

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/677

<u>Applicant</u>	Mr. CHAN Nathan Jun-fai represented by Mr. PANG Hing-yeun
<u>Site</u>	Lots 140 S.A RP, 140 S.B RP and 141 in D.D. 28, Lung Mei Village, Ting Kok, Tai Po, N.T.
<u>Site Area</u>	About 169.28m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan No. S/NE-TK/19
<u>Zoning</u>	“Green Belt” (“GB”)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, an indigenous villager of Lung Mei of Tai Po, as confirmed by the respective Indigenous Inhabitant Representative (IIR)¹, seeks planning permission to build an NTEH (Small House) on the application site (the Site) (**Plan A-1**). 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)’ within the “GB” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed Small House development are as follows:

Total floor area	: 195.09m ²
No. of storeys	: 3
Building height	: 8.23m
Roofed over area	: 65.03m ²

The un-covered area is proposed for circulation area for the house. Layout plan and sewerage drainage plan of the proposed Small House are shown on **Drawings A-1** and **A-2**.

1.3 In support of the application, the applicant has submitted an application form and attachments on 18.11.2019 (**Appendix I**).

¹ According to District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD), the applicant’s eligibility of Small House grant has yet to be ascertained.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application is detailed in Part 8 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the applicant is an indigenous villager of Lung Mei Village and thus eligible for permission to construct a Small House in accordance with the current policy;
- (b) the proposed house footprint is located within the village ‘environs’ (‘VE’) of Lung Mei Village;
- (c) the Site was a gift from the applicant’s grandfather for him to apply for Small House, and he does not own any other land for Small House application;
- (d) the intention of the government to designate ‘VE’ was to facilitate Small House applications by villagers. The location of the Site is in accordance with this designation;
- (e) there are Small Houses erected in the vicinity of the Site, hence the proposed development is compatible with the surrounding area;
- (f) the Site has been left vacant for a long period and is overgrown with weeds. The applicant has to weed routinely to avoid causing nuisances to the villagers;
- (g) the IIR of Lung Mei Village (also his grandfather) states that the amount of land available for Small House development is scarce, hence he wishes the land resources could be optimally utilised;
- (h) a youngster can hardly achieve property ownership under the very high property price in Hong Kong. The proposed development is the only feasible way for the applicant to achieve it;
- (i) the applicant will connect the house with the public sewer to minimise adverse impact to the environment;
- (j) there are similar approved planning applications in the vicinity of the Sites, such as Lot 139 S.A and 139 S.B. Also, there are similar approved planning application within the same village, such as Lot 390 RP, 391 S.A, 771 S.A RP and 966 etc.; and
- (k) the applicant will comply with the relevant departments’ requirements, and wishes that more land could be allocated to indigenous villagers for Small House development.

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

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

4. **Assessment Criteria**

The set of Interim Criteria for Consideration of Application for 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 Interim Criteria promulgated on 7.9.2007 is at **Appendix II**.

5. **Town Planning Board Guidelines**

The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant assessment criteria are summarised 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, site coverage and building height should be compatible with the character of surrounding areas;
- (c) applications for NTEH 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 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;
- (f) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area; and
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

6. **Previous Application**

- 6.1 The Site is the subject of a previous application (No. A/NE-TK/558) for a proposed Small House, submitted by a different applicant as the current application. That application was rejected by the Board on 18.9.2015 mainly on the grounds of being not in line with the planning intention of the “GB” zone; adverse landscape impacts on the surrounding areas; and land still being available within the “V” zone.
- 6.2 Details of the previous application are summarized at **Appendix III** and the location is shown on **Plans A-1 and A-2a**.

7. Similar Applications

- 7.1 There are 83 similar applications within the same “GB” zone (including 67 wholly within “GB” zone and 16 straddling on both “GB” and “V” zones) since the first promulgation of the Interim Criteria on 24.11.2000. Out of the 83 similar applications, 49 cases were approved and 34 were rejected.
- 7.2 Out of the 34 rejected applications, five of them (No. A/NE-TK/258, 263, 273, 274 and 279) were rejected by the Committee/the Board on review in 2009 mainly for reasons of not complying with the Interim Criteria and the TPB PG-No. 10 in that they would likely involve site formation and slope stabilisation works resulting in clearance of natural vegetation and damage of existing landscape of the surrounding area. Subsequently, the concerned Small Houses were approved under applications No. A/NE-TK/327, 328, 344, 392 and 393 between 2010 and 2012 mainly because the applicants had submitted Landscape Impact Assessment Report, Geotechnical Planning Review Report and Natural Terrain Hazard Study Report to demonstrate that no cutting of slopes and no felling of trees on site or in the adjacent woodland would be required, and thus the proposed development would not cause adverse geotechnical or landscape impacts on the surrounding area.
- 7.3 For the remaining 29 rejected applications (No. A/NE-TK/372, 401, 426, 443, 444, 486 – 493, 519, 520, 524, 555, 557, 559*, 570*, 571*, 577, 578, 598*, 622, 635, 660, 663 and 668), they were rejected by the Committee/the Board on review between 2011 and 2019 mainly for reasons of being not in line with the planning intention of “GB” zone; and/or not complying with the Interim Criteria and TPB PG-No. 10 for adverse landscape, sewage, water quality and/or geotechnical impacts. Moreover, the proposed Small House footprint under applications No. A/NE-TK/372, 443, 444, 519 and 520 fell outside both the “V” zone and the ‘VE’. Applications No. A/NE-TK/555, 557, 559, 570, 571, 577, 578, 598, 622, 635, 660, 663 and 668 were also rejected as land was still available within the “V” zone for Small House development.
- 7.4 Apart from the five approved applications mentioned in paragraph 7.2 above, there were 36 applications (No. A/NE-TK/140, 177, 179, 192, 204, 211, 213, 217, 226, 243, 259 – 262, 275 – 278, 294, 362, 363, 367, 373, 375, 419, 425, 440, 449, 450, 473, 476, 521, 522, 531, 540 and 545) approved with conditions by the Committee between 2002 and April 2015 before the Board’s adoption of a more cautious approach in approving applications for Small House development in August 2015. These applications were approved mainly on the considerations of being generally in compliance with the Interim Criteria in that the proposed Small House footprint fell mostly within the ‘VE’; there was a general shortage of land to meet the demand for Small House development in the “V” zone of the concerned village at the time of consideration; no significant adverse impact on the surrounding areas; and/or being the subject of previously approved application.
- 7.5 After the Board’s adoption of a more cautious approach, seven applications were approved between 2016 and 2019 on sympathetic considerations for reasons that the site was the subject of previously approved application (No. A/NE-TK/580, 582, 618, 654 and 664) or located in close proximity to the existing village cluster (No. A/NE-

* Applications No. A/NE-TK/559, 570, 571 and 598 were the subjects of Town Planning Appeals lodged by the respective applicants in 2016 and 2017, which were dismissed by the Town Planning Appeal Board on 22.3.2017, 17.10.2017 and 3.4.2019.

TK/573 and 585).

- 7.6 For the remaining approved application (No. A/NE-TK/432), it was the subject of a Town Planning Appeal (No. 5/2014) allowed by the Town Planning Appeal Board on 22.10.2015 mainly on considerations of the unique characteristics of the appeal site, i.e. located on agricultural land not covered by dense vegetation; well separated from the edge of the Pat Sin Leng Country Park; close to adjacent Small House developments; being able to be connected to public sewer; and having a general shortage of land in the “V” zone to meet the Small House demand.
- 7.7 Details of the above similar 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, A-2a and photos on Plans A-3 and A-4)

8.1 The Site is:

- (a) located at a vegetated lower hill slope to the north of Lung Mei, Tai Mei Tuk and Wong Chuk Tsuen;
- (b) currently vacant with grass cover; and
- (c) accessible via a local access.

8.2 The surrounding areas are predominantly rural in character with a mix of village houses, tree groups, and active/fallow agricultural land. There are village houses of Lung Mei, Tai Mei Tuk and Wong Chuk Tsuen located to its south. A streamcourse flowing from north to south is less than 5m to the west of the Site (**Plan A-2a**). The vegetated natural slopes in the north and east form the backdrop of the Site.

9. Planning Intention

The planning intention of the “GB” zone is primarily for defining the limit 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 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%	- Both the Site and the proposed Small House footprint fall entirely within “GB” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	100%	-	- Both the Site and the proposed Small House footprint fall entirely within the ‘VE’ of Lung Mei and Tai Mei Tuk (Plan A-1). - The District Lands Officer/Tai Po, LandsD (DLO/TP, LandsD) has no objection to the application.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)? Sufficient land in “V” zone to meet outstanding Small House applications?	✓	✓	<u>Land Required</u> - Land required to meet Small House demand: about 7.68 ha (equivalent to 307 Small House sites). The outstanding Small House applications are 60 ² while the 10-year Small House demand forecast is 247. <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the villages concerned: about 1.79 ha (equivalent to about 71 Small House sites) (Plan A-2b).
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 no strong view on the application from nature conservation point of view as the Site is a piece of vacant land.

² Among the 60 outstanding Small House applications, 29 of them fall within the “V” zone, 31 straddle or fall outside the “V” zone. For those 31 applications straddling or being outside the “V” zone, 9 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
5.	Compatible with surrounding area/development?	✓		- The surrounding areas are predominantly rural in character comprising scattered tree groups and village houses.
6.	Within Water Gathering Ground (WGG)?		✓	- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and Emergency Vehicular Access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) in general has reservation on the application but considers that the application only involving development of a Small House can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) does not support the application since the proposed house is located in the close proximity of an existing streamcourse. The applicant has not demonstrated that the proposed Small House will not adversely affect the flow path and the conveyance of run off.
11.	Sewerage impact?		✓	- Director of Environmental Protection (DEP) has no objection to the application.
12.	Landscape impact?	✓		- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) objects to the application. Considering the existing "GB" zone is largely undisturbed, there is a grave concern that approval of this application would set an undesirable precedent and the cumulative effect

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				of approving similar applications would result in degradation of landscape quality of the “GB” zone, and cause adverse landscape impact to the area.
13.	Geotechnical impact?		✓	
14.	Local objections conveyed by DO?		✓	

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

- (a) District Lands Officer/Tai Po, Lands Department;
- (b) Commissioner for Transport;
- (c) Director of Environmental Protection;
- (d) Chief Town Planner/Urban Design & Landscape, Planning Department;
- (e) Chief Engineer/Mainland North, Drainage Services Department;
- (f) Director of Agriculture, Fisheries and Conservation
- (g) Director of Fire Services; and
- (h) Chief Engineer/Construction, Water Supplies Department.

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

- (a) Chief Engineer/Special Duty Division, Drainage Services Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Project Manager/North, Civil Engineering and Development Department;
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (e) Director of Electrical and Mechanical Services; and
- (f) District Officer/Tai Po, Home Affairs Department.

11. Public Comments Received During Statutory Publication Period (Appendix VI)

On 26.11.2019, the application was published for public inspection. During the statutory public inspection period, twenty public comments were received from WWF-Hong Kong, Designing Hong Kong Limited, Hong Kong Bird Watching Society, a group of local residents and 16 individuals objecting to the application mainly on the grounds of being not in line with the planning intention of “GB” zone; being not complied with TPB-PG No. 10 for development within “GB” zone; setting of undesirable precedent; encouraging cases of “destroy first, develop later” cases; land is still available within “V” zone; polluting the streamcourse nearby; and causing adverse environmental and ecological impacts.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed Small House development at the Site falling entirely within “GB” zone on the OZP. The proposed development is not in line with the planning intention of “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 of the “GB” zone.
- 12.2 According to DLO/TP, LandsD’s record, the total number of outstanding Small House applications for Lung Mei and Tai Mei Tuk is 60 while the 10-year Small House demand forecast for the concerned villages is 247. Based on the latest estimate by the PlanD, about 1.79 ha of land (equivalent to about 71 Small House sites) are available within the “V” zone of Lung Mei and Tai Mei Tuk. As the proposed Small House footprint falls entirely within the ‘VE’ of the concerned villages, DLO/TP, LandsD has no objection to the application.
- 12.3 The Site, located at a vegetated lower hill slope to the north of Lung Mei, Tai Mei Tuk and Wong Chuk Tsuen, is vacant with grass cover. The surrounding areas are predominantly rural in character with a mix of village houses, tree groups, and active/fallow agricultural land. Village clusters are mainly found to the south of the Site (**Plan A-2a**). According to CTP/UD&L, PlanD, the proposed development is not incompatible with the surrounding landscape character, and significant adverse impacts on the landscape resources within the Site is not anticipated. However, considering the existing “GB” zone is largely undisturbed, there is a grave concern that approval of this application would set an undesirable precedent and the cumulative effect of approving similar applications would result in degradation of landscape quality of the “GB” zone, and cause adverse landscape impact to the area. On this basis, CTP/UD&L, PlanD objects to the application. DAFC has no strong view on the application from nature conservation point of view as the Site is a piece of vacant land.
- 12.4 There is a streamcourse located to the immediate west of the Site. CE/MN of DSD does not support the application since the applicant has not demonstrated that the proposed Small House will not adversely affect the flow path of the streamcourse and the conveyance of run off. C for T in general also has reservation on the application but considers that the application only involving development of a Small House can be tolerated unless it is rejected on other grounds. Other relevant Government departments including DEP, CE/C of WSD, PM/N and H(GEO) of CEDD, CHE/NTE of HyD and D of FS have no objection to or adverse comment on the application.
- 12.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the ‘VE’ of Lung Mei and Tai Mei Tuk. While land available within the “V” zone (about 1.79 ha or equivalent to 71 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand of 307 Small Houses, such available land is capable to meet the outstanding 60 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. 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 infrastructure and services.

- 12.6 There are 25 similar applications covering 18 sites in close proximity to the Site (**Plan A-2a**). Twelve of them (applications No. A/NE-TK/140, 192, 259, 260, 261, 262, 362, 363, 367, 373, 440 and 450) were approved with conditions by the Committee between 2002 and 2013 before the Board's adoption of a more cautious approach in August 2015 for approving Small House applications. For the remaining 13 similar applications (applications No. A/NE-TK/426, 486, 487, 488, 489, 490, 491, 492, 493, 524, 555, 557 and 578), they were all rejected by the Committee or the Board on review mainly for the reasons of being not in line with the planning intention of the "GB" zone; not complying with the Interim Criteria and TPB PG-No. 10 in view of adverse landscape and sewage impacts on the surrounding areas; and/or land still being available within the "V" zone for Small House development. The planning circumstances of the current application are largely similar to those rejection applications.
- 12.7 Regarding the public comments raising objection to the application on the grounds as detailed in paragraph 11 above, Government departments' comments and the planning assessments in above paragraphs are relevant.

13. Planning Department's Views

- 13.1 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 this planning intention;
 - (b) the proposed development does not comply with the Town Planning Board Guidelines 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 and drainage in the surrounding environment;
 - (c) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that the proposed development would cause adverse landscape and drainage impacts on the surrounding areas; and
 - (d) land is still available within the "V" zone of Lung Mei and Tai Mei Tuk which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within "V" zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 17.1.2024, 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 submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (b) the submission and implementation of sewerage 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 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 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 conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

15. Attachments

Appendix I	Application form and attachments received on 18.11.2019
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Previous application
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses

Drawing A-1	Location plan submitted by the applicant
Drawing A-2	Sewerage proposal submitted by the applicant
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within the "V" Zone
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
JANURARY 2020**