

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

APPLICATION NO. A/NE-LK/128

- Applicant** : Mr. LEE Kwok Shing represented by R-riches Property Consultants Limited
- Site** : Lot 1109 RP in D.D. 39, Ha Wo Hang, Sha Tau Kok, New Territories
- Site Area** : 110.8 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claimed to be an indigenous villager of Ha Wo Hang Village of Sha Tau Kok Heung¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ha Wo Hang (**Plans A-1 and A-2a**). The Site falls within an area zoned “GB” on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. According to the Notes of the OZP, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in “GB” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) are as follows:

Total Floor Area	: 195.09 m ²
Number of Storeys	: 3
Building Height	: 8.23 m
Roofed Over Area	: 65.03 m ²

1.3 The applicant indicates that the uncovered area of the Site would be used for circulation area. Layout of the proposed Small House (including septic tank) is shown on **Drawing A-3**.

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be indigenous villager of Ha Wo Hang, Sha Tau Kok Heung. His eligibility for Small House grant has yet to be ascertained.

1.4 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received by the Board on 11.5.2020.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the appendix attached to the Application Form in **Appendix I**. They can be summarised as follows:

- (a) the applicant is an indigenous villager of Ha Wo Hang and is eligible to construct a small house under the Small House Policy;
- (b) although the Site falls outside the “V” zone of Ha Wo Hang, the Site and footprint of proposed Small House falls entirely within the village ‘environs’ (‘VE’);
- (c) there is one similar application No. A/NE-LK/71 for proposed NTEH within “GB” zone at the northwest of Au Ha which was approved with conditions by the Committee on 6.1.2012 (**Plan A-1**);
- (d) the applicant will strictly follow the Professional Persons and Environmental Consultative Committee Practice Notes (ProPECC PNs) for sewage treatment at the Site; and
- (e) the proposed development would not create significant adverse traffic, environmental, landscape and drainage impacts to the surrounding areas. Adequate mitigation measures would be provided including the drainage, fire service installations and landscape measures to address any adverse impact from the proposed development.

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

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

4. **Assessment Criteria**

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in 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, which was promulgated on 7.9.2007, is at **Appendix II**.

5. **Town Planning Board Guidelines**

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

- (a) there is a general presumption against development (other than redevelopment) in a

“GB” zone;

- (b) applications for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of the surrounding areas;
- (c) applications for NTEH with satisfactory sewage disposal facilities and access arrangements may be approved if the application site is in close proximity to existing villages and in keeping with 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) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area.

6. **Previous Application**

There is no previous application at the Site.

7. **Similar Application**

There is no similar application for Small House development falling within the same “GB” zone. The similar application No. A/NE-LK/71 (**Plan A-1**) as quoted by the applicant was at another “GB” zone near Au Ha Village. That application for a NTEH was approved with conditions by the Committee in January 2012 mainly on sympathetic considerations that the Site was subject to a building entitlement under the lease and the proposed development intensity did not exceed the lease entitlement; and proposed development would not have significant adverse traffic, drainage and environmental impacts on the surrounding area. The circumstances of the current application are different from that application.

8. **The Site and Its Surrounding Area** (Plans A-1, A-2a and A-2b, aerial photo on Plan A-3 and site photo on Plan A-4)

8.1 The Site is:

- (a) covered by vegetation (**Plan A-4**);
- (b) located to the south of the existing village cluster of Ha Wo Hang Village (**Plan A-2a**); and

- (c) inaccessible by local road.

8.2 The surrounding area has the following characteristics:

- (a) to the further northwest are village houses within the “V” zone of Ha Wo Hang Village (**Plan A-2a**);
- (b) surrounded by vegetated woodland and fallow agricultural land within the “GB” zone;
- (c) to the immediate east of the Site is a natural stream (**Plan A-2a**);
- (d) to the further west is declared monument “Fat Tat Tong”; and
- (e) to the further southeast is a densely vegetated area within “Conservation Area” (“CA”) zone (**Plans A-2a and A-3**).

9. Planning Intention

The planning intention of the “GB” zone is intended 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. Comments from Relevant Government Departments

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

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	- -	100% 100%	- The Site and footprint of the proposed Small House falls entirely within an area zoned “GB”.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%	- -	- DLO/N, LandsD advises that the footprint of the proposed Small House falls entirely within the ‘VE’ of Ha Wo Hang.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3.	Sufficient land in "V" zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet Small House demand in Ha Wo Hang Village: about 21.1 ha (equivalent to 845 Small House sites). The outstanding Small House applications for Ha Wo Hang Village are 5 ² while the 10-year Small House demand forecast for the same village is 840. <u>Land Available</u> - Land available to meet Small House demand within the "V" zone of Ha Wo Hang Village: about 0.58 ha (equivalent to 23 Small House sites) (Plan A-2b).
	Sufficient land in "V" zone to meet outstanding Small House application?	✓		
4.	Compatible with the planning intention of "GB" zone?		✓	- There is a general presumption against development within the "GB" zone. - Director of Agriculture, Fisheries and Conservation (DAFC) has reservation on the application from nature conservation point of view as the Site is within "GB" zone and the surrounding environment is largely natural.
5.	Compatible with surrounding area/ development?		✓	- The proposed Small House is not entirely compatible with the surrounding rural landscape character dominated by densely vegetated woodland and fallow agricultural land with some village houses located further away from the Site.
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	

² Among the 5 outstanding Small House applications, 3 of them fall within the "V" zone and 2 straddle or outside the "V" zone. For those 2 applications straddling or being outside the "V" zone, none of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD.
9.	Traffic impact?	✓		- Commissioner for Transport (C for T) has reservation on the application and advises that Small House 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 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 construction of one Small House. He considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required.
11.	Sewage impact?		✓	- Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping impact?	✓		- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from the landscape planning point of view.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<ul style="list-style-type: none"> - Based on 2019 aerial photo, the Site was abandoned agricultural land with vegetation near Ha Wo Hang village. Existing village houses within “V” zone, are located mainly to the north of a spur with vegetation cover of trees. However, the Site is isolated and located to the southwest of the spur. The proposed development is considered not entirely compatible with the landscape character of the “GB” zone. Potential adverse landscape impact arising from the development could not be ascertained. - Should the application be approved, it would set an undesirable precedent for landscape character alteration of the “GB” zone, and would encourage more similar development within the area. The cumulative impact of such approval would further degrade the landscape quality of the environment, within the “GB” zone. - Given the nature of the proposed development and the Site is not bounded by public frontage, it is considered not necessary to impose a landscape condition.
13.	Local objection conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that all respondents including the incumbent North District Council (NDC) member of subject constituency and the Chairman of Sha Tau Kok District Rural Committee have no comment on the application.

10.2 Comments from the following Government departments have been incorporated in paragraph 10.1 above. Detailed comments from Government departments are at **Appendix III**.

- (a) District Lands Officer/North, Lands Department;
- (b) Director of Agriculture, Fisheries and Conservation;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Director of Fire Services;
- (e) Commissioner for Transport;
- (f) Chief Engineer/Mainland North, Drainage Services Department;

- (g) Director of Environmental Protection;
- (h) Chief Town Planner/Urban Design and Landscape, Planning Department; and
- (i) District Officer (North), Home Affairs Department.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Executive Secretary (Antiquities & Monuments), Antiquities and Monuments Office (ES(AM), AMO), DEVB; and
- (c) Project Manager (North), North Development Office, Civil Engineering and Development Department.

11. Public Comments Received During Statutory Publication Period

On 19.5.2020, the application was published for public inspection. During the statutory public inspection period, six public comments were received (**Appendix IV**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Conservancy Association, Designing Hong Kong, Kadoorie Farm and Botanic Garden Corporation, the Hong Kong Bird Watching Society and one individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “GB” zone; approval of the application would set an undesirable precedent to the future similar applications within the “GB” zone; land is still available within the “V” zone of Ha Wo Hang Village for Small House development; and the applicant fails to demonstrate that the proposed development would not have adverse ecological and sewerage impact on the surrounding area.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed Small House at the Site falling entirely within the “GB” zone. 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. DAFC has reservation on the application from nature conservation point of view as the Site is within “GB” zone and the surrounding environment is largely natural. There is no strong planning justification in the submission for a departure from the planning intention of the “GB” zone.
- 12.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ha Wo Hang Village is 5 while the 10-year Small House demand forecast for the same village is 840. According to the latest estimate by PlanD, a total of about 0.58 ha (equivalent to 23 Small House sites) of land are available within the “V” zone of Ha Wo Hang Village for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the footprint of the proposed Small House falls entirely within the ‘VE’ of Ha Wo Hang Village.
- 12.3 The Site is situated in an area of rural landscape character dominated by densely vegetated woodland, fallow agricultural land and some village houses (**Plans A-3 and A-4**). CTP/UD&L, PlanD has some reservations on the application from the landscape planning perspective. Based on 2019 aerial photo (**Plan A-3**), the Site was abandoned agricultural land with vegetation near Ha Wo Hang village. Potential

adverse landscape impact arising from the development could not be ascertained. Should the application be approved, it would set an undesirable precedent for landscape character alteration of the "GB" zone, and would encourage more similar development within the area. The cumulative impact of such approval would further degrade the landscape quality of the environment, within the "GB" zone. C for T considers that Small House development should be confined within the "V" zone as far as possible but given that the proposed development only involve the construction of one Small House, the application could be tolerated. Other Government departments consulted, including DEP, CE/MN of DSD, HyD, WSD, FSD, LCSD and CEDD, have no comment on or no objection to the application.

- 12.4 Regarding the Interim Criteria (**Appendix II**), the whole footprint of the proposed Small House falls within the 'VE' of Ha Wo Hang Village (**Plan A-2a**). While land available within the "V" zone (**Plan A-2b**) is insufficient to fully meet the total Small House demand of 845 Small Houses, such available land (about 0.58 ha or equivalent to 23 Small House sites) is capable to meet the 5 outstanding Small House applications. 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. As such, 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 infrastructure and services.
- 12.5 The proposed Small House development also does not comply with the TPB PG-No. 10 in that the proposed development would affect the existing natural landscape on the surrounding environment. Approval of the application will encourage similar Small House applications encroaching onto the "GB" zone leading to further degradation of the landscape quality in the surrounding area.
- 12.6 There is no previous planning application at the Site and no similar application for Small House development falling within the same "GB" zone. The applicant claimed that there is one similar application No. A/NE-LK/71 within "GB" zone at the northwest of Au Ha which is another recognised village located to the further northwest of Ha Wo Hang village (**Plan A-1**). It should be noted that Application No. A/NE-LK/71 was for a proposed NTEH (instead of a Small House) and that application was approved with conditions by the Committee in January 2012 mainly on the grounds that the Site was subject to a building entitlement under the lease and the proposed development intensity did not exceed the lease entitlement; and the proposed development would not have significant adverse traffic, drainage and environmental impacts on the surrounding area. The circumstances of the current application are different from that application.
- 12.7 Regarding the adverse public comments as detailed in paragraph 11, the Government department's comments and the planning assessment above are relevant.

13. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 12 and having 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 planning justification in the submission for a departure from the planning intention;
- (b) the proposed development does not comply with the TPB PG-No. 10 for ‘Application for Development within “GB” Zone under Section 16 of the Town Planning Ordinance’ in that the proposed development would affect the existing natural landscape in the surrounding environment;
- (c) land is still available within the “V” zone of Ha Wo Hang Village for Small House development. It is considered more appropriate to concentrate the proposed Small House within “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services; and
- (d) the approval of the application would set an undesirable precedent for similar applications in the “GB” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 10.7.2024, 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 Conditions

- (a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

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

14. Decision Sought

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

15. Attachments

Appendix I	Application Form with Attachments received on 11.5.2020
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Detailed Comments from Relevant Government Departments
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Plan showing the Vehicular Access
Drawing A-2	Land Status Plan
Drawing A-3	Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the "V" zone of Ha Wo Hang Village for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photo

**PLANNING DEPARTMENT
JULY 2020**