

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/685

- Applicant** : Mr. LEE Eric Kin Ho represented by Mr. HUI Kwan Yee
- Site** : Lots 1397 RP and 1398 RP in D.D.17, Lo Tsz Tin, Tai Po, New Territories
- Site Area** : About 115 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
- Zonings** : “Village Type Development” (“V”) (about 50.4%)
“Green Belt” (“GB”) (about 49.6%)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, an indigenous villager of Luk Heung Chung Pui San Village¹ as confirmed by the Indigenous Inhabitant Representative (IIR) of the concerned village, 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, whilst ‘House (NTEH only)’ is always permitted within the “V” zone, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ within “GB” zone requires 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

Layout of the proposed development and the proposed sewerage connection to the public sewers are shown on **Drawing A-1**.

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.

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form and attachments received on **(Appendix I)** 27.5.2020
 - (b) Further information (FI) received on 9.7.2020 **(Appendix Ia)** providing responses to public comments (*accepted and exempted from publication and recounting requirements*)
- 1.4 In light of the special work arrangement for Government departments due to the novel coronavirus infection, the meeting originally scheduled for 24.7.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. The application is now scheduled for consideration by the Rural and New Town Planning Committee (the Committee) at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form at **Appendices I** and **Ia**. They can be summarised as follows:

- (a) the proposed development will be built on a piece of vacant agricultural land;
- (b) there is no other land available;
- (c) similar house developments can be found adjacent to the Site; and
- (d) in response to the public comments, the applicant claims that he purchased the Site in October 2019 and the land dispute is irrelevant to him.

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. The latest set of 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 below:

- (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 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 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, road 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

There is no previous application at the Site.

7. Similar Applications

- 7.1 There are 12 similar applications straddling the same “GB” and “V” zones (No. A/NE-TK/197, 222, 266, 322, 323, 332, 408, 458, 543, 544, 604 and 641) since the first promulgation of the Interim Criteria on 24.11.2000. 10 of them were approved with conditions, one was partially rejected and partially approved and one was rejected.

Approved Applications

- 7.2 Applications No. A/NE-TK/197, 266, 322, 323, 408, 458, 543 and 544 were approved with conditions by the Committee between 2005 and 2015 before the Board's adoption of a more cautious approach in approving Small House applications. They were approved mainly on the considerations of being generally in line with the TPB-PG No. 10 in that the proposed development would not involve extensive clearance of existing natural vegetation nor adversely affect slope stability; and being generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the 'VE' and there was a general shortage of land in meeting the demand for Small House development in the "V" zone at the time of consideration.
- 7.3 Two applications (No. A/NE-TK/604 and 641) were approved on 3.3.2017 and 15.6.2018 respectively, after the Board's adoption of the cautious approach. Apart from having no adverse impacts on the surrounding areas, Application No. A/NE-TK/604 was approved also on a consideration that about 91% of the proposed Small House footprint fell within "V" zone, and Application No. A/NE-TK/641 was approved on sympathetic consideration as previous planning permissions (No. A/NE-TK/197 and 408) had been granted.

Partially Approved and Partially Rejected Application

- 7.4 Application No. A/NE-TK/222 for five houses was partially approved and partially rejected by the Committee on 3.11.2006. Four Houses were approved on similar grounds for approval of the previous applications mentioned in paragraph 7.2 above, and one Small House was rejected for the reasons of not complying with the Interim Criteria in that more than 50% of the Small House footprint was outside the "V" zone and the 'VE'; and the approval of the application would set an undesirable precedent for other similar applications in the "GB" zone.

Rejected Application

- 7.5 The remaining Application No. A/NE-TK/332 was rejected by the Committee on 10.12.2010 mainly on the grounds that it did not comply with the Interim Criteria in that more than 50% of the Small House footprint was outside the "V" zone and the 'VE'; and approval of the application would set an undesirable precedent for other similar applications in the "GB" zone.
- 7.6 Details of the above similar applications are summarised at **Appendix III** and the locations are shown on **Plans A-1 and A-2a**.

8. The Site and Its Surrounding Area (Plans A-1, A-2a and photos on Plans A-3 and A-4)

- 8.1 The Site is:
- (a) vacant and hard paved;

- (b) located at the eastern fringe of Lo Tsz Tin but entirely outside the ‘VE’; and
- (c) accessible by footpath and local track leading to Ting Kok Road to the south.

8.2 The surrounding areas are predominantly rural in character with village houses located to the west and south and scattered tree clusters. Active agricultural land is located to the further east (**Plan A-2a**).

9. Planning Intentions

9.1 The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

9.2 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. Comments from Relevant Government Departments

10.1 The application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarised 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	 50.6% 50.4%	 49.4% 49.6%	- The remaining portion of the Site and the footprint of the proposed Small House fall within “GB” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	 - -	 100% 100%	- The Site and the Small House footprint fall entirely outside ‘VE’ of Lo Tsz Tin. - As more than 50% of the Site and the Small House footprint fall within the “V” zone, District

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet Small House demand in Lo Tsz Tin: about 3.65 ha (equivalent to 146 Small House sites). The outstanding Small House applications are 26 ² while the 10-year Small House demand forecast is 120. <u>Land Available</u> - Land available to meet the Small House demand within the “V” zone: about 2.09 ha (or equivalent to 83 Small House sites) (Plan A-2b).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		
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 comment on the application as the Site is vacant.
5.	Compatible with surrounding area/development?	✓		- The surrounding areas are predominantly rural in character with village houses, tree clusters and active/fallow agricultural land.
6.	Within Water Gathering Ground ?		✓	- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.

² Among the 26 outstanding Small House applications, 23 of them fall within the “V” zone and three straddle or fall outside the “V” zone. For those three applications straddling or 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>
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services 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?		✓	- Commissioner for Transport (C for T) has no in-principle objection to the application from traffic engineering point of view.
10.	Drainage impact?		✓	- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint. - Approval condition on submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) has no adverse comment on the application.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L of PlanD) has no objection to the application from landscape planning perspective as the Site is hard paved with no significant sensitive landscape resources.
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 whereas applicable. 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 and Landscape of 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 Highway Engineer/New Territories East, Highways Department;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.
- (c) Project Manager (North), Civil Engineering and Development Department;
- (d) Director of Electrical and Mechanical Services; and
- (e) District Officer (Tai Po), Home Affairs Department.

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

11.1 On 5.6.2020, the application was published for public inspection. During the statutory public inspection period, three public comments were received. Two of them were from the adjacent lot owners to the Site objecting to the application mainly for disputes over land ownership with the applicant and possible impacts on the existing power cables and sewers. The remaining public comment was from an individual objecting to the application as land is still available within the “V” zone of Lo Tsz Tin for Small House developments and the “GB” zone should be preserved.

12. Planning Considerations and Assessments

12.1 The application is for a proposed Small House development at the Site partly zoned “V” (about 50.4%)” and partly zoned “GB” (about 49.6%) 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 Lo Tsz Tin is 26 while the 10-year Small House demand

forecast for the same village is 120. Based on the latest estimate by the Planning Department, about 2.09 ha of land (equivalent to about 83 Small House sites) is available within the “V” zone of the concerned village. As more than 50% of the Site and the footprint of the proposed Small House fall within the “V” zone of Lo Tsz Tin, DLO/TP of LandsD has no objection to the application.

- 12.3 The Site is located at the eastern fringe of Lo Tsz Tin. It is currently vacant and hard paved. The surrounding areas are predominantly rural in character with a mix of village houses, tree clusters and active/fallow agricultural land. Village clusters are mainly found to the west and south. According to CTP/UD&L of 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. DAFC has no comment on the application as the Site is vacant. Other relevant Government departments including C for T, DEP, CE/MN of DSD, CE/C of WSD, PM/N and H(GEO) of CEDD, CHE/NTE of HyD and D of FS have no objection to or no adverse comment on the application. The proposed development is generally in compliance with the TPB PG-No. 10 for development within “GB” zone in that there is no significant adverse impact on visual, landscape, drainage, sewerage and geotechnical aspects.
- 12.4 Regarding the Interim Criteria (**Appendix II**), while the proposed Small House footprint falls entirely outside the ‘VE’ of Lo Tsz Tin, more than 50% of the Small House footprint falls within the “V” zone of the same village. Although land available within the “V” zone (**Plan A-2b**) is insufficient to fully meet the future Small House demand of 146 Small Houses, such available land (about 2.09 ha or equivalent to 83 Small House sites) is capable to meet the 26 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. 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.
- 12.5 There are 12 similar applications in close proximity to the Site (**Plan A-2a**). One application (No. A/NE-TK/332) and part of another one (No. A/NE-TK/222) were rejected in 2010 and 2006 respectively mainly for not complying with the Interim Criteria in that more than 50% of the Small House footprint was outside the “V” zone and the ‘VE’ of any recognized village. Eight applications (No. A/NE-TK/197, 266, 322, 323, 408, 458, 543 and 544) and part of the Application No. A/NE-TK/222 were approved before the Board’s adoption of a more cautious approach. After the adoption of a more cautious approach, two applications (No. A/NE-TK/604 and 641) were approved. Application No. A/NE-TK/604 was approved on consideration that about 91% of the proposed Small House footprint fell within the “V” zone. Application No. A/NE-TK/641 was approved on sympathetic consideration as it was the subject of previously approved applications. The circumstances of the current

application are different from these approved applications (No. A/NE-TK/604 and 641).

- 12.6 Regarding the public comments as detailed in paragraph 11, Government departments' comments and the planning assessments above 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 "Green Belt" zone, which is primarily for defining the limits of urban and suburban 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; and
- (b) land is still available within the "Village Type Development" zone of Lo Tsz Tin which is primarily intended for Small House development. 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.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **1.9.2024**, 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 condition of approval and advisory clauses are also suggested for Members' reference:

Approval Condition

- (a) the submission and implementation of a 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 VI**.

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, 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 and attachment received on 27.5.2020
Appendix Ia	Further Information received on 9.7.2020
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories
Appendix III	Similar applications
Appendix IV	Detailed comments from relevant Government departments
Appendix V	Public comments
Appendix VI	Recommended advisory clauses
Drawing A-1	Site plan 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
Plans A-3	Aerial photo
Plans A-4	Site photo

**PLANNING DEPARTMENT
SEPTEMBER 2020**