

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TP/651

<u>Applicant</u>	Mr. LO, Jason Kay Fung
<u>Site</u>	Lot 416 s.S and Lot 416 s.T in D.D. 21, Pun Shan Chau village, Tai Po
<u>Site Area</u>	About 186 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Draft Tai Po Outline Zoning Plan (OZP) No. S/TP/27
<u>Zonings</u>	“Green Belt” (“GB”) (about 66%) and “Village Type Development” (“V”) (about 34%)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, an indigenous villager of Ha Tei Ha Village as confirmed by the Indigenous Inhabitant Representative (IIR) of the concerned village¹, seeks planning permission to build 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’ (except for rebuilding of NTEH or replacement of existing domestic building by NTEH only) use within the “GB” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed Small House are as follows:
- | | |
|------------------|------------------------|
| Total floor area | : 195.09m ² |
| No. of storeys | : 3 |
| Building height | : 8.23m |
| Roofed over area | : 65.03m ² |
- 1.3 Layout of the proposed Small House with septic tank is shown on **Drawing A-1**.

¹ The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that his eligibility of Small House grant has yet to be ascertained.

- 1.4 The Site is the subject of a previous application (No. A/TP/ 623) submitted by the same applicant, which was rejected by the Rural and New Town Planning Committee (the Committee) on 7.4.2017. Compared with the previous application, the current application extends to the south to cover one more private lot (i.e. Lot 416 s.T in D.D. 21) resulting in a larger site area (+ 23m²), the Small House footprint is shifted to the south and the septic tank relocated to the southeastern part of the Site. Other proposed development parameters remain unchanged.
- 1.5 In support of the application, the applicant has submitted an application form with attachments on 15.6.2018 (**Appendix I**).

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) he is an indigenous villager of a “recognized” village, i.e. Ha Tei Ha, Tai Po; and
- (b) the Site situated by the road-side has been vacant for years; and
- (c) he has submitted a Small House grant application to District Lands Officer/Tai Po, who recently advised him to apply for planning permission from the Board.

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

The applicant is the sole “current land owner” of the Site. 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 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 “Green Belt” zone under section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant assessment criteria are summarized 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. With the exception of NTEHs, a plot ratio up to 0.4 for residential development may be permitted;
- (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 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/TP/ 623) submitted by the same applicant, which was rejected by the Committee on 7.4.2017 mainly for reasons of being not in line with the planning intention of the “GB” zone; not in compliance with TPB PG-No. 10 in that the proposed development would affect existing natural landscape in the area; not complying with the Interim Criteria in that it would cause adverse landscape impact on the surrounding areas; and land is still available within “V” zone.
- 6.2 Compared with the previous application, the current application extends to the south to cover one more private lot (i.e. Lot 416 s.T in D.D. 21) resulting in a larger site area (+ 23m²), the Small House footprint is shifted to the south and the septic tank relocated to the southeastern part of the Site. Other proposed development parameters remain unchanged.
- 6.3 Details of the previous application are summarized at **Appendix III**.

7. Similar Applications

- 7.1 There are 15 similar applications (No. A/TP/326, 334, 337, 344, 366, 385, 416, 419, 437, 448, 631, 634, 635, 645 and 646) in the vicinity of the Site within the

same “GB” zone since the first promulgation of the Interim Criteria on 24.11.2000.

- 7.2 Among them, three applications (No. A/TP/416, 437 and 631) covering the same site were submitted by the same applicant. Application No. A/TP/416 was rejected by the Committee on 9.1.2009 mainly on the grounds of being not in line with the planning intention of the “GB” zone and not complied with the Interim Criteria in that more than 50% of the site and footprint were located outside both the ‘VE’ and the “V” zone. Subsequently, application No. A/TP/437 was approved by the Committee on 23.10.2009 mainly on considerations that the proposed development complied with the Interim Criteria in that more than 50% of the proposed Small House footprint fell within “V” zone, 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. However, the planning permission lapsed on 24.10.2013. Application No. A/TP/631 was approved by the Committee on 8.9.2017 mainly due to sympathetic consideration as it was the subject of a previously approved application (No. A/TP/437) and the processing of the Small House grant was at an advanced stage.
- 7.3 There were also six similar applications (No. A/TP/326, 337, 344, 366, 385 and 419) approved by the Committee between 2004 and 2009 on the considerations of being complied with the Interim Criteria in that more than 50% of the proposed Small House footprints fell within the “V” zone/‘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; and the proposed developments would unlikely cause any adverse impacts on the surrounding areas.
- 7.4 The remaining six applications (No. A/TP/334, 448, 634, 635, 645 and 646) covering four sites were rejected by the Committee in 2004, 2010, 2017 and 2018 respectively. Applications No. A/TP/334 and 448 were rejected mainly on the grounds of being not in line with the planning intention of “GB” zone; non-compliance with the Interim Criteria in that more than 50% of the sites and Small House footprints were located outside both the ‘VE’ and the “V” zone, and the proposed development would have adverse landscape impact on the surrounding areas; and/or setting of undesirable precedent. Applications No. A/TP/634, 635, 645 and 646 were rejected by the Committee mainly on the grounds of being not in line with the planning intention of “GB” zone, non-compliance with the Interim Criteria and TPB-PG No.10 in that the proposed development would involve clearance of natural vegetation and have adverse landscape impact on the surrounding areas, and land was still available within the “V” zone for Small House development.
- 7.5 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 roadside and at the toe of a natural slope;
- (b) partly paved with vehicle parking and partly covered by vegetation and fruit trees; and
- (c) accessible via a local access.

8.2 The surrounding area is predominantly rural in character with village houses, temporary structures and tree groups. Village houses are largely concentrated within the “V” zone. The nearest village house is about 20m to the south. To the east is a natural slope covered by dense vegetation and tree groups.

9. Planning Intentions

- 9.1 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.
- 9.2 The planning intention of the “V” zone is to designate both the existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for the 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.

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 Houses - Application site	56% 34%	44% 66%	- Part of the Site and footprint of the proposed Small House fall within the “GB” zone.
2.	Within village ‘environs’ (‘VE’)? - Footprint of the Small Houses - Application site	100% 100%	- -	- The Site and footprint of the proposed Small House fall entirely within the ‘VE’ of Pun Shan Chau. - The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?	✓		<ul style="list-style-type: none"> - Land required to meet Small House demand in Pun Shan Chau: about 0.25 ha (or equivalent to 10 Small House sites). The outstanding Small House applications are 10² while the 10-year Small House demand forecast for the same village is not available. - Land available within the “V” zone to meet Small House demand of the village concerned: about 1.65 ha (or equivalent to 66 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “GB” zone?		✓	<ul style="list-style-type: none"> - There is a general presumption against development within the “GB” zone. - The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application as the Site is partly paved and the surrounding area is largely developed.
5.	Compatible with surrounding area/development?	✓		<ul style="list-style-type: none"> - The proposed Small Houses are not incompatible with the surrounding areas which are predominantly rural in character occupied by village houses and dense tree groups.
6.	Within WGGs?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and Emergency Vehicular Access (EVA)?		✓	<ul style="list-style-type: none"> - The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?	✓		<ul style="list-style-type: none"> - The Commissioner for Transport (C for T) in general has reservation on the application but considers the application only involves development of a Small House could be tolerated unless it is rejected on other grounds.

² Among the 10 outstanding Small House applications, 5 of them fall within the “V” zone and 5 straddle or outside the “V” zone. For those 5 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>
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage point of view. - Approval condition on submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	<ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) has no objection to the application.
12.	Landscape and visual impacts?	✓		<ul style="list-style-type: none"> - The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) objects to the application from the landscape planning perspective. - The proposed development is likely in conflict with existing trees within the Site, including the mature tree <i>Artocarpus heterophyllus</i> (菠蘿蜜) located close to the proposed house and within “GB” zone which is considered a significant landscape resources. Adverse impact arising from the construction works to the tree crown and root zone of the tree is anticipated but cannot be mitigated. - Approval of the application would further attract similar developments into the “GB” zone. The cumulative effect of approving similar applications would result in degradation of landscape character and cause adverse landscape impact to the area.
13.	Geotechnical impact?		✓	
14.	Local objections conveyed by District Officer?		✓	

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

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

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

On 22.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, 18 public comments were received from Designing Hong Kong Limited, WWF-Hong Kong and 16 individuals objecting to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “GB” zone; does not comply with the TPB PG-No. 10; would involve extensive clearance of trees and cause adverse environmental, water quality, sewerage, geotechnical, ecological, landscape and road safety impacts on the surrounding areas; setting of precedent; and no impact assessment has been carried out.

12. Planning Considerations and Assessments

12.1 Majority of the Site (about 66%) falls within an area zoned “GB” whilst a smaller portion (about 34%) falls within “V” zone. The proposed Small House 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 “GB” zone. There is no strong planning justification given 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 Pun Shan Chau Village is 10 while no information on the 10-year Small House demand forecast has been provided by the IIR. Based on the latest estimate of Planning Department, about 1.65 ha (or equivalent to about 66 Small House sites) of land are available within the subject “V” zone.

As the proposed Small House footprint falls entirely within the 'VE' of the village concerned, DLO/TP, LandsD has no objection to the application.

- 12.3 The Site is located at roadside and at the northeastern edge of the "V" zone of Pun Shan Chau village and is partly paved and partly covered by vegetation and fruit trees (**Plans A-3 and A-4**). The proposed development is not incompatible with the surrounding areas which are predominantly rural in character with village houses, temporary structures and tree groups. Whilst DAFC has no strong view on the application from the nature conservation point of view, CTP/UD&L, PlanD objects to the application from the landscape planning perspective as the proposed development is likely in conflict with existing trees within the Site, including the mature tree *Artocarpus heterophyllus* (菠蘿蜜) located close to the proposed house and within "GB" zone which is considered a significant landscape resources. Adverse impact arising from the construction works to the tree crown and root zone of the tree is anticipated but cannot be mitigated. Approval of the application would further attract similar developments into the "GB" zone. The cumulative effect of approving similar applications would result in degradation of landscape character and cause adverse landscape impact to the area. Besides, C for T in general has reservation on the application and considers that such type of development should be confined within the "V" zone as far as possible, however the application involves construction of one Small House only could be tolerated unless it is rejected on other grounds. Other Government departments consulted including CE/MN of DSD, CE/C of WSD, D of FS and CHE/NTE, HyD have no objection to/adverse comment on the application.
- 12.4 Regarding the Interim Criteria (**Appendix II**), while more than 50% of the proposed Small House footprint is located within the 'VE' of Pun Shan Chau village and the "V" zone, there is sufficient land within the "V" zone (about 1.65 ha or equivalent to about 66 Small House sites) (**Plan A-2b**) to fully meet the future Small House demand (about 0.25 ha or equivalent to about 10 Small Houses). As such, the proposed development does not comply with the Interim Criteria in that there is no general shortage of land in meeting the demand for Small House development in the concerned "V" zone. It is therefore 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. Furthermore, the proposed development also does not comply with the Interim Criteria and TPB PG-No. 10 as it would involve clearance of existing natural vegetation affecting the existing natural landscape and would cause adverse landscape impact to the area.
- 12.5 The Site is the subject of a previous application (No. A/TP/623) submitted by the same applicant, which was rejected by the Committee on 7.4.2017 mainly for reasons of being not in line with the planning intention of the "GB" zone; not in compliance with TPB PG-No. 10 in that the proposed development would affect existing natural landscape in the area; not complying with the Interim Criteria in that it would cause adverse landscape impact on the surrounding areas; and land was still available within "V" zone. There is no change in the planning circumstances since the rejection of this previous application.

- 12.6 There are 15 similar applications for NTEH/Small House developments within the same “GB” zone. The current application is similar to the four applications No. A/TP/634, 635, 645 and 646 which were rejected by the Committee in 2017 and 2018 mainly for the reasons of being not in line with the planning intention of “GB” zone; having adverse landscape impact on the surrounding areas; and land is still available within “V” zone for Small House development.
- 12.7 Regarding the public comments objecting to the application mainly on the grounds of being not in line with the planning intention of “GB” zone, extensive clearance of trees, adverse water quality, sewerage and landscape impacts and setting of precedent, comments from relevant Government departments and 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 the planning intention;
 - (b) the application does not comply with the Town Planning Board Guidelines No. 10 for ‘Application for Development within “Green Belt” zone under section 16 of the Town Planning Ordinance’ in that the proposed development would involve clearance of natural vegetation affecting the existing natural landscape in the area. The applicant fails to demonstrate that the proposed development would have no adverse landscape impact on the surrounding areas;
 - (c) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that there is no general shortage of land in meeting the demand for Small House development in the “V” zone of Pun Shan Chau and the proposed development would have adverse landscape impact on the surrounding areas; and
 - (d) land is still available within the “V” zone of Pun Shan Chau 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 3.8.2022, 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;
- (b) the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (c) the submission and implementation of tree preservation and landscape proposal to the satisfaction of the Director of Planning 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 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 attachments received on 15.6.2018
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	Government departments' detailed comments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses

Drawing A-1	Drawing 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 photo

**PLANNING DEPARTMENT
AUGUST 2018**