

Appendix II of RNTPC
Paper No. A/FSS/273

Relevant Revised Interim Criteria for Assessing Planning Applications for
NTEH/Small House Development in the New Territories
(Revised on 7.9.2007)

- (a) sympathetic consideration may be given if not less than 50% of the proposed NTEH/Small House footprint falls within the village 'environs' ('VE') of a recognized village and there is a general shortage of land in meeting the demand for Small House development in the "Village Type Development" ("V") zone of the village;
- (b) if more than 50% of the proposed NTEH/Small House footprint is located outside the 'VE', favourable consideration could be given if not less than 50% of the proposed NTEH/Small House footprint falls within the "V" zone, provided that there is a general shortage of land in meeting the demand for Small House development in the "V" zone and the other criteria can be satisfied;
- (c) development of NTEH/Small House with more than 50% of the footprint outside both the 'VE' and the "V" zone would normally not be approved unless under very exceptional circumstances (e.g. the application site has a building status under the lease, or approving the application could help achieve certain planning objectives such as phasing out of obnoxious but legal existing uses);
- (d) application for NTEH/Small House with previous planning permission lapsed will be considered on its own merits. In general, proposed development which is not in line with the criteria would normally not be allowed. However, sympathetic consideration may be given if there are specific circumstances to justify the cases, such as the site is an infill site among existing NTEHs/Small Houses, the processing of the Small House grant is already at an advance stage;
- (e) an application site involves more than one NTEH/Small House, application of the above criteria would be on individual NTEH/Small House basis;
- (f) the proposed development should not frustrate the planning intention of the particular zone in which the application site is located;

- (g) the proposed development should be compatible in terms of land use, scale, design and layout, with the surrounding area/development;
- (h) the proposed development should not encroach onto the planned road network and should not cause adverse traffic, environmental, landscape, drainage, sewerage and geotechnical impacts on the surrounding areas. Any such potential impacts should be mitigated to the satisfaction of relevant Government departments;
- (i) the proposed development, if located within water gathering grounds, should be able to be connected to existing or planned sewerage system in the area except under very special circumstances (e.g. the application site has a building status under the lease or the applicant can demonstrate that the water quality within water gathering grounds will not be affected by the proposed development[^]);
- (j) the provision of fire service installations and emergency vehicular access, if required, should be appropriate with the scale of the development and in compliance with relevant standards; and
- (k) all other statutory or non-statutory requirements of relevant Government departments must be met. Depending on the specific land use zoning of the application site, other Town Planning Board guidelines should be observed, as appropriate.

[^]i.e. the applicant can demonstrate that effluent discharge from the proposed development will be in compliance with the effluent standards as stipulated in the Water Pollution Control Ordinance Technical Memorandum.

**Similar s.16 Applications for Proposed House
(New Territories Exempted House - Small House) within “GB” Zone on the
Draft Fanling/Sheung Shui Outline Zoning Plan No. S/FSS/23**

Approved Applications

Application No.	Proposed Developments	Date of Consideration	Approval Conditions
A/FSS/185	Proposed House (New Territories Exempted House - Small House)	12.02.2010	A1 & A2
A/FSS/186	Proposed House (New Territories Exempted House - Small House)	12.02.2010	A1 & A2
A/FSS/188	Proposed House (New Territories Exempted House - Small House)	19.03.2010	A1 & A2
A/FSS/190	Proposed House (New Territories Exempted House - Small House)	23.04.2010	A1 & A2
A/FSS/191	House (New Territories Exempted House - Small House)	07.05.2010	A1, A2 & A3
A/FSS/257	Proposed House (New Territories Exempted House - Small House)	17.03.2017	A1 & A4
A/FSS/258	Proposed House (New Territories Exempted House - Small House)	17.03.2017	A1 & A4
A/FSS/263	Proposed House (New Territories Exempted House - Small House)	02.03.2018	A1 & A4
A/FSS/264	Proposed House (New Territories Exempted House - Small House)	02.03.2018	A1 & A4

Approval Conditions

A1 the submission and implementation of drainage proposals

A2 the provision of fire fighting access, water supplies for fire fighting and fire service installations

A3 no existing trees within the application site and its surrounding area should be felled / affected

A4 the provision of septic tank

Comments from Relevant Government Departments

1. Land Administration

Comments of the District Lands Officer/North, Lands Department (DLO/N, Lands D):

- (a) the Site of application No. A/FSS/273 falls entirely within the 'VE' of Ng Uk Tsuen;
- (b) the applicant of application No. A/FSS/273 claimed himself as an indigenous villager of Ng Uk Tsuen. His eligibility for small house concessionary grant has yet to be ascertained;
- (c) the Site is not covered by any Modification of Tenancy/ Building Licence;
- (d) the Site is on Government land;
- (e) the number of outstanding Small House applications in Ng Uk Tsuen is 8;
- (f) the number of 10-year Small House demand forecast provided by the relevant Indigenous Inhabitant Representative of Ng Uk Tsuen is 85;
- (g) all 8 outstanding Small House applications in Ng Uk Tsuen are on Government land;
- (h) the Small House application in respect of the Site was received by his office on 16.3.2010; and
- (i) the Court of First Instance of the High Court on 8.4.2019 handed down a judgment on a judicial review of the Small House Policy. The Court ruled that the Private Treaty Grant (PTG) arrangement under the policy is unconstitutional and that the subject Small House application is of PTG in nature. As such, his office has suspended processing of the Small House application. Even though the applicant could obtain s.16 permission from the Board, his office would not consider the applicant's application.

2. Traffic

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

- (a) he has reservation on the application. Such type of development should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the "V" zone, if permitted, will set undesirable precedent case for similar application in the future. The resulting cumulative adverse traffic impact could be substantial; and
- (b) notwithstanding the above, the application only involve construction of a Small House. He considers that the application can be tolerated unless they are rejected on

other grounds.

3. Environment

Comments of the Director of Environmental Protection (DEP):

- (a) in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution; and
- (b) septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the ProPECC PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" and are duly certified by an Authorized Person.

4. Landscape

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

- (a) he has no objection on the applications from the landscape planning perspective;
- (b) based on the latest aerial photo of 2018, the Site is situated in an area of urban fringe landscape character comprises of high-rise and low-rise residential buildings, schools, car parks and roadside vegetation/trees. According to his site record taken in 2018, the Site is surrounded by wild grass/vegetation, no significant landscape resources of high sensitivity are observed within the Site. Moreover, based on PlanD's information, permissions were given to at least 5 planning applications (Nos. A/FSS/191, 257, 258, 263 and 264) from 2010 to 2018 for Small House developments in close proximity to the Site under this application in the same "GB" zone;
- (c) in view of the above, the proposed use is considered not incompatible with the surrounding environment, and significant adverse impact arising from the proposed use under the application on existing landscape resources is not anticipated; and
- (d) it is noted that space within the Site is limited. There is insufficient space for meaningful landscaping. Should the Board approve the subject application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.

5. Drainage

Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) he has no objection to the application from public drainage viewpoint; and
- (b) should the application be approved, a condition should be included to request the

applicant to submit and implement a drainage proposal for the Site to ensure that the development will not cause adverse drainage impact to the adjacent area.

6. Nature Conservation

Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) he has reservation on the application;
- (b) his site investigation revealed that the Site was vegetated with some trees and shrubs of common species found at the Site. A semi-mature *Celtis sinensis* is located outside the eastern boundary;
- (c) according to the layout plans provided in the application, it seems that the proposed development would be in direct conflict with the semi-mature *Celtis sinensis* and other trees located within the Site; and
- (d) he noted that sometime in 2009-10, a large number of trees had been felled at the Site and its vicinity and considered it as undesirable and should not be encouraged.

7. Fire Safety

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

- (a) he has no in-principle objection to the application; and
- (b) the applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

8. District Officer's Comments

Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) District Officer (North), Home Affairs Department (DO(N), HAD) has consulted the locals from 3.5.2019 to 10.5.2019. The incumbent North District Council (NDC) member of the subject Constituency supported the proposal;
- (b) The Chairman of 8 Royal Green Owner's Cooperation (OC) objected to the proposal on grounds that the Site is within "GB"; the Site is not on private land; the application should be rejected in light of the recent judicial review on Small House development on Government land; and the noise from Small House residents would affect the lower floor residents of the private housing estate; and
- (c) The Chairman of Sheung Shui District Rural Committee (SSDRC), the Indigenous Inhabitant Representative (IRR) of Ng Uk Tsuen, and the Chairman of Glorious Peak OC had no comment on the proposal.

9. Demand and Supply of Small House Sites

according to DLO/N's records, the total number of outstanding Small House applications for Ng Uk Tsuen Village is 8 while the 10-year Small House demand forecast for the same village is 85. According to the latest estimate by PlanD, about 0.113ha (equivalent to about 5 Small House sites) of land are available within the "V" zone of Ng Uk Tsuen for Small House development. There is insufficient land in the "V" zone of Ng Uk Tsuen to meet the demand of land for Small House development (i.e. about 2.325ha of land which is equivalent to 93 Small House sites).

Recommended Advisory Clauses

- (a) to note the comments of DLO/N, LandsD that the Court of First Instance of the High Court on 8 April 2019 handed down a judgment on a judicial review of the Small House Policy. The Court ruled that the Private Treaty Grant (PTG) arrangement under the policy is unconstitutional and that the subject Small House application is of PTG in nature. As such, his office has suspended processing of the Small House application. Even though the applicant could obtain s.16 permission from the Town Planning Board, his office would not consider the applicant's application;
- (b) to note the advice of DEP that septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the ProPECC PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" and are duly certified by an Authorized Person;
- (c) to note the comments of CE/C, WSD that for provision of water supply to the developments, the applicant may need to extend the inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards;
- (d) to note the comments of CBS/NTW, BD that in case DLO/N decides not to issue the certificates of exemption for the site formation works and/or drainage works associated for the NTEH development, such works will require prior approval and consent under the Buildings Ordinance. In the circumstance, an Authorised Person (AP) should be appointed as coordinator for the proposed works. The applicant may approach DLO/N or seek AP's advice for details;
- (e) to note the comments of D of FS that the applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD;
- (f) to note that the permission is only given to the development under application. If provision of an access road is required for the proposed development, the applicant should ensure that such access road (including any necessary filling/excavation of land) complies with the provisions of the relevant statutory plan and obtain planning permission from the Town Planning Board where required before carrying out the road works; and
- (g) to avoid adverse impact on the semi-mature *Celtis sinensis* located outside the eastern boundary of the Site.

