

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-CWBN/49

- Applicants** : LAU Siu Hung and Steven Philip BEAVER represented by Thomas Tsang Surveyors Limited
- Site** : Lots 330, 331 RP(Part), 332 s.B, and 333 s.B in D.D. 225, Pak To Avenue, Clear Water Bay, Sai Kung, New Territories
- Site Area** : 646m²
- Land Status** : Demised for agricultural use under Block Government Lease of D.D. 225
- Plan** : Approved Clear Water Bay Peninsula North Outline Zoning Plan (“OZP”) No. S/SK-CWBN/6
- Zonings** : “Green Belt” (“GB”) (about 602m² or 93%)
‘Road’ (about 44m² or 7%)
- Application** : Proposed House and the associated Excavation of Land

1. The Proposal

- 1.1 The applicants seek planning permission for house and associated excavation of land at the application site (the Site). The Site falls within the area mainly zoned “GB” (about 602m² or 93%) with minor portion within area shown as ‘Road’ (about 44m² or 7%). According to the Notes of the OZP, ‘House’ development within the “GB” zone and area shown as ‘Road’ requires planning permission from the Town Planning Board (the Board). The Notes of the OZP for the “GB” zone also stipulate that excavation of land within “GB” zone requires planning permission from the Board. The Site is partly occupied by temporary structures, including a removable container for storage purpose and an open shed for carparking, while the remaining part is used as a garden.
- 1.2 The Site is the subject of a previous application No. A/SK-CWBN/30 (submitted by the same applicants) for a proposed house and the associated excavation of land (1m in depth), which was rejected by the Rural and New Town Planning Committee (the Committee) of the Board on 25.7.2014.
- 1.3 The major development parameters of the proposed development as compared to the previous application are as follows:

	Previous Rejected Application No. A/SK-CWBN/30 (a)	Current Application (b)	Difference (b) – (a)
Site Area	661.7m ²	646m ²	-15.7 m ²
Proposed Gross Floor Area (GFA)	262m ² (including a plant room but excluding 2 car parks at carport level)	203.095m ² *	-58.905 m ²
Plot Ratio	0.4	0.31*	-0.09
Site Coverage	15%	14.86%	-0.14%
No. of Storeys	3 (2 storeys over 1 storey of carport)	3 (2 storeys over 1 storey of carport)	0
Building Height	9m (excluding rooftop structure of 2.14m)	9m	0
No. of Unit(s)	2	1	-1
Private Open Space	Nil	550m ²	+550m ²
Car Parking Spaces	2	1	-1

* with an assumption that GFA of the carport level (including 1 car park, a plant room, a staff quarter, an E&M room and a water meter room at carport level) is disregarded and subject to the approval of the Building Authority

- 1.4 The vehicular ingress and egress for the proposed development will be located at the eastern boundary of the Site (**Drawing A-3**).
- 1.5 In addition, septic tank and soakaway pit are proposed for sewage treatment. Excavation of land for house footing of about 12m (L) x 8m (W) x 1m (D) and for septic tank of about 3m (L) x 2m (W) x 3m (D) are required.
- 1.6 The site plan, dimension plan, floor layout plan, swept path analysis, sight clearance cause, proposed drainage plan and photomontages submitted by the applicants are at **Drawings A-1 to A-7**.
- 1.7 In support of the application, the applicants have submitted the following documents:
 - (a) Application form and planning statement received (b) 25.7.2018 (**Appendix I**)
 - (b) Letter from the applicants dated 6.8.2018 clarifying the proposed development parameters and providing replacement pages to the application form and a revised floor layout plan (**Appendix Ia**)
 - (c) Further Information (FI) (1) from the applicants received on 5.11.2018 and 6.11.2018 (accepted and exempted from publication) (**Appendix Ib**)

- (d) FI (2) from the applicants received on 21.2.2019 (**Appendix Ic**)
(accepted and exempted from publication)
- (e) FI (3) from the applicants received on 13.6.2019 (**Appendix Id**)
(accepted and not exempted from publication)
- (f) FI (4) from the applicants received on 24.7.2019 (**Appendix Ie**)
(accepted and exempted from publication)

1.8 On 21.9.2018, 21.12.2018 and 12.4.2019, the Committee agreed to defer its consideration on the application as requested by the applicants for submission of FI. The applicants submitted FIs as indicated in paragraph 1.7 above.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the application are detailed in Appendix 1 of the Planning Statement (**Appendix I**) and summarised as follows:

- (a) the Site has been used as an access road with proper ingress and egress, covered carparks, a lawn and a storeroom for recreational garden use by the owners living at Lot No. 748 in D.D. 225, and there is no incentive to convert the Site for agricultural use;
- (b) the Site is covered with grass and there are low rise housing developments to the east and west. No disturbance to high landscape value within the “GB” zone is anticipated. Appropriate protection of existing trees would be provided thus no tree will be damaged or felled during construction operations;
- (c) as detailed in the Geotechnical Planning Review Report, the slope stability will not be compromised due to the site formation work and the factor of safety is more than adequate;
- (d) the proposed development is low-rise and low-density in nature. Only one car parking space is proposed. The proposed development would not generate traffic problems to the locality;
- (e) the proposed development meets the planning criteria for planning application within the “GB” zone in that the proposed development should be compatible with the character and scale of the surrounding areas; the proposed development would not involve extensive clearance of existing natural vegetation or cause any adverse visual impact on the surrounding environment; the vehicular access and provision of car parking is appropriate to the proposed scale of development; the proposed development would not overstrain the capacity of the existing and planned infrastructure; and the proposed development is not susceptible to adverse environmental effects from pollution sources nearby and it would not be the source of pollution.

3. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) ‘Application for Development within “Green Belt” zone under section 16 of the Town Planning

Ordinance' are relevant to this application (**Appendix II**).

4. Compliance with the “Owner’s Consent/Notification” Requirements

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

5. Previous Application

The Site is the subject of one previous application No. A/SK-CWBN/30 for a proposed house and the associated excavation of land (1m in depth) (**Plan A-2**), which was rejected by the Committee on 25.7.2014 mainly on the grounds that the proposed development is not in line with the planning intention of the “GB” zone; the proposed development does not meet the TPB-PG No. 10 in that there are no exceptional circumstances for approving the application, and the applicant has failed to demonstrate that the proposed development would not have adverse traffic, drainage, geotechnical, landscape and visual impacts on the surrounding areas; and setting of an undesirable precedent.

6. Similar Applications

There are four similar applications No. A/DPA/SK-CWBN/11, A/SK-CWBN/16, 18 and 25, all for proposed New Territories Exempted Houses (NTEHs) (Small Houses) within the “GB” zones of the OZP (**Plan A-1**). All applications were rejected by the Committee or the Board mainly on the grounds that the proposed development was not in line with the planning intention of the “GB” zone; the proposed development was not in line with the TPB-PG No. 10/ ‘Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in the New Territories’; and setting of an undesirable precedent. Details of these applications are summarised at **Appendix III**.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4b)

7.1 The Site is:

- (a) partly occupied by temporary structures, including a removable container for storage purpose, an open shed for carparking and partly used as garden covered with grass (**Plans A-4a to 4-b**); and
- (b) directly abutting and accessible from Pak To Avenue with two existing ingresses/egresses (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) to the west of the Site is a site zoned “Residential (Group C)1” (“R(C)1”). A residential building is erected on Lot 748 within the “R(C)1” site with swimming pool and tennis court on Lot 181 S.A within the “GB” zone, which are currently occupied by the applicants. There are also illegal structures on government land attached to the

house on Lot 748 erected on the adjoining government land within the “GB” zone (**Plan A-2 and A-4b**);

- (b) to the south across Pak To Avenue is the Hong Kong Adventist College;
- (c) to the east across Pak To Avenue is the JC Studio and to the northeast is Gospel Villa which is the dormitories of the Seventh Day Adventists; and
- (d) to the north are some private lots and government land covered by vegetation.

8. Planning Intention

The planning intention of “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 outlet. There is a general presumption against development within this zone.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/Sai Kung, LandsD (DLO/SK, LandsD):

- (a) the subject lots falling within the Site are demised for agricultural purposes under Block Government Lease of D.D. 225 (the Lease) and any buildings or structures are not permitted under the Lease. Part of the slope 12NW-C/R275 which shall be responsible by lot owner of Lot 331RP in D.D.225 also falls within the Site;
- (b) when compared with the previous application, the applicants exclude 2 triangular-shaped areas (which are part of the private lot 331 RP) from the subject planning application. There are illegal structures built on the 2 said triangular-shaped areas. Regarding the illegal occupation of government land, land control action would be taken; and
- (c) details of the house development proposal would be examined during the stage of land exchange application. Should the land exchange be approved, it will be subject to terms and conditions, including payment of premium and administrative fee, as considered appropriate. However, there is no guarantee that the said land exchange will be approved irrespective of any approval given by the Board.

Traffic

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

- (a) as the section of Pak To Avenue near the Site is not under TD's management, comments should be sought from relevant management and maintenance agents;
- (b) the sight distance at the proposed ingress/egress location is less than the requirement of the Transport Planning and Design Manual. Without any proposed improvement measures on the sightline, he has reservation on the captioned application; and
- (c) in view of the above, should the Board decided to approve the application, an approval condition on the design and provision of ingress/egress to the satisfaction of the C for T or of the Board should be included.

Environment

9.1.3 Comments of the Director of Environmental Protection (DEP):

in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.

Urban Design and Visual

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

- (a) the Site is located in an area with rural character surrounded by vegetated areas and roads. Several low-rise buildings for residential or government, institution or community uses are found to the further east and south of the Site, e.g. JC Studio (BH: 1 to 3 storeys), Adventist College (BH: 1 to 4 storeys), residential developments at Gospel Villa (BH: 2 storeys) and the Portofino (BH: 4 to 5 storeys); and
- (b) having reviewed all the submissions, the proposed development is considered not incompatible with the surrounding area given that the surrounding built form is largely characterised by similar low-rise residential developments. Also, significant adverse visual impact is not anticipated provided the plant buffer front Pak To Avenue is maintained.

Landscape

9.1.5 Comments of the CTP/UD&L, PlanD:

- (a) the Site is situated in a rural landscape character surrounded by

scattered low-rise developments and dense woodlands. With reference to the aerial photo taken in December 2015 and site visit conducted in 16.8.2018, there is a 2-storey residential building adjacent to the Site. Some mature trees are growing along the edge of an open lawn and the lot boundary, providing a planting buffer to Pat To Avenue;

- (b) although the applicants claim that no tree will be damaged or felled due to the development, apparently some existing trees may be affected by the associated site formation during construction. Thus the impact of the proposed house development on existing landscape resources cannot be fully ascertained. Further loss of the landscape buffer between Pat To avenue and the existing woodland would disrupt the continuity of the remaining “GB” zone;
- (c) the approval of the application would set an undesirable precedent for other similar applications encroaching onto the existing “GB” zone and creating piece-meal development pattern in the “GB” zone along Pak To Avenue. The cumulative effect of approving similar applications would result in deterioration of the local environment. Therefore, she has reservation on the captioned application from the landscape planning perspective. Should the Board approved the application, in view of the above, she would recommend the following approval condition to be included:

the submission and implementation of a landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board; and

- (d) the applicants should seek comment/advice from relevant government department(s), as appropriate, if there is any change in the tree preservation and removal proposal.

Drainage

9.1.6 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

- (a) the concerned lot is currently not covered by DSD public drainage and sewerage networks. As the proposed drainage plan does not provide sufficient drainage details, on the condition that adequate stormwater drainage collection and disposal facilities will be provided in connection with the proposed development to deal with the surface runoff of the Site and the same flowing onto the Site without causing any adverse impacts or nuisance to the adjoining area, he has no objection in-principle to the application; and
- (b) an approval condition from drainage perspective is required

should the planning application be approved. The wording proposed will be “the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Board”.

Building Matters

9.1.7 Comments of the Chief Building Surveyor/New Territories East 2 & Rail, Buildings Department (CBS/NTE2 & Rail, BD):

she has no in-principle objection under the Buildings Ordinance to the application subject to following comments:

- (a) unless the Site abuts on a specified street complying with the requirements under Building (Planning) Regulations (B(P)R) 18A(3) and not less than 4.5m wide, the development intensity of the Site should be determined by the Building Authority under B(P)R 19(3);
- (b) the means of obtaining access to the proposed building from a street including the land status of the existing access road should be clarified to demonstrate compliance of B(P)R 5;
- (c) every domestic building within the Site shall be provided with an open space complying with the Second Schedule under B(P)R;
- (d) emergency vehicular access complying with B(P)R 41D shall be provided for all buildings in the Site;
- (e) PNAP APP-2, HKPSG and the advice of C for T will be referred to when determining exemption of GFA calculation for aboveground or underground carparking spaces; and
- (f) applicants’ attention is also drawn to the policy on GFA concessions under PNAP APP-151 in particular the 10% overall cap on GFA concessions and, where appropriate, the Sustainable Building Design requirements under PNAP APP-152.

Nature Conservation

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

it is noted that the Site is a fenced private garden. He has no strong view on the application.

Fire Safety

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

he has no in-principle objection to the application subject to fire

service installations and water supply for firefighting being provided to his satisfaction. EVA arrangement shall comply with Section 6, Part D of the 'Code of Practice for Fire Safety in Buildings 2011' administered by BD. Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

Water Supply

9.1.10 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD):

- (a) he has no objection to the application; and
- (b) for provision of fresh water supply to the proposed development, the applicants may need to extend their inside service to the nearest suitable government water mains for connection. The applicants 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.

Geotechnical

9.1.11 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

no in-principle geotechnical objection to the application. However, the adopted soil parameters and design groundwater level in the Geotechnical Planning Review Report should be justified during the detailed design of the site formation works.

9.2 The following departments have no comment on the application:

- (a) Director of Electrical and Mechanical Services;
- (b) District Officer/Sai Kung, Home Affairs Department;
- (c) Chief Engineer/Sewerage Projects, Drainage Services Department;
- (d) Chief Engineer/Consultants Management, Drainage Services Department;
- (e) Chief Engineer (Works), Home Affairs Department;
- (f) Project Manager/New Territories East, Civil Engineering and Development Department; and
- (g) Chief Highway Engineer/New Territories East, Highways Department.

10. Public Comments Received During Statutory Publication Period

On 7.8.2018 and 21.6.2019, the application and the FI submitted by the applicants were published for public inspection. During the first three weeks of the statutory public inspection periods which ended on 28.8.2018 and 12.7.2019, six public

comments from the Hong Kong Bird Watching Society, the World Wide Fund Hong Kong, Designing Hong Kong Limited and individuals of public were received (**Appendix IV**). They object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “GB” zone; the proposed development does not meet the TPB-PG No.10; and setting of an undesirable precedent.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed house and associated excavation of land at the Site mainly zoned “GB” with minor portion within area shown as ‘Road’ on the approved Clear Water Bay Peninsula North OZP No. S/SK-CWBN/6. 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 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.
- 11.2 Although the proposed 3-storey house development is not incompatible with the surrounding area which is characterised by similar low-rise residential developments and significant adverse visual impact is not anticipated, according to DLO/SK, the Site is demised for agricultural purposes without building entitlement under the lease. There are no exceptional circumstances and strong planning ground to justify the proposed house development.
- 11.3 Although the Site is partly occupied by temporary structures and partly used as garden covered with grass, it forms part of a wider “GB” zone while the applicants claim that no tree will be damaged/ felled due to the development, CTP/UD&L, PlanD considers that some existing trees may be affected by the associated site formation. She has reservation on the application from landscape planning perspective as the impact of the proposed house development on existing landscape resources cannot be fully ascertained. In this connection, the application does not comply with the TPB-PG No. 10 in that the applicants fail to demonstrate the proposed development would not generate adverse landscape impacts on the area.
- 11.4 C for T has reservation on the application that the design of the proposed ingress/egress does not meet the requirement while relevant departments, including DEP, CE/MS of DSD, CE/Construction of WSD and H(GEO) of CEDD, have no objection to or no comment on the application.
- 11.5 The Site is the subject of a previous planning application No. A/SK-CWBN/30 for a proposed house and associated excavation of land (1m in depth) submitted by the same current applicants rejected by the Committee on 25.7.2014 mainly on the grounds of not in line with the planning intention of the “GB” zone; does not meet the TPB-PG No. 10; and setting of an undesirable precedent. Rejection of the application is in line with the Committee’s previous decision.

- 11.6 The previous application and the four similar applications for house and NTEHs development respectively within “GB” zone on the OZP were all rejected by the Committee. Approval of the application would set an undesirable precedent for other similar applications encroaching onto the “GB” zone. The cumulative effect of approving similar applications would result in deterioration of the local environment and adverse impact on the landscape character of the area.
- 11.7 The public comments objecting to the application are mainly on the grounds of incompliance with the planning intention of the “GB” zone; incompliance with the TPB-PG No. 10 and setting of an undesirable precedent. In this regard, the assessments in paragraphs 11.1 to 11.6 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, 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. The applicants fail to provide strong justifications in the submission for a departure from the planning intention;
 - (b) the proposed development does not meet the TPB-PG No. 10 for ‘Application for Development within “GB” Zone’ in that there are no exceptional circumstances for approving the application and the applicants fail to demonstrate that the proposed development would not have adverse traffic and landscape impacts on the surrounding areas; and
 - (c) the approval of the application would set an undesirable precedent for other similar applications encroaching onto the existing “GB” zone. The cumulative effect of approving similar applications would result in deterioration of the local environment and adverse impact on the landscape character of the area.
- 12.2 Alternatively, should the Committee decide to approve the application, the permission shall be valid until 2.8.2023, 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 approval conditions and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) the submission and implementation of a landscape proposal to the

satisfaction of the Director of Planning or of the Town Planning Board;

- (b) the design and provision of ingress/egress to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (c) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (d) the submission and provision of a fire service installations and water supply proposals 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 **Appendix V**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission. The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to approve the 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.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form received 25.7.2018
Appendix Ia	Letter from the applicants dated 6.8.2018
Appendix Ib	Further Information (1) from the applicants received on 5.11.2018 and 6.11.2018
Appendix Ic	Further Information (2) from the applicants received on 21.2.2019
Appendix Id	Further Information (3) from the applicants received on 13.6.2019
Appendix Ie	Further Information (4) from the applicants received on 24.7.2019
Appendix II	The 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'
Appendix III	Similar Applications
Appendix IV	Public Comments
Appendix V	Advisory Clauses

Drawing A-1	Site Plan submitted by the Applicants
Drawing A-2	Floor Layout Plan submitted by the Applicants
Drawing A-3	Swept Path Analysis submitted by the Applicants
Drawing A-4	Sight Clearance Cause submitted by the Applicants
Drawing A-5	Proposed Drainage Plan submitted by the Applicants
Drawings A-6 to A-7	Photomontages submitted by the Applicants
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2019**