

**APPLICATION FOR EXTENSION OF TIME  
FOR COMMENCEMENT OF DEVELOPMENT  
UNDER SECTION 16A(2) OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/I-MWF/26-2**

- Applicant** : Mr. SCHOFIELD John Cyril Lester and Mrs. SCHOFIELD Motoko represented by Mr. SCHOFIELD John Cyril Lester
- Site** : Lots No. 318 S.A, 318RP(Part) and 337(Part) in D.D.4 MW, Mui Wo, Lantau Island
- Site Area** : About 658 m<sup>2</sup>
- Lease** : (a) Lots No. 318S.A and 337 – Agricultural Lots held under Block Government Lease  
(b) Lot No. 318RP – Agricultural Lot held under Block Government Lease covered by Building License for non-industrial purpose
- Plan** : Approved Mui Wo Fringe Outline Zoning Plan (OZP) No. S/I-MWF/10
- Zoning** : “Residential (Group D)” (“R(D)”) [No development including redevelopment for ‘House’ (except ‘New Territories Exempted House’) uses shall result in a development and/or redevelopment in excess of a maximum plot ratio of 0.2, a maximum site coverage of 20% and a maximum building height of 2 storeys (6m)]
- Application** : Class B Amendment - Category 18  
Extension of time (EOT) for commencement of development for the approved house under Application No. A/I-MWF/26

**1. Background**

- 1.1 On 19.5.2015, the applicants sought planning permission for a house development at the application site (about 658 m<sup>2</sup>) (the Site) which falls within an area zoned “R(D)” on the approved Mui Wo Fringe OZP No. S/I-MWF/10 (**Plan AA-1**). The approved development comprises a 2-storey house with a gross floor area (GFA) of about 130m<sup>2</sup> (plot ratio 0.2) and site coverage of 10%.
- 1.2 On 17.7.2015, the application was approved by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) subject to a validity period of 4 years up to 17.7.2019 (**approval letter and extracted minutes of the RNTPC meeting at Appendices I and Ia**) and the following conditions:
- (a) the submission and implementation of landscape and tree preservation proposal

to the satisfaction of the Director of Planning or of the Board; and

- (b) the design and provision of fire service installations and water supplies for fire-fighting to the satisfaction of the Director of Fire Services or of the Board.
- 1.3 The applicants have not submitted any information for compliance with the approval conditions.

## **2. Application for Extension of Time**

- 2.1 On 22.5.2019, the applicants submitted the subject s.16A(2) application for Class B amendment (Category 18) for EOT for commencement of development for the approved development.
- 2.2 In support of the application, the applicants have submitted the following:
- (i) Application form received on 22.5.2019 **(Appendix II)**
  - (ii) Replacement page of application form received on 26.6.2019 **(Appendix IIa)**

## **3. Justifications from the Applicants**

The justifications put forth by the applicants in support of the application as detailed in **Appendix II** are summarized as follows:

- (a) the Luk Tei Tong and Ma Po Tsuen village sewerage scheme has suffered significant delay and the timetable for implementation remains uncertain. As a result, a septic tank system needs to be provided in the event that the sewerage scheme is further delayed or cancelled. The original vehicle access for the proposed development, which will fall on the alignment of the sewer tracks of the planned sewerage scheme, and the associated parking spaces within the Site would be deleted.
- (b) new information has come to light from the Judicial Review case (Kwok Cheuk Kin and Lui Chi-hang v. Director of Lands and Others) heard by the High Court in December 2018 with judgement handed down in April 2019. In view of the Court's judgment, it is possible that Lands Department (LandsD) may relax their interpretation of the policy statement that land exchange and /or Building Licence (BL) issuance is primarily intended for indigenous villagers in this kind of situation. Besides, there are precedents of BL being issued to non-indigenous land-owners in this area. More time is needed to discuss with LandsD on eligibility for and method of granting the BL needed to implement the proposal; and
- (c) the proposed house should fall within the definition of a New Territories Exempted House (NTEH) as the height will not exceed 7.62m and that the roofed-over area will not exceed 65.02 m<sup>2</sup>. As such, Buildings Department's previous comment on the requirements under the Building Ordinance may not be applicable.

#### **4. Town Planning Board Guidelines**

##### Town Planning Board Guidelines for Extension of Time for Commencement of Development (TPG PG-No. 35C)

- 4.1 The criteria for assessing application for EOT for commencement of development with planning conditions include:
- (a) whether there has been any material change in planning circumstances since the original permission was granted (such as a change in the planning policy/land-use zoning for the area);
  - (b) whether there are any adverse planning implications arising from the EOT;
  - (c) whether the commencement of development is delayed due to some technical/practical problems which are beyond the control of the applicant, e.g. delays in land administration procedures, technical issues in respect of vehicular access and drainage works or difficulties in land assembly;
  - (d) whether the applicant has demonstrated that reasonable action(s), e.g. submission of building plans for approval or application for SH/ land exchange, have been taken for the implementation of the approved development;
  - (e) whether the applicant has demonstrated that reasonable action(s), e.g. submission and implementation of proposals, have been taken to the satisfaction of relevant government departments in complying with any approval conditions;
  - (f) whether the applicant has demonstrated that there is a good prospect to commence the proposed development within the extended time limit;
  - (g) whether the extension period applied for is reasonable; and
  - (h) any other relevant considerations.
- 4.2 Any extension(s) of time for commencement of development shall not result in an aggregate extension period longer than the original duration for commencement of the approved development proposal.

##### TPB Guidelines for Class A and Class B Amendments to Approved Development Proposals (TPB PG-No. 36B)

- 4.3 According to Town Planning Board Guidelines for Class A and Class B Amendments to Approved Development Proposals (TPB PG-No. 36B), the Board has delegated its authority to the Director of Planning to consider applications for Class B amendments. However, an application which is considered unacceptable to the concerned government departments will have to be submitted to the Board for consideration.

## **5. Comments from Relevant Government Departments**

5.1 The following government departments have been consulted and their views on the application are summarized as follows:

### **Land Administration**

5.1.1 Comments of the District Lands Officer/ Islands, Lands Department (DLO/Is, LandsD) are as follows:

- (a) the Site falls within private lots, i.e. Lots No. 318s.A, 318RP (Part) and 337 (Part) in D.D.4 MW. Lot 318RP is an agricultural lot held under Block Government Lease (BGL). Lot 318RP is an agricultural lot held under BGL and granted with a BL No. 993 to permit part of this lot for non-industrial purposes. However, the area covered by the BL does not form part of the Site;
- (b) the Site falls within the ‘village environ’ (‘VE’) of the recognized village Luk Tei Tong. Under the prevailing policy, land in ‘VE’ of recognized villages should be primarily preserved for Small House (SH) development by indigenous villagers under the SH Policy. An application submitted by a non-indigenous villager (e.g. the applicants of the captioned planning application) for land exchange to permit building development on the Site, which falls within the ‘VE’ of the recognized village Luk Tei Tong, would not be entertained. As such, his office objected to the previous planning application (No. A/I-MWF/26) when it was circulated to his office and other departments. As the prevailing policy remains unchanged, his office maintains the view against non-SH development on the Site and does not support the captioned application;
- (c) after obtaining the previous planning approval, the applicants submitted information to his office to justify his proposed land exchange for house development on the Site. After considering the submission, his office informed the applicants that an application submitted by a non-indigenous villager for land exchange for site within ‘VE’ would not be entertained;
- (d) as to the applicants’ representation in para.2 of Section 5 (Justification) of their current EOT application that the proposed house is a NTEH, please note that a NTEH is not equivalent to a SH under the SH Policy. Only indigenous villagers of a recognized village are eligible to SH grants under the Policy;
- (e) in Section 5 (Justification) of the applicants’ current EOT submission, the applicants have also mentioned about “seeking an indigenous villager to develop the site”. The applicants’ intention is not clear and the applicants should clarify this point. The applicants are however reminded that under the SH Policy, when executing a SH grant (including a BL issued in respect of private agricultural land), the SH applicant is required, through the warranty clause stipulated in the land grant document, to expressly warrant that he has never made any arrangements to transfer his right to develop a SH or his eligibility to apply for a SH grant. It is against the law to obtain government approval by deception through false declaration or fraud. Criminal prosecution can be initiated

if the illegal acts are established by the law enforcement departments; and

- (f) as to the applicants' proposal to use the existing pathways as an access to the Site, the pathways fall within the boundary of the Lots (partly on Lots No. 310 and 312s.A in D.D. 4 MW), which are held under BGL and demised for agricultural use. No right of way has been reserved under the BGL for the applicants to pass through the Lots. Presumably, comments from the owner(s) of the Lots would be sought.

### **Traffic**

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

- (a) he has no comment on the EOT application from traffic engineering perspective; and
- (b) the access roads in the vicinity of the Site are not managed by the Transport Department.

### **Environment**

#### 5.1.3 Comments of the Director of Environmental Protection (DEP):

- (a) he has no comment on the EOT application; and
- (b) the applicants are advised to design and operate the septic tank and/or soakaway system following the requirements in EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department", including the percolation test, sufficient clearance distances from sensitive receivers and certifications by Authorized Person.

### **Nature Conservation**

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

he has no adverse comment on the EOT application. He previously had no objection to the application noting that the portion of watercourse within the Site would generally be left undisturbed and precautionary measures would be implemented to avoid/ minimise any potential impacts to the subject watercourse; and trees within the Site would also be retained as far as possible.

### **Drainage and Sewerage**

#### 5.1.5 Comments of the Chief Engineer/Consultants Management, Drainage Services Department (CE/CM, DSD):

- (a) he has no particular comment on the EOT application; and
- (b) the Luk Tei Tong and Ma Po Tsuen village sewerage works are still under planning stage. The project was first gazetted in the end 2014 and due to funding availability and unresolved comments on works in Luk Tei Tong, the project could not proceed to construction. In March 2019, amendments were made to the original scheme with an aim to firstly implement the Ma Po Tsuen village sewerage works and it is now in the process of objection resolution. The Luk Tei Tong and Ma Po Tsuen village sewerage works will be implemented upon all relevant preparation works (i.e. gazette authorization, funding application, etc.) are completed.

### **District Officer's Comments**

#### 5.1.6 Comments of the District Officer (Islands), Home Affairs Department (DO/Is, HAD):

- (a) he has no particular comment on the EOT application; and
- (b) his office has not received any local comments regarding the proposed EOT application.

#### 5.2 The following government departments have no objection to/ no comment on the EOT application:

- (a) Chief Highway Engineer/ New Territories East, Highways Department;
- (b) Chief Engineer/Hong Kong & Islands, Drainage Services Department;
- (c) Chief Engineer/ Construction, Water Supplies Department;
- (d) Chief Building Surveyor/ New Territories East 1 & Licensing, Buildings Department;
- (e) Head of the Sustainable Lantau Office, Civil Engineering and Development Department;
- (f) Director of Fire Services;
- (g) Commissioner of Police; and
- (h) Chief Town Planner/ Urban Design and Landscape, Planning Department.

## **6. Planning Considerations and Assessments**

6.1 The proposed house development at the Site (Application No. A/I-MWF/26) was approved by the Committee on 17.7.2015 with conditions. The current application is an EOT application for commencement of development for an additional 48 months until 17.7.2023 under Class B amendment. The original application was approved by the Committee on the consideration that the proposed 2-storey house development with maximum plot ratio of 0.2 and site coverage of 10% is considered not incompatible with the surrounding environment which is predominately rural in character with low-rise village house of 1 to 3 storeys.

6.2 The applicants claim that the delay of the planned Luk Tei Tong and Ma Po Tsuen

village sewerage scheme has affected the progress of the approved development, and propose to use septic tank system instead of connecting to the future sewerage system. To this end, CE/CM, DSD advises that the Luk Tei Tong and Ma Po Tsuen village sewerage works are still under planning stage. It is now in the process of objection resolution and the sewerage works will be implemented upon all relevant preparation works are completed. DEP and CE/CM, DSD have no objection to/comment on the EOT application. Because of the said delay, the applicants also propose to delete the vehicular access and parking spaces which are contingent upon the alignment of sewer tracks of the planned sewerage scheme. C for T has no comment on the applicants' current proposal to use the existing pathways for general access to the Site.

- 6.3 Regarding DLO/Is, LandsD's non-supportive view on the EOT application on the grounds that the Site falls within 'VE' of recognized village which should be primarily preserved for SH development by indigenous villagers under the SH Policy and an application for land exchange to permit non-SH development with 'VE' of a recognized village would not be entertained; in considering the original application, the Committee noted that land use planning and land administration are under two separate regimes and decided to approve the application despite LandsD's objection. It should be noted under the "R(D)" zone, 'House (not elsewhere specified)' is a column 2 use which may be permitted on application to the Board. Indigenous villagers who wish to development SH in the "R(D)" zone may submit s.16 planning application to the Board for consideration. There has been no change in planning circumstances since the original permission granted on 17.7.2015. The land use zoning of the Site remains unchanged and no adverse planning implication arising from the EOT application is anticipated. Relevant departments consulted have no comment on/objection to the EOT application.
- 6.4 The EOT application for commencement of development is considered generally in line with the TPB PG-No.35C in that there has been no change in planning circumstances since the original permission was granted; the commencement of development is delayed due to some technical/practical problems which are beyond the control of the applicants; and the applicants have taken action to implement the approved scheme by submitting information to DLO/Is, LandsD for a proposed land exchange after obtaining the previous planning approval. This is the first EOT sought and more time is required by the applicants to resolve technical requirements and land administration process. The extension period (i.e. 48 months) is considered not unreasonable.

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

- 7.1 Based on the assessment made in paragraph 6, the Planning Department has no objection to the application for EOT for commencement of development.
- 7.2 Should the Committee decide to approve the EOT application, it is suggested that the time limit for commencement of the approved development be extended for **48 months until 17.7.2023** as proposed by the applicants subject to the same conditions (a) and (b) attached to the previous planning permission granted for the original application (No. A/I-MWF/26). The recommended advisory clauses are updated and attached at **Appendix III** for Members' reference.

- 7.3 The applicants should be advised that according to the TPB PG No. 35C, any extension(s) of time for commencement of development shall not result in an aggregate extension period longer than the original duration for commencement of approved development proposal. Further EOT for commencement of development would be outside the scope of Class B amendments and a fresh application is required.
- 7.4 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

The applicants fail to provide strong justifications for extension of the time limit for commencement of the approved development.

## **8. Decision Sought**

- 8.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the EOT for commencement of development with approval conditions.
- 8.2 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicants.

## **9. Attachments**

<b>Appendix I</b>	Approval letter dated 7.8.2015
<b>Appendix Ia</b>	Extract of minutes of the RNTPC meeting held on 17.7.2015
<b>Appendix II</b>	Application Form received on 22.5.2019
<b>Appendix IIa</b>	Replacement page of application form received on 26.6.2019
<b>Appendix III</b>	Advisory Clauses
<b>Plan AA-1</b>	Location Plan
<b>Plan AA-2</b>	Site Plan
<b>Plan AA-3</b>	Aerial Photo

**PLANNING DEPARTMENT  
JULY 2019**