

IN THE TOWN PLANNING APPEAL BOARD

Town Planning Appeal No. 1 of 2014

BETWEEN

YEW CHUNG EDUCATION FOUNDATION LIMITED Appellant

and

TOWN PLANNING BOARD Respondent

Appeal Board: Mr. Chan Chi-hung, SC (Chairman)
 Ir. Dr. Kelvin Leung Kai-yuen (Member)
 Dr. Emmy Li Yuen-mei (Member)
 Mr. Simon Siu Chak-yu, BBS, JP (Member)
 Ms Ada Tse Koon-hang (Member)
In Attendance: Ms Suan Man (Secretary)

Representation: For the Appellant: Dr. Andrew Chan Ping-Chiu
 For the Respondent: Ms Catrina D.W. Lam, Counsel

Date of Hearing: 2 - 3 & 13 February 2015

Date of Last Written 8 April 2015

Submissions:

Date of Decision: 4 June 2015

DECISION

Background

1. This is an appeal by Yew Chung Education Foundation Limited (“**Appellant**”) against the decision of the Town Planning Board (“**TPB**”) in refusing the Appellant’s application (No. A/K18/301) to the TPB under section 16 of the Town Planning Ordinance (“**TPO**”) for planning permission to convert an existing 2-storey residential building into a “Primary School with 8 Supporting Activity Rooms” (“**the Application**”).

2. The 2-storey residential building is at 15 Kent Road, Kowloon Tong, in New Kowloon Inland Lot No. 871 (“**the Site**”). Kent Road is a one-way road with 2 lanes and a width ranging from about 8 meters near Cornwall Street to about 8.8 meters near Somerset Road (excluding pavement).

3. There are a number of schools in the immediate locality:
 - (a) Yew Chung International School (“**YCIS**”) (Primary Section) has three campuses nearby at 2 Kent Road (“**K2**”), 11 & 13 Kent Road (“**Adjoining Campus**” or “**K11&13**”) and 22 Somerset Road (“**S22**”). The Appellant is the legal entity running YCIS;

 - (b) There are 3 kindergartens / nurseries on Kent Road, namely, Yew Chung Children’s House, Kentville Kindergarten (“**Kentville**”) and Zenith

Kindergarten / International Nursery (“**Zenith**”). Kentville abuts the Adjoining Campus to its south, whereas Zenith is directly opposite on the other side of Kent Road; and

(c) On Somerset Road, there are two children’s learning centres and two other kindergartens, both are campuses of YCIS (Kindergarten Section).

4. Traffic to all of the above schools must go through the same junction of Cornwall Street / Kent Road, and traffic to YCIS (Kindergarten Section) at 20 Somerset Road and YCIS (Primary Section) at S22 and K2 (whose entrance is on Somerset Road) must go through the same junction, as well as the junction of Kent Road / Somerset Road.
5. The area is well served by public transport including buses, mini-buses and taxis, and is located near the mass transit railway (Kowloon Tong MTR Station) with busy traffic.
6. On 17 April 2012, the Appellant entered into a lease to rent the Site from 15 May 2012 to 31 August 2015 (with an option to renew for a further term of 3 years) at HK\$300,000 per month.
7. The Site was the subject of a previous planning application (No.A/K18/295) (“**the Previous Application**”) submitted by the Appellant for a “Primary School” with “8 Classrooms”, which was rejected by the Metro Planning Committee (“**MPC**”) of the TPB on 11 January 2013. On 22 March 2013, two months after the previous application was rejected by the MPC, the Appellant lodged the Application.

8. After the Application was rejected by MPC by a letter dated 24 May 2013, the Appellant applied for a review under section 17 of TPO of the decision (“**the Review**”), which was also rejected by a letter dated 14 February 2014.

Applicable Principles

9. In considering an appeal against the decision of TPB, this Appeal Board must exercise an independent planning judgement, and is entitled to disagree with TPB (*Henderson Real Estate Agency Ltd v Lo Chai Wan [1997] HKLRD 258 (PC) at 261, 266A*). This Appeal Board can substitute its own decision for that of the TPB even if the TPB had not strictly committed any error on the materials before it, as the hearing before the Appeal Board would normally be much fuller and more substantial than a review hearing under section 17 of TPO (*Town Planning Appeal No. 18 of 2005, unreported, 12 April 2007 para 51*).

10. The relevant outline zoning plan and its Notes are material documents to which this Appeal Board is bound to have regard in exercising its independent judgement and, indeed, they are the “most material documents”. Whilst the Explanatory Statement (“**ES**”) is expressly stated not to be part of the plan, it does not follow that it is not a material consideration for this Appeal Board to take into account. Similarly, the Guidelines are also material considerations to be taken into account. This Appeal Board is not bound to follow the ES or the Guidelines, but they cannot be disregarded (*Henderson, at 267A-C; Halsbury’s Laws of Hong Kong, Vol. 48, §[385.270]*). 21.

11. It is relevant to consider whether the proposed development would result in an additional gain to the community (*Halsbury’s Laws of Hong Kong, Vol. 48, §[385.270]*). On the other hand, if the proposed development is likely to have adverse impacts on the vicinity, the Appellant bears the burden to demonstrate that

it is able to take adequate preventive or mitigation measures to mitigate such impacts (*Town Planning Appeal No. 2 of 2008, 25 February 2009*).

Planning Intention

12. The Site falls within an area zoned “Residential (Group C) 1” (“**R(C)1**”) on the draft Kowloon Tong Outline Zoning Plan No. S/K18/17 (“**OZP**”).

13. According to the Notes of the OZP, the R(C) 1 zone is “intended primarily for low to medium-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Town Planning Board”. Thus, such zoning as “R(C)1” differs from “Government, Institution or Community” (“**G/IC**”) where “School” use is an always permitted use not requiring a planning permission from TPB.

14. However, such “Planning Intention” stated in the Notes of the OZP for “R(C)1” does not entirely preclude a proposed development as a school, even if it is neither “residential developments” nor “commercial uses serving the residential neighbourhood”. That is evident from the fact that it was expressly stated in Column 2, “Uses that may be permitted ...on applications:...School”. Thus, it depends on the individual application on its merits.

15. On the other hand, the interpretation of the relevant planning documents (namely, those stated in paragraph 10 above) is that, overall, the area is intended primarily as a low density residential area, and a material consideration in this Appeal would be the likely volume of vehicular traffic and the likely congestion and noise, if any, that may be caused by the proposed development or intended use.

16. That involves the consideration of whether the intended use if the Application is granted will involve additional number of students being taken, and, (whether or not there will be an addition of the number of students), whether such intended use will increase the traffic volume at or near the Site, and whether the increased traffic volume will cause excessive noise or congestion in the vicinity of the Site, all considered in the light of the measures proposed by the Appellant to abate such possible traffic problems.

17. On the other hand, the possibility and the degree of the adverse effect from traffic noise and congestion should be weighed against the obvious benefit of the proposed use of the Site to YCIS (in particular the Primary Section) and its students, and the possible benefit to the public, in having the Site for the proposed use of YCIS (Primary Section) as an international school offering IGCSE and IB curriculum. This Appeal Board must bear in mind that Hong Kong is a cosmopolitan city which will benefit from a proper availability of international school (see the Applicable Principles in paragraph 11 above). Further, the Appellant would have to continue to look for alternative suitable sites (which it does not have at this juncture) for the intended use, and suffer pecuniary loss (such as the rent under the lease of the Site), if the Application is refused (or if this Appeal is dismissed).

Whether the Approval will result in an increase in the number of students?

18. The Deputy Director of the Appellant, Ms Winnie Cheng (“**Ms Cheng**”), gave evidence for the Appellant at the hearing of this Appeal. Ms Cheng’s evidence emphasized that the intended use, though as part of a primary school, would not be as classrooms, but as 8 activity rooms (“**the 8 Activity Rooms**”) only, and therefore granting of the planning permission for their use as activity rooms would not cause an increase in the number of students, as a school’s capacity to take

students depended on the number of classrooms registered as such with the Education Bureau (“EDB”).

19. Her evidence was that the 8 Activity Rooms were intended for student activities including a Library, an IT Laboratory, a Music Room, a Chinese Additional Language Room, an English Additional Language Room, a Science Room and two Small Group Rooms, and that the activity rooms in the other three existing campuses (see paragraph 3(a) above) would not be transferred to the Site nor converted into classrooms. Her evidence was that the 8 Activity Rooms would be in addition to the existing ones at the Adjoining Campus (as well as the other existing campuses) and would not replace any existing ones (meaning that there would not be any net increase in classrooms and thus there would not be any net increase in the number of students).

20. Further, the evidence from the Appellant was that the 8 Activity Rooms were intended for the activity of the students of the Adjoining Campus, and those students would use the internal connecting passage to commute between the Site and the Adjoining Campus. Thus, it is argued by the Appellant, no additional vehicular traffic will result from the use of the Site as activity rooms of YCIS Primary Section.

21. Thus, the Appellant’s case is that (relying also on Ms Cheng’s evidence), although the Appellant does have plan to increase the number of students, such plan is part of the overall plan of the Appellant under the Appellant’s other long term planning considerations (such as to have certain number of classes at each level of the Primary Section to fit the number of classes in the Secondary School: the “through-train” structure), and the planned increase has nothing to do with whether the Site and the 8 Activity Rooms could be used by YCIS Primary Section at all.

22. Ms Cheng's explanation is as follows. The Appellant has been following a development plan to increase the total student population in its Primary Section from 729 (actual figure in 2014/15) to 888 in 2019/20 ("the **888 Plan**"). The student population in the Adjoining Campus will be increased from 316 to 375 in 2019/2010. This is still within the permitted maximum capacity registered with EDB. The 888 Plan was formulated when the Secondary Section of YCIS at To Fuk Road was completed in 2006, before any planning application for the Site was submitted (upon hearing that evidence, this Appeal Board invited the Appellant to submit documentary evidence to show that the 888 Plan was formulated before the date of the Application: see paragraphs 37 and 38 below). The Applicant's case is that the 888 Plan will be implemented irrespective of the outcome of the Application.

23. Ms Cheng further explained in more details about the permitted maximum capacity not being exceeded. Although the maximum number of students allowed by EDB in a school depended on the number of classrooms registered with the EDB, YCIS (Primary Section) had always adopted a small class policy having only 25 students in each class (well below the maximum allowed), and thus YCIS could, at least in theory, increase the number of students anyway even if there was no additional classrooms from the Site, by increasing the number of students in each class. And that, she argued, further demonstrated the absence of correlation between the approval of the Application and the likely increase in the number of students.

24. Further, the Appellant argued, this Appeal Board could impose conditions as to the use of the 8 Activity Rooms so that they could not be used as classrooms.

25. The Respondent disputes the Appellant's assertion that granting the planning permission, with or without conditions, will not contribute to an increase in the number of students. The Respondent also drew this Appeal Board's attention to the fact that in the Previous Application, the Appellant described the 8 rooms as classrooms rather than activity rooms.

26. Thus, there is also a disputed issue of fact to be resolved by this Appeal Board on the evidence: whether the Appellant actually intends to use the 8 Activity Rooms as classrooms, and whether the Appellant intends to increase the number of students by making use of the Site if the planning permission is granted. That will be relevant to the issue of whether the granting of planning permission is likely to be followed with an increase of the number of students.

27. Ms Cheng explained that she did not have first-hand knowledge of the full details of the Previous Application, as then it was not handled by her, but in so far as the Previous Application described the 8 rooms as classrooms, it had to be a mistake, as the Appellant never intended to use the Site as classrooms, and the Appellant could and did promise that it would never so use the Site. Ms Cheng explained that if the planning permission for the Site for use as Activity Rooms was not granted, alternative sites for activity rooms had to be found and the students in the Adjoining Campus would have to be transported by school bus to and from the alternative sites. When challenged under cross examination, Ms Cheng asserted that further contemporaneous documentary evidence would be adduced to show that the planning by YCIS for the increase of students was unrelated to the Site and the Site had always been planned for Activity Rooms and not classrooms.

28. Apart from the evidence of Ms Cheng, Mr. Steve Chan ("**Mr. Chan**") also gave evidence at the hearing of this Appeal. He is a qualified architect and an

authorised person under the Building Ordinance, and was the person engaged by the Appellant to handle the Previous Application as well as the Application.

29. As for the Previous Application describing the rooms as classrooms, he explained that he then liaised with the Assistant Manager of the Appellant Mr. Andy Ma (who did not give evidence in this hearing). Mr. Chan then was simply given to understand that the Appellant's intended use of the Site was as a school, and the then general practice of himself and professional advisors in handling an application for a school applicant would simply be describing the rooms of the relevant premises as classrooms as a very general description, and, on his then thinking, it should not matter whether they would actually be intended to be used as classrooms or for other more specific purposes such as activity rooms. Thus he simply described the 8 rooms as classrooms in the Previous Application. It was rather because he later realised that TPB somehow practically put a moratorium on any new school application in the whole of the area in the vicinity of and including the Site, that in the Application he described, this time accurately, the 8 rooms as the 8 Activity Rooms.

30. This Appeal Board rejects the evidence from Ms Cheng and Mr. Chan that it was simply a mistake in stating those rooms as classrooms in the Previous Application and that throughout the Previous Application and the Application, the intended use of the Site has always been as activity rooms and that the activity rooms of the Adjoining Campus will not be converted into classrooms so that there will not be additional classes or additional students from addition of the Site as YCIS Primary Section campus. This Appeal Board finds as a fact that the Appellant intended and intends to use the 8 Activity Rooms as classrooms, or to increase the total number of classrooms (in the existing campuses stated in paragraph 3(a) above plus the Site), so that there will be increase in the number of students, if the Application is granted. The reasons are set out below.

31. In the Previous Application, the letter dated 22 August 2012 from the Appellant's representative described the proposed development as "the proposed 8-classroom primary school", and stated that there would be 200 students and 50 staff there. Such was repeated several times in the contents of the Planning Statement for the Previous Application. Appendix D thereto was a detailed 80-page Traffic Impact Assessment, based on such number of students using 8 classrooms. Mr. Chan signed a declaration at the end of the Previous Application form that "the particulars given in this application are correct and true to the best of my knowledge and belief." The form also contained an express warning that "any person who knowingly or wilfully makes any statement or furnish any information ...which is false ...shall be liable to an offence...".

32. Further, the management of the Appellant could not have been ignorant of such alleged mistakes on the part of Mr. Chan before such Planning Statement for the Previous Application was submitted, and could not have omitted to cause Mr. Chan to state therein that there would not be additional students nor additional traffic as the Site would only be used as activity rooms for the existing students from the Adjoining Campus commuting only through internal connection, or from the other existing campuses. Not one document (whether email or letter), was produced to show that Mr. Chan was told by the Appellant, before submitting the Previous Application, as to the intended use of the 8 rooms, or that they would be used as activity rooms only and not as classrooms.

33. In the supplementary information in support of the Review submitted by the Appellant, 18 classes were projected for the Adjoining Campus, when it had only 15 registered classrooms. That is rather more consistent with an intention to convert some activity rooms in the Adjoining Campus to classrooms when new activity rooms are available in the Site.

34. In any event, even if the description as classrooms in the Previous Application came about only for the reasons as asserted by Mr. Chan, and the 8 Activity Rooms will not be registered as classrooms with the EDB, this Appeal Board still finds that there will be an increase in the number of students in the YCIS (Primary Section) in its existing campuses set out in paragraph 3(a) above, if not in the Site, if the Application is granted. The reasons are set out below.

35. The Appellant does not dispute that it does have a plan to increase the total number of students: the 888 Plan. However, just as Ms Cheng put it during her evidence under cross-examination that “a projection is a projection”, a plan may or may not materialize, depending on the circumstances. This Appeal Board does not accept the Appellant’s assertion that YCIS Primary Section would implement its 888 plan in its existing campus set out in paragraph 3(a) above whether the approval for the Application is given or not. It was Miss Cheng’s own evidence that there would be no floating class (i.e. a class without a home room so that there need not be a registered classroom for it), as the students ought to have a sense of belonging to their home room. It was her evidence that YCIS would stick to its small class policy to maintain its performance pledge. Sufficient activity rooms have to be available for its students for the various purposes described. 37 classes were projected (in the Original Projection submitted as supplementary information in support of the Review) for 888 students with 18 classes at the Adjoining Campus, when YCIS only had 35 registered classrooms across the 3 existing campuses, with 15 classrooms in the Adjoining Campus.

36. When confronted with the aforesaid problems under cross examination, Ms Cheng’s answer was that the 888 Plan would still be implemented even if the Application was refused, and, in that scenario, YCIS would have to find a new campus for activity rooms elsewhere, and to bus the students from the existing campuses to that other new campus for activities now intended to be in the 8

Activity Rooms. However, this Appeal Board does not accept that explanation as real or practicable. It is unrealistic to expect that YCIS's students have to be transported by school bus from the existing campuses to another place outside the vicinity for activities like going to the library, having a music lesson, having language or IT classes, or having small group teachings and the like. The more likely scenario is that the plan of YCIS to increase the number of students depends on the approval of the Application.

37. After this Appeal Board queried as to whether there was documentary evidence to support Ms Cheng's evidence that the 888 Plan was formulated before the Appellant applied for planning permission for the Site, the Appellant produced the "YCIS Primary Hong Kong 5 Year Plan" ("**the 5 Year Plan**") on 11 February 2015.

38. However, it can be noted that the 5 Year Plan (dated 31 March 2011, before the date of the Previous Application) was for 2011/12 to 2015/16, rather than up to 2019/20 in the 888 Plan. The student numbers projected were also quite different. There was also no reference to increasing the total number of students to 888 in 2019/20. It, being dated 2011, certainly was much later than 2006 which Ms Cheng said was when the plan to increase the students was formulated (when the Secondary Section of YCIS at To Fuk Road was completed). Like the 888 Plan, there was no clear formulation as to where and how additional campus space (classrooms or activity rooms) would become available to cater for the planned increase of number of students.

39. This Appeal Board also notes the following. The section 16 application for planning permission for the Adjoining Campus in 2001 was for a primary school with 17 activity rooms, 9 of which would be used as classrooms, for 234 students.

Nevertheless, 15 classrooms were registered with the EDB in November 2002, just one year after approval. This Appeal Board does not accept that the procedure of registration of classrooms with the EDB is such that the Planning Department's approval had to be given or that they would be consulted again, on any such attempt of conversion into classrooms, so that the 8 Activity Rooms could not be converted after approval of the Application.

40. Imposing conditions in granting the Application, prohibiting the 8 Activity Rooms from being used as registered classrooms, cannot really help. Quite apart from the issue (as submitted by the Respondent) that the definition of a classroom is problematic (as Activity Rooms include rooms for small group teaching, music or language lessons etc. which may fall within the definition of a classroom), such conditions cannot bind the other existing YCIS Primary Section campuses in that vicinity. Once the Site is available to YCIS Primary Section as its additional campus, it can increase its number of students and increase its registered classrooms by conversion from activity rooms in the existing campuses.

41. Thus, the Appeal Board is firmly of the view that if the Application is approved, there probably will be a significant increase in the number of students either due to all or some the 8 Activity Rooms being used as registered classrooms, or due to an increase in the number of registered classrooms in the existing campuses set out in paragraph 3(a) above (e.g. by conversion of some activity rooms into classrooms), or due to more activity rooms thus accommodating a higher students intake by the existing campuses, or combination of the aforesaid. In any event, there will be a significant increase in the volume of traffic in that vicinity resulting in significant adverse impact on the environment, unless there are sufficient abating/mitigating measures. This issue is considered below.

The traffic issue

42. As at present, the traffic congestion during school peak hours outside YCIS Primary Campuses is already a very serious problem.
43. With a view to preserving the low density and quietness of that area, many residents wrote to object to the Application, and complained that the traffic volume generated by the presence of the existing schools and kindergartens in the area is already causing unacceptable traffic congestion in the area and that part of the Kent Road.
44. In an attempt to mitigate that problem, the Appellant since August 2014 has implemented a scheme (“**the Bus Scheme**”) requiring all newly admitted primary students to sign an undertaking to take school bus to and from school unless exemptions are granted. However, this Bus Scheme is mandatory only for new students, not existing students.
45. Further, policing compliance with the Bus Scheme is, clearly, quite difficult. Still further, there are no sufficient punitive sanctions in place to ensure those students who signed up for the Bus Scheme in fact take the school bus. Although Ms Cheng said that the school would work closely with the school bus provider to monitor the students who repeatedly miss the school buses and that the enrolment of those student may be jeopardised for the following school year, it would seem very harsh and is in reality very unlikely for any student to be dismissed from the YCIS solely for the reason that he or she has not strictly complied with the Bus Scheme.

46. Because of the aforesaid difficulties in enforcing the Bus Scheme, imposing conditions relating to implementation of the Bus Scheme as conditions of approval of the Application cannot help much to abate the problem.

47. Mr. Edmund Kwok (“**Mr. Kwok**”), an Associate Director of MVA Hong Kong Limited (the traffic consultant engaged by the Appellant) also gave evidence at the hearing of this Appeal.

48. From Mr. Kwok’s evidence, the mitigating effect of the Bus Scheme on the overall traffic situation in the area would in any event be quite insufficient. The reduction in “passenger car unit” between 2013/14 and 2018/19 of 63 (198 less 135) only represents 4.5% of the total projected traffic flow in the area along Kent Road immediately outside the Site in 2018.

49. On the other hand, the results of the traffic survey and queue length survey carried out by the Transport Department on 12 November 2014 and 12 January 2015, which were after commencement of the Bus Scheme in August 2014, are as follows:-

(a) The traffic survey carried out in the section of road in front of the Site and the Adjoining Campus showed that (i) from 7:30 am to 8:40 am, there was a total of 283 pick-up/drop-off activities (with 123 incidents of illegal parking at right kerbside and illegal pick-up/drop-off in the middle of the carriageway) and (ii) from 3:00 pm to 3:50 pm, there was a total 68 pick-up/drop-off activities (with 65 incidents of illegal parking at right kerbside, illegal pick-up/drop-off in the middle of the road and illegal parking in the middle of the road).

(b) The queue length survey showed that (i) traffic queue began to develop at the Cornwall Street/Kent Road junction at around 7:40 am and 3:10 pm;

(ii) between 8:10 am and 8:50 am, the queue length at Cornwall Street Eastbound and Westbound waiting to turn into Kent Road reached a maximum length of 170m and 300m respectively, equivalent to approximately 30 and 50 private vehicle lengths; (iii) between 3:20 pm and 3:50 pm, the queue length at Cornwall Street Eastbound and Westbound waiting to turn into Kent Road reached a maximum length of 150m and 300m respectively, equivalent to approximately 25 and 50 private vehicle lengths.

50. The Commissioner of Police has also observed no improvement to the traffic in the area since the implementation of the Bus Scheme. Police officers on a site visit in the vicinity also noted that between 8:00 am and 9:15 am, the kerbside activities along Kent Road was heavy and seriously affected vehicular movements on Cornwall Street, resulting in traffic congestion along Waterloo Road.

51. The number of School Buses will be increased from 16 in 2013/14 to 38 in 2019/20. According to Mr Kwok's evidence, the lay-by area on the ground floor inside the Adjoining Campus can accommodate about three 24-seater buses. Assuming the buses would take only 3 minutes to drop off the children, it would still take around 40 minutes for 38 buses just to offload the students. This would result in kerbside blockages along Kent Road caused by buses waiting to enter into the Adjoining Campus, which would in turn offset significantly the effect of a possible reduction, if any at all, in the number of private cars intended by the Bus Scheme.

52. Thus, this Appeal Board is clearly of the view that the Appellant has failed to demonstrate that there will be sufficient abating or mitigating measures or circumstances to sufficiently abate the adverse traffic impact likely to result from granting the Application. This Appeal Board is clearly of the view that granting

the Application will result in unacceptable aggravation of the traffic congestion problem now existing, and is clearly against the planning intention.

53. Considering all the relevant factors aforesaid, and after careful weighing and balancing of them, this Appeal Board is of the firm view that the Application should not be granted.

Whether the Application should be granted for a temporary period

54. As a fall back submission, the Appellant urged this Appeal Board to consider granting the planning permission for a limited period or to treat the Application as one for a temporary planning permission. It is argued that this will give all parties time to see, after permission is granted, whether the traffic condition will really become that bad as the Respondent argued, and whether YCIS Primary Section will really use any of the 8 Activity Rooms, or convert any of the activity rooms in the existing campuses, as registered classrooms.

55. This Appeal Board rejects such contention, because, this is not a borderline case, nor a case where there are too many unknowns or many factors are too tentative, nor a case where there is a good chance of a net benefit in granting the Application, nor a case that despite all misgivings as aforesaid this is an appropriate case to give the go ahead for a while to see what will happen. On the contrary, as discussed above, this Appeal Board has been able to come to a firm view on the matter. If the Application should not be granted on balancing all the relevant considerations as aforesaid, then it should not be granted for any period at all.

56. Further, not renewing a planning permission for the Site will cause greater hardship to the students of YCIS than refusing the Application now. For example,

if more students are indeed taken by YCIS after the Application is granted for 18 months e.g. using some of the 8 Activity Rooms as home rooms, and at the end of that period it is indeed found that the traffic conditions are still as bad or worse as discussed above and that the planning permission is not renewed, these additional students will suffer. Further, such hardship on the students (in not renewing an approval) in itself will make it very difficult for the future TPB to refuse renewal even if, on hindsight, it is then proved that the temporary approval should not have been given in the first place.

57. Thus, this Appeal Board is also of the view that the Application should not be granted for any temporary period at all.

The Minority View

58. The reasons and findings of this Appeal Board aforesaid are that of the majority (3 to 2) only. The minority is of the view that the Application ought to be granted for a temporary period of 18 months, with conditions to be imposed restricting the use of the 8 Activity Rooms (prohibition from use as registered classrooms), and as to implementation of the Bus Scheme.

Conclusion

59. By a majority, for the aforesaid reasons, this Appeal is dismissed with no order as to costs.

(Signed)

Mr. Chan Chi-hung, SC
(Chairman)

(Signed)

Ir. Dr. Kelvin Leung Kai-yuen
(Member)

(Signed)

Dr. Emmy Li Yuen-mei
(Member)

(Signed)

Mr. Simon Siu Chak-yu, BBS, JP
(Member)

(Signed)

Ms Ada Tse Koon-hang
(Member)