

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TP/669

- Applicant** : Mr. CHANG Ka Po represented by Mr. LUI Wing Fat
- Site** : Lot 947 S.A in D.D. 26, Wong Yue Tan Village, Tai Po, New Territories
- Site Area** : 67.3m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plans** : Approved Tai Po Outline Zoning Plan (OZP) No. S/TP/28 and
Approved Ting Kok OZP No. S/NE-TK/19
- Zonings** : “Village Type Development” (“V”) (about 58%) under Ting Kok OZP and
“Green Belt” (“GB”) (about 42%) under Tai Po OZP
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, an indigenous villager of Wong Yue Tan Village¹ as confirmed by the respective Indigenous Inhabitant Representative, seeks planning permission to build an NTEH (Small House) on the application site (the Site) (**Plan A-1**), which falls within an area partly zoned “V” on the approved Ting Kok OZP and partly zoned “GB” on the approved Tai Po OZP. According to the Notes of the OZPs, whilst ‘House (NTEH) only’ use is always permitted in the “V” zone, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH only’ in the “GB” zone 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 | : | 162.0m ² |
| No. of storeys | : | 3 |
| Building height | : | 8.23m |
| Roofed over area | : | 54.0m ² |

1.3 Layout of the proposed Small House development is shown on **Drawing A-1**. The septic tank will be provided underneath the balcony of the proposed Small House.

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

- 1.4 The Site is part of the subject of a previous application (No. A/TP/449) submitted by the same applicant for the same use, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 27.8.2010. The planning permission has been extended once with validity up to 27.8.2018 and lapsed on 28.8.2018. Compared with the previous application, the government land portion has been excluded and there is a corresponding reduction in site area and proposed Small House footprint under the current application.
- 1.5 In support of the application, the applicant has submitted an application form with attachments on 1.11.2019 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application stated in Part 9 of the application form at **Appendix I** are summarized as follows:

- (a) the applicant is an indigenous villager of Wong Yue Tan Village. He has no alternative site for the proposed Small House development;
- (b) planning permission has been given to the Site in 2010, which was further extended up to 27.8.2018. The applicant misunderstood that, with DLO/TP, LandsD's approval of his Small House grant application, he was not required to apply for any further extension of the planning permission;
- (c) the Small House grant application (by way of land exchange involving government land) was approved by DLO/TP, LandsD in May 2017. On 15.5.2017, the applicant signed and returned the letter of acceptance to DLO/TP, LandsD for the processing of land exchange. Nevertheless, LandsD suspended the process of land exchange for Small Houses involving government land. The applicant was advised to confine the Small House footprint within the private lot and submit a fresh planning application for the Board's consideration; and
- (d) the applicant has enclosed a letter from the Village Representative of Wong Yue Tan supporting the proposed 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 set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines 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 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;
- (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 of hillside should not adversely affect slope stability.

6. Previous Application

- 6.1 Part of the Site is the subject of a previous application (No. A/TP/449) submitted by the same applicant for the same use, which was approved with conditions by the Committee on 27.8.2010 mainly on considerations of being in compliance with the Interim Criteria in that more than 50% of the proposed Small House footprint was within the village 'environs' ('VE') of Wong Yue Tan Village and there was a general shortage of land in meeting the Small House demand in the "V" zone of the concerned village at the time of consideration. The planning permission was extended for a further period of 4 years and subsequently lapsed on 28.8.2018. Compared with the previous application (No. A/TP/449), the government land portion is not included in the current application and the site area is reduced from 79.87m² to 67.3m² (-12.57m² or -16%) and Small House footprint is reduced from 65.03m² to 54.0m² (-11.03m² or -17%).
- 6.2 Details of the previous application are summarized at **Appendix III** and its location is shown on **Plans A-1 and A-2a**.

7. Similar Applications

- 7.1 There are 20 similar applications for Small House development in the vicinity of the Site and within the same “GB” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Appendix II**), of which 17 were approved and three were rejected.
- 7.2 Among the 17 approved applications, 14 of them (applications No. A/NE-TK/219, 220, 221, 405, 455 & 514 and A/TP/442, 445, 479, 494, 496, 526, 527 & 533) were approved with conditions by the Committee between 2006 and 2014 mainly on considerations of being in compliance with the Interim Criteria in that more than 50% of the Small House footprint fell within the ‘VE’ and there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration. After the Board’s adoption of a more cautious approach in approving applications for Small House development in August 2015, two applications (No. A/TP/594 and 632) were approved in 2016 and 2017 mainly on sympathetic considerations as the sites were the subject of previously approved applications (No. A/TP/445 and 479) and the processing of the respective Small House grant applications was at advance stage.
- 7.3 Application No. A/TP/580 for the proposed rebuilding of an NTEH was rejected by the Committee in February 2015 for the reason that while the development scale of the proposed NTEH remained unchanged, the building footprint was proposed to be shifted southwards so that it fell entirely within the “GB” zone where there was a general presumption against development within “GB” zone. Subsequently, the same applicants submitted another application (No. A/TP/587) with the footprint straddling the “V” and “GB” zones similar to the existing Small House on site, which was approved by the Committee in August 2015. Since it was for the redevelopment of the existing Small House and no adverse impact to the surrounding area was expected, it was considered having exceptional circumstances that warranted sympathetic consideration.
- 7.4 Regarding the other two rejected applications (No. A/TP/591 and 613), they were rejected by the Committee/the Board on review in 2015 and 2017 respectively mainly for the reasons of being not in line with the planning intention of the “GB” zone; not in compliance with the Interim Criteria and the TPB-PG No. 10 in that the proposed development would cause adverse landscape impact on the surrounding area; setting of undesirable precedent; and land being still available within the “V” zone of Wong Yue Tan Village 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-2 and photos on Plans A-3 and A-4)

- 8.1 The Site is:
- (a) vacant and covered with grasses;

- (b) located at the southern fringe of Wong Yue Tan Village;
- (c) entirely within the ‘VE’ of Wong Yue Tan Village; and
- (d) located near a wooded slope.

8.2 The surrounding areas are predominantly rural in character occupied by clusters of village houses of Wong Yue Tan Village in the north. To the immediate south of the Site is a natural woodland on hillside.

9. Planning Intentions

9.1 The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. 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 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 | 57% 58% | 43% 42% | - The remaining portion of the Site and Small House footprint fall within the “GB” zone. |
| 2. | Within ‘VE’? - Footprint of the Small House - Application site | 100% 100% | - - | - The Site and the Small House footprint fall entirely within the ‘VE’ of Wong Yue Tan Village. - The District 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 | | ✓ | <u>Land Required</u> - Land required to meet Small House demand in Wong Yue Tan Village: about 4.08 ha (or equivalent to 163 |

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|-----|---|------------|-----------|--|
| | House applications plus 10-year Small House demand)? | | | <p>Small House sites). The outstanding Small House applications are 51² while the 10-year Small House demand forecast for the same village is 112.</p> <p><u>Land Available</u></p> <ul style="list-style-type: none"> - Land available to meet Small House demand within the “V” zone of the village concerned: about 2.06 ha (or equivalent to 82 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? | | ✓ | <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 overgrown with some common weeds and young trees. |
| 5. | Compatible with surrounding area/ development? | ✓ | | <ul style="list-style-type: none"> - The surrounding areas are predominantly rural in character with natural woodland and village houses. |
| 6. | Within Water Gathering Ground (WGG)? | | ✓ | <ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) and the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) have no objection to the application. |
| 7. | Sewerage impact? | | ✓ | |
| 8. | Encroachment onto planned road networks and public works boundaries? | | ✓ | |
| 9. | Need for provision of fire services installations and emergency vehicular access (EVA)? | | ✓ | <ul style="list-style-type: none"> - The Director of Fire Services (D of FS) has no comment on the application. |
| 10. | Traffic impact? | | ✓ | <ul style="list-style-type: none"> - The Commissioner for Transport (C for T) has no in-principle objection to the application. |

² Among the 51 outstanding Small House applications, 46 of them within the “V” zone and five straddle or outside the “V” zone. For those five applications straddling or being outside the “V” zone, one of them has obtained valid planning approval from the Board.

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|-----|----------------------------------|------------|-----------|---|
| 11. | 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 viewpoint. - Approval condition on the submission and implementation of drainage proposal is required. |
| 12. | Landscape impact? | | ✓ | <ul style="list-style-type: none"> - The Chief Town Planner/ Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning perspective as no existing tree is found within the Site and significant adverse impact from the proposed development on landscape resources is not anticipated. |
| 13. | Geotechnical impact? | | ✓ | <ul style="list-style-type: none"> - The Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) has no comment on the application. He also advises that as the Site is overlooked by steep natural hillside and meets the alert criteria requiring for an Natural Terrain Hazard Study (NTHS), the applicant is required to undertake an NTHS and to provide suitable mitigation measures, if found necessary, as part of the proposed development. The applicant has provided information on the submission of the NTHS report. |
| 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 V**.

- (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, Planning

- Department;
- (e) Chief Engineer/Mainland North, Drainage Services Department;
 - (f) Director of Agriculture, Fisheries and Conservation;
 - (g) Director of Fire Services;
 - (h) Chief Engineer/Construction, Water Supplies Department; and
 - (i) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.

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

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

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

On 8.11.2019, the application was published for public inspection. During the statutory public inspection period, three public comments were received from WWF-Hong Kong, Designing Hong Kong Limited and an individual objecting to the application mainly on the grounds of being not in line with the planning intention of “GB” zone; land being still available within the “V” zone at Wong Yue Tan for Small House development; adverse ecological impact; being located outside the village cluster; the use of septic tank; and setting of an undesirable precedent.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed Small House development at the Site partly zoned “V” (about 58%) on the approved Ting Kok OZP and partly zoned “GB” (about 42%) on the approved Tai Po 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. Nonetheless, DAFC has no strong view on the application as the Site is overgrown with some common weeds and young trees.
- 12.2 According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Wong Yue Tan is 51 while the 10-year Small House demand forecast for the same village is 112. Based on the latest estimate by the Planning Department, about 2.06 ha of land (equivalent to about 82 Small House sites) are available within the “V” zone concerned. As the proposed Small House footprint falls entirely within the ‘VE’ of the concerned village, DLO/TP, LandsD has no objection to the application.
- 12.3 The Site, located at the southern fringe of Wong Yue Tan Village, is vacant and covered with grasses. Clusters of village houses are situated to the north of the Site. The proposed development is not incompatible with the surrounding area which is predominantly rural in character with a mix of unused land, village houses and tree groups. CTP/UD&L of PlanD has no objection to the application from landscape planning point of view as no

existing tree is found within the Site and significant adverse impact to landscape resources arising from the proposed development is not anticipated. H(GEO) of CEDD advises that the Site is overlooked by steep natural hillside and meets the alert criteria for an NTHS and the applicant is required to undertake an NTHS and to provide suitable mitigation measures, if found necessary, as part of the proposed development. As the applicant has submitted information on the NTHS report for the Site via Buildings Department in 2014, he has no comment on the application. Other relevant Government departments including C for T, DEP, CE/C of WSD, CE/MN of DSD, CHE/NTE of HyD, PM(N) of CEDD and D of FS have no objection to or adverse comment on the application. As the proposed development is not expected to have significant adverse environmental, traffic, geotechnical, landscape, drainage and sewerage impacts, the application generally meets the TPB-PG No. 10.

- 12.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the 'VE' of Wong Yue Tan. While land available within the "V" zone (**Plan A-2b**) is insufficient to fully meet the future Small House demand of 163 Small Houses, such available land (about 2.06 ha or equivalent to 82 Small House sites) is capable to meet the 51 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. Nevertheless, part of the Site is the subject of a previous application (No. A/TP/449) for Small House development submitted by the same applicant, which was approved in 2010. According to the applicant, his Small House application was approved by LandsD in 2017 but the land grant document has not yet executed. As planning permission of the previous approved application (No. A/TP/449) lapsed in August 2018, the applicant is required to submit a new planning application for the Board's consideration. In view of the High Court's judgement on the judicial review of the Small House Policy, the applicant has changed the Small House application by way of FBL under which the Small House would be constructed entirely within the private lot. Compared with the previous approved application, the government land portion (about 13m²) has been excluded and the Small House footprint is reduced from 65.03m² to 54.0m². As advised by DLO/TP of LandsD, the Small House grant application by way of FBL was received from the applicant. Should the current application be approved by the Committee, LandsD will process the Small House application. Hence, sympathetic consideration could be given to the current application.
- 12.5 As shown on **Plan A-2a**, there are 13 similar applications for Small House development within the same "GB" zone in close proximity to the Site. Eleven applications (No. A/TP/445, 494, 496, 526 & 527 and A/NE-TK/219, 220, 221, 405, 455 & 514) were approved between 2006 and 2014 before the Board's adoption of a more cautious approach in August 2015. For Application No. A/TP/632, it was approved in 2017 mainly on sympathetic consideration as it was the subject of a previously approved application (No. A/TP/445) and the processing of Small House grant application was at an

advance stage. The remaining application (No. A/TP/613) was rejected by the Board on review in 2017 mainly for the reasons of being not in line with the planning intention of the “GB” zone; not complying with the Interim Criteria in that the proposed development would cause adverse landscape impact; setting of undesirable precedent; and land being still available within the “V” zone for Small House development. The planning circumstances of the current application are similar to Application No. A/TP/632 in that it was the subject of a previous approved application and the Small House grant application is still under processing by LandsD.

- 12.6 Regarding the public comments objecting to the application as detailed in paragraph 11 above, Government departments’ comments and the planning assessments and considerations 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 has no objection to the application.
- 13.2 Should the Committee decided to approve the application, it is suggested that the permission shall be valid until **13.12.2023**, 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, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

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

- 13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members’ reference:
- (a) the proposed development is not in line with the planning intention of the “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 this planning intention; and

- (b) land is still available within the “Village Type Development” (“V”) zone of Wong Yue Tan 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.

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 received on 1.11.2019 |
| Appendix II | Relevant revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007) |
| 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 |
| 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 |