction, Water Services Department (CE/C, WSD);
- (d) Chief Engineer/Hong Kong & Islands, Drainage Services Department (CE/HK&I, DSD);
- (e) Director of Electrical and Mechanical Services (DEMS); and
- (f) District Officer (Wan Chai), Home Affairs Department (DO(WC), HAD).

6. Public Comments on the Review Application Received during Statutory Publication Periods

6.1 On 15.1.2021, the review application was published for public inspection. During the first three weeks of the statutory public inspection period of the review application, 1 comment supporting the application and 4 comments objecting to the application were received (**Annex E**). The supporting comment from an individual considered that the application can provide services and bring convenience to nearby residents. The 4 objecting comments received from two owners of the subject building and 3 other individuals had raised the following grounds of objection:

- (a) the use of the Premises was garage/car park according to the occupation permit (OP) and DMC, it should be reverted to carpark use given the shortage in parking space in the vicinity. There is also concern that it will be a precedent case for similar conversion of uses as ground floor car park is common in tenement buildings in the area; and
- (b) the food and beverage nature of the proposed business will create nuisance and problems of environmental hygiene and pedestrian safety.

6.2 During the statutory public inspection period of the s.16 application, 25 public comments (including one from OC of the subject building) objecting to the application with similar grounds above were received. Their details are set out in paragraph 9 of **Annex A**.

## **7. Planning Considerations and Assessments**

- 7.1 The application is for a review of the MPC's decision on 4.12.2020 to reject the s.16 application for shop and services use at the Premises for selling snack foods. The rejection reason was that there was no strong planning justification for the change of uses in the area which was primarily for residential uses; the approval of the application would set an undesirable precedent for other similar applications; and the cumulative effect of approving such applications would result in changing the residential character of the neighbourhood.
- 7.2 In support of the review application, the applicant has put forward justifications that stores selling drinks and snacks are only located at Lai Tak Tsuen or at Wun Sha Street, which is far away from the Premises, the proposed food business would bring convenience to nearby residents. The proposed food business will not cause problems and nuisances in terms of pedestrian safety and hygiene or affect the existing character of the neighbourhood. In response to the objection from the OC in the s.16 application stage, the applicant claims that it was due to the management fee issue and there was no objection/comment received from the OC during the renovation of the Premises.
- 7.3 Given there are eating places or convenience stores selling fast food located at Lai Tak Tsuen to the northeast uphill or area around Wun Sha Street to the north downhill (**Plan R-1**) to cater for the residents' needs, which is about 300 m away from the Premises, there is no justification for change of uses in an area which is primarily for residential uses. Apart from the subject building, other buildings within the same "R(B)" zone are without any retail shop on ground floor. The approval of the application will set an undesirable precedent, in particular the remaining part of the ground floor of the subject building. Although there are three real estate agencies on the ground floors of the subject building, no planning permission has been granted by the Board for such use. The cumulative impact of other similar applications will result in changing the residential character of the neighbourhood.
- 7.4 While there is a public comment supporting the retail use, the remaining comments raise concerns over the nuisance, environmental hygiene, pedestrian safety as well as the issue of DMC and OP as detailed in paragraph 6 above. The planning considerations and assessments above and comments of the government departments in paragraph 5 are relevant.

## **8. Planning Department's Views**

- 8.1 Based on the assessment made in paragraph 7 and having taken into account the public comments mentioned in paragraph 6, and given that there is no major change in the planning circumstances since the consideration of the subject application by the MPC on 4.12.2020, the Planning Department maintains its previous view of not supporting the review application for the following reason:

there is no strong planning justification for the change of uses in the area which is primarily for residential uses. The approval of the application would set an undesirable precedent for other similar applications, the cumulative effect of approving such applications would result in changing the residential character of the neighbourhood.



- 8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until 19.3.2025, 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 submission and implementation of fire service installations and water supplies for firefighting to the satisfaction of the Director of Fire Services or of the Town Planning Board.

Advisory clauses

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

**9. Decision Sought**

- 9.1 The Board is invited to consider the application for a review of the MPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the application on review, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review 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.

**10. Attachments**

<b>Annex A</b>	MPC Paper No. A/H6/90
<b>Annex B</b>	Extract of minutes of the MPC meeting held on 4.12.2020
<b>Annex C</b>	Secretary of the Board's letter dated 18.12.2020
<b>Annex D</b>	Applicant's letter and written submission received on 5.1.2021 applying for review of MPC's decision
<b>Annex E</b>	Public comments
<b>Annex F</b>	Recommended advisory clauses
<b>Plan R-1</b>	Location Plan
<b>Plan R-2</b>	Site Plan
<b>Plan R-3</b>	Site Photos