

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

**APPLICATION NO. A/SK-PK/253**

- Applicant:** Mr. Lok Chiu Nam represented by DeSPACE (International) Limited
- Site:** Lot No. 470 S.B ss.2 in D.D. 222, Pak Kong, Sai Kung, New Territories
- Site Area:** About 113m<sup>2</sup>
- Lease Status:** Old Schedule Agricultural Lot held under Block Government Lease (demised for agricultural use)
- Plan:** Approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11
- Zoning:** “Green Belt” (“GB”)
- Application:** Proposed House (New Territories Exempted House (NTEH)) – Small House

**1. The Proposal**

- 1.1 The applicant, an indigenous villager of Pak Kong Village, seeks planning permission for the development of one NTEH (Small House) at the application site (the Site). According to the Notes of the OZP, NTEH development within “GB” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site is the subject of two rejected previous applications for NTEH (Small House) development (Applications No. A/SK-PK/63 and A/SK-PK/239) and forms part of the subject of another rejected previous application (Application No. A/SK-PK/217) for development of 3 NTEHs (Small Houses). They were submitted by the same applicant. The Small House layout proposed in this application is the same as the previous applications. The major development parameters are summarised as follows:

Site Area:	113m <sup>2</sup>
Covered Area:	65.03 m <sup>2</sup>
Total GFA:	195.09m <sup>2</sup>
No. of Storey:	3
Building Height:	8.23m

- 1.3 In support of the application, the applicant has submitted the Application Form (**Appendix I**) and Supporting Planning Statement dated 11.7.2019 (**Appendix Ia**).
- 1.4 The plans submitted by the applicant are shown in **Drawings A-1 to A-4**.

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in **Appendix Ia**. They can be summarised as follows:

- (a) There is a material change in planning circumstances and general shortage of land in meeting the demand for Small House development in “V” zone in that based on the Court of First Instance (CFI) of the High Court handing down a judgment on a judicial review of the Small House policy on 8.4.2019, all government land needs to be excluded from the estimate of land available for Small House development in “V” zone. An updated estimate is conducted, a total area of private land available to meet Small House demand within the “V” zone is about 4,600m<sup>2</sup> (or equivalent to about 18 Small House sites);
- (b) based on the above, the present planning application warrants sympathetic consideration as there is insufficient land available within the “V” zone to meet the current outstanding Small House demand;
- (c) the current application is compatible with the assessment laid down in the interim criteria for assessing planning application for NTEH/Small House development in the New Territories;
- (d) the application is compatible with Town Planning Board Guidelines No. 10 (TPB PG-No. 10) for ‘Application for Development within “Green Belt” Zone under section 16 of the Town Planning Ordinance’;
- (e) it is appropriate to concentrate the new proposed Small House developments. The Site is deemed to be a logical and spontaneous expansion of the “V” zone. The Site is contiguous to the existing approved planning cases and shares the same boundary of another recently approved case (Application No. A/SK-PK/234);
- (f) the Site has been planned by the government as part of the Phase 2 of the Village Extension Area of Pak Kong Village since the 1990s;
- (g) approval of this application would not be an undesirable precedent for other similar applications within the “GB” zone;
- (h) infill sites among other approved Small House developments with compatible development intensity; and
- (i) the applicant is eligible for the construction of a Small House.

### **3. Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

### **4. Assessment Criteria**

The set of interim criteria for assessing planning applications for NTEH/Small House development in the New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. The latest set of Interim Criteria promulgated on 7.9.2007 is at **Appendix II**.

### **5. Town Planning Board Guidelines**

Town Planning Board Guidelines No. 10 (TPB PG-No. 10) for ‘Application for Development within “Green Belt” Zone under section 16 of the Town Planning Ordinance’ is relevant to the application (**Appendix III**). The relevant assessment criteria are summarized as follows:

- (a) there is a general presumption against development in the “GB” zone;
- (b) applications for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning ground. The scale and intensity of the proposed development including the plot ratio (PR), site coverage and building height should be compatible with the character of surrounding areas;
- (c) applications for NTEHs with satisfactory sewage disposal facilities and access arrangements may be approved if the application sites are in close proximity to existing villages and in keeping the surrounding uses, and where the development is to meet the demand from indigenous villagers;
- (d) the design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (f) any proposed development on a slope or hillside should not adversely affect slope stability.

### **6. Previous Applications (Plans A-1 and A-2a)**

6.1 The Site is the subject of two previous applications for NTEH (Small House) development (Applications No. A/SK-PK/63 and A/SK-PK/239) and forms part of the subject of another previous application (Application No. A/SK-PK/217) for development of 3 NTEHs (Small Houses).

- 6.2 Application No. A/SK-PK/63 was rejected by the Rural and New Town Planning Committee (the Committee) on 6.2.1998 on the grounds of not in line with planning intention of “GB” zone; undesirable effect resulted from an increase in population; sufficient land within “V” zone to meet the Small House demand; and setting of undesirable precedent for similar applications with the “GB” zone.
- 6.3 Application No. A/SK-PK/217 for proposed 3 NTEHs (Small Houses) was rejected upon review by the Board on 12.6.2015 mainly on the grounds of not in line with planning intention of “GB” zone; land is still available within “V” zone in Pak Kong for Small House development; and setting of undesirable precedent for other similar applications within the “GB” zone.
- 6.4 Application No. A/SK-PK/239 for proposed NTEH (Small House) was rejected upon review by the Board on 14.9.2018 mainly on the grounds of not in line with planning intention of “GB” zone; not in line with TPB PG-No. 10; land is still available within “V” zone in Pak Kong for Small House development; and setting of undesirable precedent for other similar applications within the “GB” zone.

## **7. Similar Applications**

- 7.1 There are 11 similar applications (Applications No. A/SK-PK/16, 64, 65, 157, 214, 231, 234, 235, 240, 241 and 251) for Small House developments in the vicinity of the Site and within the same “GB” zone on the Pak Kong and Sha Kok Mei OZP (**Plans A-1 and A-2a**).
- 7.2 Application No. A/SK-PK/16 for development of 10 NTEHs (Small House) and EVA was approved with conditions upon review by the Board on 11.8.1995 before the promulgation of the Interim Criteria in 2000. Since the promulgation of the Interim Criteria, planning permissions have subsequently been granted for development of NTEHs (Small House) at the same/part of the 10 approved Small House sites under Applications No. A/SK-PK/157, 231, 234 and 235.
- 7.3 Two planning permissions (Applications No. A/SK-PK/214 and A/SK-PK/251 covering the same site and submitted by the same applicant) for proposed NTEH (Small House) falling partly within “V” zone and partly within “GB” zone were approved with conditions by the Committee on 2.1.2015 and 2.8.2019 respectively. The applications were approved mainly on the grounds that sympathetic consideration may be given to the proposed Small House partly zoned “V”, which generally complies with the Interim Criteria and TPB PG-No. 10, and no significant adverse impact is anticipated.
- 7.4 Four applications covering two sites were rejected by the Committee on 6.2.1998 (Applications No. A/SK-PK/64 and 65) and 26.1.2018 (Applications No. A/SK-PK/240 and 241) respectively mainly on grounds of not in line with the planning intention of the “GB” zone; adverse traffic impact and other undesirable effect is anticipated; land is still available within “V” zone in Pak Kong for Small House development; and setting of undesirable precedent for other similar applications within the “GB” zone.

7.5 Details of the applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1 and A-2a**.

**8. The Site and its Surrounding Areas (Plans A-1 to A-2b, aerial photo on Plan A-3 , and photos on Plan A-4a and A-4b)**

8.1 The Site is:

- (a) partly formed, partly vegetated and gently sloping from north to south;
- (b) accessible by a paved village track leading to Pak Kong Road; and
- (c) within the Consultation Zone (CZ) of Pak Kong Water Treatment Works (PKWTW).

8.2 The surrounding areas have the following characteristics:

- (a) to its east is a plant nursery, Koon Lam Garden;
- (b) to its north is some existing vegetated shrubs;
- (c) to its southwest are village houses under construction;
- (d) to its west are clusters of 3-storey village houses within the “V” zone; and
- (e) to its further east is the PKWTW.

**9. Planning Intention**

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

**10. Planning Assessments and Comments from Relevant Government Departments**

10.1 The application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1	Within “V” zone? -Footprint of the Small House - Application site		100% 100%	Within “GB” zone
2	Within ‘VE’? -Footprint of the NTEH/Small House -Application site	100% 100%		

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	<ul style="list-style-type: none"> <li>Land required to meet Small House demand: about 5.55 ha (equivalent to 222 Small House sites). The outstanding Small House applications are 17<sup>1</sup> while the 10-year Small House demand forecast is 205<sup>2</sup>.</li> <li>Land available to meet Small House demand: 51 Small House sites (about 1.28 ha).</li> </ul>
4	Compatible with the planning intention of “GB” zone?		✓	There is a general presumption against development within the “GB” zone.
5	Compatible with Surrounding area/ development?	✓		The surrounding development which is mainly rural in character with clusters of village houses.
6	Within Water Gathering Grounds?		✓	
7	Encroachment onto planned road networks and public works boundaries?		✓	
8	Need for provision of fire service installations and Emergency Vehicular Access?		✓	Director of Fire Services (D of FS) has no specific comment on the application. The applicant is reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by Lands Department. Detailed fire safety requirements will be formulated upon receipt of formal application referred by Lands Department.
9	Traffic impact?	✓		Commissioner for Transport (C for T) has reservation on the application and considers that the proposed development should be confined within “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 an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial. Notwithstanding the above, the application only involves one Small House, she considers the application can be tolerated unless it is rejected on other grounds.
10	Drainage impact?		✓	Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD) has no in-principle

<sup>1</sup> Among the 17 outstanding Small House applications, there are 8 Small House applications straddling or outside the “V” zone. For those 8 applications straddling or being outside the “V” zone, 3 of them have obtained valid planning approvals from the Board.

<sup>2</sup> The Indigenous Inhabitant Representative (IIR) of Pak Kong has not provided the 10-year Small House demand forecast for the village since 2015. The forecast provided by the IIR of Pak Kong in December 2014 is 205.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				objection to the application.
11	Sewerage impact?		✓	In view of the small scale of the NTEH, the application alone would unlikely cause any major impact.
12	Local objections?		✓	District Officer/Sai Kung, Home Affairs Department (DO/SK, HAD) has no comment on the application.
13	Landscaping impact?	✓		<ul style="list-style-type: none"> <li>• CTP/UD&amp;L, PlanD has reservation on the application from the landscape planning point of view.</li> <li>• The Site is located in an area of rural landscape character dominated by vegetated area and dense tree groups with some isolated village houses nearby. The proposed Small House is not incompatible with the surrounding rural landscape character. Significant changes or disturbances to the existing landscape resources arising from the proposed Small House are not anticipated; however, approval of the proposed Small House would encourage the spreading of village houses into the “GB” zone leading to cumulative deterioration of landscape character of the “GB” zone.</li> <li>• In consideration of limited space within the Site, implementation of effective landscape treatment (particularly by means of tree planting) for bringing greenery contribution to the public realm seems not practicable. It is considered not necessary to impose any landscape-related condition should the application be approved by the Board.</li> </ul>
14	Risk aspect		✓	Director of Environmental Protection (DEP) has no objection to the application from chlorine risk point of view with respected to the PKWTW.

10.2 Comments from the following government departments have been incorporated in the above paragraph. Details of their comments are at **Appendix V**.

- (a) District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD);
- (b) D of FS;
- (c) C for T;
- (d) CE/MS, DSD;
- (e) CE/Construction, WSD;
- (f) DAFC;
- (g) DO/SK, HAD;
- (h) CTP/UD&L, PlanD; and
- (i) DEP.

10.3 The following departments have no objection to/no comment on the application:

- (a) Chief Engineer (Works), Home Affairs Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (d) Chief Building Surveyor/New Territories East 2 & Rail, Buildings Department.

## **11. Public Comments Received During Statutory Publication Period**

On 19.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 9.8.2019, three public comments were received from Kadoorie Farm & Botanic Garden Corporation, The Hong Kong Bird Watching Society and an individual of the public (**Appendix VI**). All commenters object to the application mainly on grounds that the proposed development is not in line with the planning intention; approval of the application may set an undesirable precedent for other similar applications which will result in encroachment of the “GB” zone; approval would encourage “destroy first, build later”; and adverse sewerage and drainage impacts are anticipated.

## **12. Planning Considerations and Assessments**

- 12.1 The application is for proposed development of one NTEH (Small House) at the Site falling entirely within an area zoned “GB” on the approved Pak Kong and Sha Kok Mei OZP. The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. The proposed Small House development is not in line with the planning intention of the “GB” zone. There is no strong justification for a departure from the planning intention of the “GB” zone.
- 12.2 The Site and the footprint of the proposed Small House fall entirely within the ‘VE’ of Pak Kong. According to DLO/SK, there are 17 outstanding Small House applications while the IIR of Pak Kong has not provided the 10-year Small House demand forecast for the village since 2015, the forecast provided by the IIR of Pak Kong in December 2014 is 205. As such, the total estimated Small House demand forecast for the village is 222 (or equivalent to about 5.55ha of land). Based on the latest estimate by Planning Department, about 1.28 ha (or equivalent to about 51 Small House sites) of land are available within the “V” zone of Pak Kong. Although there is insufficient land to fully meet the future Small House demand of the village in the long run, it should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of



infrastructures and services.

- 12.3 The Site is the subject of previous applications (Applications No. A/SK-PK/63, A/SK-PK/217 and A/SK-PK/239) rejected by the Committee or the Board upon review mainly on the grounds of not in line with planning intention of the “GB” zone, land is still available within “V” zone and setting of undesirable precedent. With regard to the CFI’s judgment in HCAL 260/2015 (8.4.2019), the said judgment relates to the Small House Policy implemented by LandsD. The judgment does not affect the Board’s functions under the Town Planning Ordinance (Cap. 131) (TPO). Pursuant to section 16 of the TPO, the Board shall consider applications for planning permission for Small House development, and decide whether to grant or refuse planning permission taking into account the relevant planning considerations. Since the rejection of the last Application No. A/SK-PK/239, there is no change in planning circumstances.
- 12.4 The Site is located in the midst of the “GB” zone. The proposed development is considered not incompatible with the surrounding environment which is mainly rural in character with clusters of village houses, tree groups and shrubs. CTP/UD&L, however, has reservation on the application in that approval of the proposed Small House would encourage the spreading of village houses into the “GB” zone leading to cumulative deterioration of landscape character of the “GB” zone.
- 12.5 The applicant claims that there are similar approved cases for NTEHs in the area. However, within the same “GB” zone in the vicinity of the Site, most of the similar cases (Applications No. A/SK-PK/157, 231, 234 and 235) were approved given the exceptional circumstances that they were covered by the previous planning approval given for development of 10 Small Houses in 1999 under Application No. A/SK-PK/16 before the promulgation of the Interim Criteria. Other similar applications No. A/SK-PK/214 and A/SK-PK/251 (on the same site and submitted by same applicant) were approved on grounds that sympathetic consideration was given to the proposed Small House partly zoned “V” and partly zoned “GB” and can generally meet the Interim Criteria and TPB PG-No. 10. As the Site falls entirely within the “GB” zone with no exceptional circumstance that warrants sympathetic consideration, approval of the application will set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving such applications will result in a general degradation of the landscape character of the area.
- 12.6 Regarding the public comments objecting to the application, the assessments in paragraphs 12.1 to 12.5 above are relevant.

### **13. Planning Department’s Views**

- 13.1 Based on the assessment made in paragraph 12 and taken into account the public comments mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a

general presumption against development within this zone. There is no strong justification in the submission for a departure from the planning intention;

- (b) land is still available within the “V” zone of Pak Kong where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services; and
- (c) approval of the application will set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving such applications will result in a general degradation of the landscape character of the area.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 6.9.2023, 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 conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Condition

the provision of septic tank as proposed by the applicant to the satisfaction of the Director of Lands or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VII**.

**14. Decision Sought**

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

**15. Attachments**

<b>Appendix I</b>	Application form dated 12.7.2019
<b>Appendix Ia</b>	Supporting Planning Statement
<b>Appendix II</b>	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
<b>Appendix III</b>	Town Planning Board Guidelines No. 10 for ‘Application for Development within “Green Belt” zone under section

<b>Appendix IV</b>	16 of the Town Planning Ordinance'
<b>Appendix V</b>	Similar applications for Small Houses
	Relevant Government Departments' comments on the application
<b>Appendix VI</b>	Public comments received
<b>Appendix VII</b>	Advisory clauses
<b>Drawing A-1</b>	Site Plan submitted by the applicant
<b>Drawing A-2</b>	Dimension Plan submitted by the applicant
<b>Drawings A-3 and A-4</b>	Stormwater Drainage Plan and Site Photos submitted by the applicant
<b>Plan A-1</b>	Location Plan
<b>Plans A-2a and A-2b</b>	Site Plans
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a and A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
SEPTEMBER 2019**