

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TT/10

- Applicant:** Mr. WONG Ken-liang
- Site:** Government land in D.D. 289, Ko Tong, Tai Po, New Territories
- Site Area:** 65.03 m²
- Land Status:** Government Land
- Plan:** Approved Tai Tan, Uk Tau, Ko Tong and Ko Tong Ha Yeung Outline Zoning Plan (OZP) No. S/NE-TT/2
- Zoning:** “Green Belt” (“GB”)
- Application:** Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, who is an indigenous villager of Ko Tong Village as confirmed by the Indigenous Inhabitant Representative (IIR), 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 (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ use within the “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 |
| Number of storeys | : | 3 |
| Building height | : | 8.23m |
| Roofed over area | : | 65.03m ² |
- 1.3 The layout of the proposed Small House is shown on **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted an application form with attachment (**Appendix I**) which was received on 17.1.2019.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the applicant had submitted several applications for building Small House in the past, all of which were not approved;
- (b) the applicant owns no land in the village for building Small House and it is difficult to acquire suitable land in the village for Small House development; and
- (c) the Site is located near to the village.

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

As the Site involves Government land only, the “owner’s consent/notification” requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) are not applicable to the application.

4. 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 the application. The relevant assessment criteria are summarized below:

- (a) there is a general presumption against development (other than redevelopment) in a “GB” zone;
- (b) an application 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 surrounding areas;
- (c) applications for NTEHs with satisfactory sewage disposal facilities and access arrangements may be approved if the application sites are in close proximity to existing villages and in keeping 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 vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and

parking should not adversely affect existing trees or other natural landscape features. Tree preservation and landscaping proposals should be provided;

- (f) 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;
- (g) the proposed development should not overstrain the overall provision of Government, institution or community facilities in the general area;
- (h) the proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution; and
- (i) any proposed development on a slope or hillside should not adversely affect slope stability.

5. 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 set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

6. Previous Application

- 6.1 The Site is the subject of a previous planning application (No. A/DPA/NE-TT/64) for the same use submitted on 5.6.2015 by another applicant. It was rejected by the Committee on 17.7.2015 and also by the Board upon review on 15.1.2016, on the same grounds that the proposed development would cause adverse landscape impacts on the surrounding area, and approving the application would set undesirable precedents for similar applications in the area and pre-determine the land use zonings of the OZP under preparation.
- 6.2 Details of the previous application are at **Appendix IIIa** and its location is shown on **Plans A-1 and A-2a**.

7. Similar Applications (Plans A-1 and A-2a)

- 7.1 There are 4 similar applications for Small House development in the vicinity of the Site and within the same “GB” zone in the Ko Tong area (**Plan A-1**).
- 7.2 Applications No. A/NE-TT/1 and 7 were rejected by the Committee on 8.9.2017 and 18.1.2019 respectively on the grounds that the proposed developments were not in line with the planning intention of “GB” zone; the proposed developments did not comply with the TPB PG-No. 10 for development within “GB” zone; the proposed developments did not meet the

Interim Criteria and they would cause adverse landscape impact on the surrounding area; and setting of undesirable precedent.

- 7.3 Application (No. A/NE-TT/8) was approved by the Committee on 1.2.2019 on sympathetic consideration that the subject Small House grant was approved and executed by LandsD and the excavation permit for commencement of construction was also granted, all of which had occurred before the first statutory plan for the area was gazetted. The remaining similar application (No. A/NE-TT/9) will be considered by the Committee in the same meeting with the current application.
- 7.4 Details of the above similar applications are summarized at **Appendix IIIb** and their locations are shown on **Plan A-1**.

8. The Site and the Surrounding Areas (Plans A-1 to A-4)

8.1 The Site is:

- (a) situated on a hillslope and are about 20m to the west of the existing village cluster of Ko Tong;
- (b) currently vacant with a tree in a fair condition and a group of tree seedlings;
- (c) only accessible by an unauthorized track; and
- (d) adjacent to a Small House under construction¹.

8.2 The surrounding areas are natural and rural in character comprising the woodland hillslope in the immediate environs of the Site and the existing village cluster of Ko Tong to the east.

9. Planning Intention

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

10. 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:

¹ Approved similar application No. A/NE-TT/8

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	<p>Within “V” zone ?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - Application site 		<p>✓</p> <p>✓</p>	<ul style="list-style-type: none"> - The Site and the footprint of the proposed Small House falls entirely within the “GB” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - Application site 	<p>100%</p> <p>100%</p>		<ul style="list-style-type: none"> - DLO/TP, LandsD advises that the applicant’s Small House grant application was first submitted to her office on 9.9.1997 on a location different from the Site, which is still under processing. The Site is on sloping land. An unauthorized track in the vicinity is under land control action by her Office and approval will not be given to the applicant to form or disturb Government land for the formation of new access road to facilitate his Small House development. - DLO/TP, LandsD has reservation on the application since there are ongoing complaints against the unauthorized track and the applicant could not demonstrate how he can make proper access to the Site.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?</p>		<p>✓</p>	<ul style="list-style-type: none"> - Land required to meet the Small House demand in Ko Tong: about 3.28 ha (equivalent to 131 Small House sites). The outstanding Small House applications for Ko Tong Village are 31² while the 10-year Small House demand forecast for the same village is 100.

² Among the 31 outstanding Small House applications, 15 of them fall within the “V” zone and 16 straddle or outside the “V” zone. For those 16 applications straddling or being outside the “V” zone, none of them has obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		- Land available to meet the Small House demand within the “V” zone of Ko Tong Village: about 0.78 ha (equivalent to 31 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.
5.	Compatible with surrounding area/ development?		✓	- The proposed Small House is incompatible with the surrounding environment which is natural and rural in character comprising the woodland hillslope in the immediate environs of the Site.
6.	Within WGG?		✓	- 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 services 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 the “New Territories Exempted Houses – A Guide to Fire Safety Requirements” published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.
9.	Traffic impact?	✓		- Commissioner for Transport (C for T), in general, has reservation on the application and advises that Small House development should be confined within the “V” zone as far as possible.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				- Notwithstanding the above, the application only involve construction of a Small House. C for T 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 strong view to the proposed Small House development. Should the application be approved, an approval condition on the submission and implementation of drainage proposal is required.
11.	Sewerage / Environmental impact?		✓	- CE/MN, DSD advises that there is no existing public sewerage in the vicinity of the Site. - 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	Ecological impact	✓		- Director of Agriculture, Fisheries and Conservation (DAFC) advises that the construction of the proposed Small House and the ancillary site formation may affect trees on Government land. He has reservation on the application from the tree preservation and nature conservation perspective.
13.	Landscape impact?	✓		- According to the Chief Town Planner/Urban Design and Landscape (CTP/UD&L, PlanD), the Site is situated in an area of rural landscape character comprising an extensive hillside

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>woodland which links with the Sai Kung West Country Park to its west. Also, the Site falls within an area of high landscape and scenic value with undisturbed native woodland. Therefore, the proposed Small House is considered incompatible with the surrounding environment.</p> <ul style="list-style-type: none"> - According to her site inspection dated in February 2019, the Site is currently vacant with a tree (<i>Aporusa dioica</i> (銀柴)) in a fair condition and a group of tree seedlings. - In addition, vegetation clearance has been carried out gradually within the Site and its immediate surroundings since 2014. Approval of the application would set an undesirable precedent for similar vegetation removal prior to obtaining planning permission. The cumulative effect of approving such application would result in general degradation of the surrounding environment and undermine its function to conserve the natural landscape of the area. She objects to the application from the landscape planning perspective. - She further advises that imposition of landscape approval condition is considered not practicable as the proposed Small House will occupy the entire Site.
14.	Geotechnical impact?		✓	- Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) has no comment on the application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
15.	Local objection received from DO?		✓	- District Officer (Tai Po), Home Affairs Department (DO(TP), HAD) has no comment on the application.

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

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

10.3 The following Government departments have no particular comment on the application:

- (a) Chief Highway Engineer / New Territories East, Highways Department;
- (b) Director of Electrical and Mechanical Services; and
- (c) Project Manager/North, Civil Engineering and Development Department.

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

On 25.1.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 15.2.2019, eight public comments were received from the Hong Kong Bird Watching Society, the Conservancy Association, Kadoorie Farm and Botanic Garden Corporation, World Wide Fund for Nature Hong Kong, Ko Tong Village Owners and Tenants Society and three individuals (**Appendix V**) objecting to the application mainly on the grounds of being not in line with the planning intention of “GB” zone; the proposed development does not comply with the TPB PG-No. 10/Interim Criteria; it is a case of “destroy first, build later”; the proposed development would cause adverse landscape, ecological and drainage impacts; there is no proper access to the Site and no ancillary facilities/ infrastructure near the Site; and the setting of undesirable precedent.

12. Planning Considerations and Assessment

- 12.1 The Site falls entirely within the “GB” zone (**Plan A-1**). The proposed Small House 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 the “GB” zone. There is no strong planning justification in the submission for a departure from the planning intention of the “GB” zone.
- 12.2 The Tai Tan, Uk Tau, Ko Tong and Ko Tong Ha Yeung area (the Area) is a Country Park Enclave surrounded by Sai Kung East and West Country Parks and fronting Ko Tong Hau in the northeast (**Plan A-1**). Given the natural environment, its ecological and landscape values coupled with its potential natural terrain landslide hazards, an incremental approach has been adopted for designation of “V” zones for Small House development with an aim to guiding Small House development at suitable locations around the existing village clusters so as to avoid undesirable disturbances to the natural environment and to achieve a more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 12.3 According to the DLO/TP, LandsD’s records for Ko Tong, the total number of outstanding Small House applications is 31 while the 10-year Small House demand forecast is 100. Based on the latest estimate by the PlanD, about 0.78 ha (equivalent to about 31 Small House sites) of land is available within the “V” zone of Ko Tong on the OZP. Although there is sufficient land within the “V” zone to meet the outstanding Small House applications, it cannot fully meet the future Small House demand for about 3.28 ha of land (equivalent to about 131 Small House sites).
- 12.4 The Site is located on a piece of vacant Government land on a densely vegetated hillslope linking with Sai Kung West Country Park (**Plan A-1, A-3 and A-4**). The proposed Small House is incompatible with the surrounding environment which is natural and rural in character. Furthermore, vegetation removal had been carried out on the Site and its vicinity. Approval of the application would set an undesirable precedent for similar vegetation removal prior to obtaining planning permission. The cumulative effect of vegetation removal would result in adverse impact on the surrounding environment and undermine the function of the “GB” zone to conserve the natural landscape of the area. For these reasons, CTP/UD&L, PlanD objects to the application from the landscape planning perspective. DAFC also has reservation on the application from the tree preservation and nature conservation perspectives.
- 12.5 The Site is located on a hillslope about 20m to the west of the existing village cluster of Ko Tong, and is mainly accessible via an unauthorized track (**Plans A-2a to A-4**). DLO/TP, LandsD advises that there are ongoing complaints against this unauthorized track, and the applicant could not demonstrate how he could make proper access to the Site. She thus has reservation on the application. C for T also has reservation on the application as the cumulative adverse traffic impact could be substantial but considers that the proposed development involving one house only can be tolerated. Other relevant

Government departments including DEP, CE/MN of DSD, CHE/NTE of HyD, PM/N of CEDD, H(GEO) of CEDD, CE/C of WSD, D of FS and DEMS have no objection to or no adverse comment on the application.

- 12.6 Regarding the Interim Criteria (**Appendix II**), the footprint of the proposed Small House falls entirely within the ‘VE’ of Ko Tong. While land available within the ‘V’ zone of Ko Tong is insufficient to fully meet the future demand of 131 Small Houses, it is noted that land (about 0.78 ha or equivalent to 31 Small House sites) is still available within the ‘V’ zone to meet the 31 outstanding Small House applications. Furthermore, the application does not meet the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding area. The application also does not meet the TPB PG-No. 10 as the proposed Small House would affect the existing natural landscape. The approval of the application would set an undesirable precedent for similar applications in the area, the cumulative effect of which would result in adverse impacts on the natural environment and landscape character of the area.
- 12.7 The Site is subject of a previous planning application for Small House (No. A/DPA/NE-TT/64) which was rejected by the Committee in 2015 and by the Board upon review in 2016 on the grounds that the proposed development would cause adverse landscape impacts and approving the application would set an undesirable precedent and pre-determine the land use zonings of the OZP under preparation. Furthermore, there were two similar applications for Small Houses (No. A/NE-TT/1 and 7) within the ‘GB’ zone in Ko Tong area, which were rejected by the Committee on 8.9.2017 and 18.1.2019 on the grounds that the proposed developments were not in line with the planning intention of ‘GB’ zone, did not comply with the TPB PG-No. 10 for development within ‘GB’ zone and did not meet the Interim Criteria in that they would cause adverse landscape impact on the surrounding area; and approving the application would set an undesirable precedent. Although there was a similar application approved by the Committee on 1.2.2019 (No. A/NE-TT/8), that application was approved on sympathetic consideration that the subject Small House grant was approved and executed before the first statutory plan for the area was gazetted. The circumstances of the current application are similar to the rejected applications (No. A/NE-TT/1 and 7).
- 12.8 Regarding the adverse public comments mainly on the grounds of being not in line with the planning intention of the ‘GB’ zone; not complying with the TPB PG-No. 10/Interim Criteria; being a ‘destroy first, build later’ case; adverse landscape, ecological and drainage impacts; no proper access to the Site and no ancillary facilities/ infrastructure near the Site; and the setting of undesirable precedent, the comments from concerned Government departments and the planning assessment above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessment 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 “Green Belt” (“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;
- (b) 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 impact on the surrounding area;
- (c) 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
- (d) the approval of the application would set an undesirable precedent for similar applications in the area. The cumulative effect of approving such applications would result in adverse impacts on the natural environment and landscape character of the area.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 8.3.2023, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) the provision of septic tank 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 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 approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application form and attachment
Appendix II	Relevant Revised Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories (promulgated on 7.9.2007)
Appendix IIIa	Previous application
Appendix IIIb	Similar applications
Appendix IV	Detailed comments from relevant government departments
Appendix V	Public comments
Appendix VI	Advisory clauses
Drawings 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 "V" zone
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2019**