

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/FSS/273

- Applicant** : Mr. Tsang Chung Yan
- Site** : Government land in D.D. 91, Ng Uk Tsuen, Sheung Shui, New Territories
- Site Area** : 65.03 m² (about)
- Land Status** : Government Land
- Plan** : Draft Fanling/Sheung Shui Outline Zoning Plan (OZP) No. S/FSS/23
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

1.1 The applicant, who claims to be indigenous villager of Ng Uk Tsuen¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ng Uk Tsuen, Sheung Shui. The Site falls within an area zoned “GB” on the draft Fanling/Sheung Shui OZP No. S/FSS/23 (**Plans A-1, A-2a to 2c, and A-3**). According to the Notes of the OZP, ‘House’ is a Column 2 use within the “GB” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant and covered with grass and shrubs (**Plan A-4**).

1.2 Details of the proposed NTEH (Small House) are as follows:

Total Domestic Floor Area	: 195.09 m ²
Covered Area	: 65.03 m ²
Number of Proposed House	: 1
No. of Storeys	: 3
Building Height	: 8.23 m

1.3 In support of the application, the applicant has submitted the following documents:

- (a) Application Form with attachments received on 1.4.2019 (**Appendix I**)

¹ As advised by the District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant’s eligibility for Small House concessionary grant has yet to be ascertained.

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 summarised as follows:

- (a) the applicant is an indigenous villager of Ng Uk Tsuen and is entitled to a Small House under the current Small House policy;
- (b) the proposed Small House development is located within the ‘village environ’ (‘VE’) of Ng Uk Tsuen;
- (c) the applicant does not own any land within the “Village Type Development” (“V”) zone. The land available for villagers of Ng Uk Tsuen is scarce. There is a shortage of land within the “V” zone for the increasing population;
- (d) the applicant wish to provide a comfortable living environment for his family and himself;
- (e) the proposed development is compatible with the surrounding environment, and will not induce adverse environmental impact; and
- (f) should the application be approved, the applicant would follow the departmental comments to ensure the development will not cause environmental impacts to the surrounding areas.

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. 31) is 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’ promulgated in July 1991 is relevant. The relevant assessment criteria are summarised as follows:

- (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. 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 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, roads, 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 (G/IC) facilities in the general area; and
- (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.

5. **Assessment Criteria**

The set of Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007 respectively. The latest set of Interim Criteria, promulgated on 7.9.2007, is at **Appendix II**.

6. **Previous Application**

There is no previous application in respect of the Site.

7. **Similar Applications**

7.1 9 similar applications (Nos. A/FSS/185, 186, 188, 190, 191, 257, 258, 263 and 264) for proposed house (NTEH – Small House) on 5 separate sites to the west of the Site were approved by the Committee on 12.2.2010 (Nos. A/FSS/185 and 186), 19.3.2010 (No. A/FSS/188), 23.4.2010 (No. A/FSS/190), 7.5.2010 (No. A/FSS/191), 17.3.2017 (Nos. A/FSS/257 and 258) and 2.3.2018 (Nos. A/FSS/263 and 264) respectively. All these applications were approved mainly on the consideration that there was a shortage of land available to meet the Small House demand in Ng Uk Tsuen; the proposed Small House generally complied with the Interim Criteria; and the proposed Small House was not incompatible to the adjacent village setting of Ng Uk Tsuen and high-rise residential development in

the east and south. The planning permission of Application No. A/FSS/191 was extended once for 48 months on 7.5.2014 and was lapsed on 8.5.2018.

7.2 Details of the applications are attached at **Appendix III** and the location is shown on **Plans A-1, A-2a and A-2b**.

8. The Site and Its Surrounding Areas (Plans A-1 to A-3 and site photos on Plan A-4)

8.1 The Site is:

- (a) in the southern part of Ng Uk Tsuen;
- (b) within the 'VE' of Ng Uk Tsuen; and
- (c) vacant and covered mainly with grass and shrubs.

8.2 The surrounding areas have the following characteristics:

- (a) to the immediate west are four sites with valid planning permissions (Application Nos. 257, 258, 263 and 264) for Small Houses;
- (b) to the immediate south is another Small House application No. A/FSS/274 to be considered in the same meeting. And to the further south and east are areas covered with vegetations, beyond which are residential developments, including Royal Green, Glorious Peak and 8 Royal Green; and
- (c) to the southwest across the existing footpath are two one-storey domestic structures and natural landscape area with tree clusters.

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. Planning Assessments and Comments from Relevant Government Departments

10.1 The application has been assessed against the assessment criteria in **Appendix II**. The application generally meets the Interim Criteria as the footprint of the proposed NTEH (Small House) falls entirely within the 'VE' of Ng Uk Tsuen and according to the latest estimate by Planning Department, there is a general shortage of land in meeting the demand for Small House development in the "V" zone of Ng Uk Tsuen. The assessment is summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	<p>Within “V” zone?</p> <ul style="list-style-type: none"> - The Site - Footprint of the proposed Small House 		<ul style="list-style-type: none"> ✓ ✓ 	<ul style="list-style-type: none"> - The Site falls entirely within the “GB” zone. - The footprint of the proposed Small House falls entirely within the “GB” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - The Site - Footprint of the proposed Small House 	<p>100%</p> <p>100%</p>		<ul style="list-style-type: none"> - District Lands Officer/North, Lands Department (DLO/N, LandsD) has advised that the Site falls entirely within the ‘VE’ of Ng Uk Tsuen. - The footprint of the proposed Small House is within the ‘VE’ of Ng Uk Tsuen.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?</p> <p>Sufficient land in “V” zone to meet outstanding Small House application?</p>		<ul style="list-style-type: none"> ✓ ✓ 	<p><u>Land required</u></p> <ul style="list-style-type: none"> - Land required to meet Small House demand in Ng Uk Tsuen: about 2.325ha (equivalent to 93 Small House sites). The outstanding Small House applications for Ng Uk Tsuen are 8 while the 10-year Small House demand forecast for the same village is 85. <p><u>Land available</u></p> <ul style="list-style-type: none"> - Land available to meet the Small House demand within the “V” zone of Ng Uk Tsuen: about 0.113ha (equivalent to about 5 Small House sites (Plan A-2c)) - The Court of First Instance of the High Court on 8 April 2019 handed down a judgment on a judicial review of the Small House Policy. The Court ruled that the Private Treaty Grant (PTG) arrangement under the policy is unconstitutional and that the subject Small House application is of PTG in nature. As such, DLO/N, LandsD has suspended processing of the Small House application. Even though the applicant could obtain s.16 permission from the Board, his office would not consider the applicant’s application.
4.	<p>Compatible with the planning intention of “GB” zone?</p>		<ul style="list-style-type: none"> ✓ 	<ul style="list-style-type: none"> - There is a general presumption against development within “GB” zone. - The Director of Agriculture, Fisheries and

				Conservation (DAFC) has reservation on the application in view that there is a semi-mature <i>Celtis sinensis</i> located outside the eastern boundary of the Site and the proposed development is in direct conflict with that and other trees located within the Site. And between 2009 and 2010, a large number of trees had been felled at the Site and its vicinity which is undesirable and should not be encouraged.
5.	Compatible with surrounding area/development?	✓		- The proposed NTEH (Small House) is located to the south of the village proper of Ng Uk Tsuen with residential developments to its east and south.
6.	Within Water Gathering Ground?		✓	
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 advised that the applicant should be reminded to observe '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 the LandsD.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) has reservation on the application and advises that Small House development should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the "V" zone, if permitted, will set an undesirable precedent case for similar application in the future. The resulting cumulative adverse traffic impact could be substantial. - Notwithstanding the above, the application only involves construction of one Small House; he considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?		✓	- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has advised that approval condition on the submission and implementation of drainage

				proposal is required.
11.	Sewerage impact?		✓	<ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) has advised that in view of the small-scale nature of the proposed development, the application alone is unlikely to cause major pollution. - Sceptic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” and are duly certified by an Authorized Person.
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 on the application from landscape planning perspective.
13.	Local objections conveyed by DO(N)?	✓		<ul style="list-style-type: none"> - District Officer (North), Home Affairs Department (DO(N), HAD) has consulted the locals from 3.5.2019 to 10.5.2019. The incumbent North District Council (NDC) member of the subject Constituency supported the proposal. - The Chairman of 8 Royal Green Owner’s Cooperation (OC) objected to the proposal on the grounds that the Site falls within “GB” zone; the Site is not on private land; the application should be rejected in light of the recent judicial review on Small House development on Government land; and the noise from Small House residents would affect the lower floor residents of the private housing estate. - The Chairman of Sheung Shui District Rural Committee (SSDRC), the Indigenous Inhabitant Representative (IRR) of Ng Uk Tsuen, and the Chairman of Glorious Peak OC had no comment on the proposal.

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

(a) DLO/N, LandsD;

- (b) C for T;
- (c) CE/MN, DSD;
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (e) DEP;
- (f) CTP/UD&L, PlanD;
- (g) DAFC;
- (h) D of FS; and
- (i) DO(N), HAD.

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

- (a) Commissioner of Police (C of P);
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (c) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (d) Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD); and
- (e) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H/GEO, CEDD).

11. Public Comment Received During Statutory Publication Period

- 11.1 The application was published for public inspection from 9.4.2019 to 30.4.2019. During the statutory public inspection period, a total of eight public comments from seven individuals and Designing Hong Kong Limited were received.
- 11.2 An individual supported the application on the grounds that the proposed development can fulfil the housing needs of the villagers (**Appendix IVa**). Another indicated that he has no comment on the application (**Appendix IVb**).
- 11.3 Five individuals (**Appendices IVc to IVg**) and Designing Hong Kong Limited (**Appendix IVh**) objected to the application mainly on the grounds that the proposed development is very close to the neighbouring buildings; the slope is dangerous to the surrounding area; the proposed Small House development is incompatible with the planning intention of the “GB” zone and character of the area; the Site does not fall within private land area; the application should be rejected in light of the recent judicial review on Small House development on Government land; the noise from Small House residents would affect the lower floor residents of 8 Royal Green; there are concerns on the sewerage facilities; orderly pattern should be maintained by having Small House developments as close to the village as possible; and approval of the application would set an undesirable precedent for similar applications within the “GB” zone.

12. Planning Considerations and Assessments

Planning Intention

- 12.1 The application is for Small House development at the Site which falls entirely within “GB” zone (**Plan A-1**). The planning intention of “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. Although the proposed development is not in line with the planning intention of the “GB” zone, it generally complies with the assessment criterion of the Town Planning Board Guidelines for Application for Development within “GB” zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) set out in paragraph 4(c) above in that the proposed NTEH development is in close proximity to existing villages and in keeping with the surrounding uses, and is to meet the demand from indigenous villagers. And EPD has no adverse comment on the proposed sewerage treatment.

Interim Criteria

- 12.2 DLO/N, LandsD advised that the total number of outstanding Small House applications for Ng Uk Tsuen is 8 while the 10-year Small House demand forecast for the village is 85. According to the latest estimate by PlanD, about 0.113ha (equivalent to about 5 Small House sites) of land are available in the “V” zone (**Plan A-2c**) which is insufficient to meet even the outstanding Small House applications. As such, the application generally complies with the Interim Criteria in that the application site and the footprint of the proposed Small House fall entirely within the ‘VE’ of Ng Uk Tsuen (**Plans A-1 and A-2**), and there is a general shortage of land in meeting the demand for Small House development in the “V” zone of the same village. Hence, sympathetic consideration should be given to the application.

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- 12.3 There is a presumption against development in the “GB” zone. However, as pointed out in paragraph 12.1 above, the application complies with the assessment criterion in respect of NTEH.
- 12.4 The Site is currently vacant and covered mainly with grass and shrubs. To the immediate south is another Small House application No. A/FSS/274 to be considered in the same meeting. The proposed development is not incompatible to the adjacent village setting and the residential development to the east and south. Although DAFC has reservation on the application as there is a semi-mature *Celtis sinensis* located outside the eastern boundary of the Site and a large number of trees had been felled between 2009 and 2010, CTP/UD&L, PlanD has no objection to the application on the grounds that the proposed use is considered not incompatible with the surrounding environment, and significant adverse impact arising from the proposed use on existing landscape resources is not anticipated. An advisory clause is suggested to advise the applicant to avoid adverse impact on the semi-mature *Celtis sinensis* located outside the eastern boundary of the Site. C for T also has reservation on the proposed development as it may set an undesirable precedent for similar applications but considered that the application could be tolerated. Other relevant Government departments including DEP, CE/C of WSD and CE/MN of DSD have no adverse comments on or no objection to the applications.

Similar Applications

- 12.5 The proposed Small House is located close to the village cluster of Ng Uk Tsuen and in close proximity to a cluster of proposed Small Houses. 9 similar Small House applications (Nos. A/FSS/185, 186, 188, 190, 191, 257, 258, 263 and 264)

at 5 separate sites in the same “GB” zone had been approved with conditions by the Committee between 2010 and 2018 (**Appendix III**) mainly on the consideration that there was a shortage of land available to meet the Small House demand in Ng Uk Tsuen and the proposed Small House generally complied with the Interim Criteria; and the proposed Small House was not incompatible to the adjacent village setting of Ng Uk Tsuen. Approval of the current application is in line with the Committee’s previous decisions.

Public comments

- 12.6 There is one supporting local comment and one objecting local comment conveyed by DO(N), HAD as stated at paragraph 10.1 above. Eight public comments were received during the statutory publication period, including one supporting comments, one indicating no comment and six public comments objecting to the application, as stated in paragraph 11 above. In this regard, relevant Government departments’ comments and planning assessments as stated above in paragraphs 12.1 to 12.5 are relevant. Regarding the view that the application should be rejected in light of the recent Court of First Instance's (CFI) judgment in HCAL 260/2015 (8.4.2019), the said judgment relates to the Small House Policy implemented by LandsD. The judgment does not affect the Board's functions under the Town Planning Ordinance (Cap 131) (TPO). Pursuant to section 16 of the TPO, the Board shall consider applications for planning permission for Small House development, and decide whether to grant or refuse planning permission taking into account the relevant planning considerations.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account local comments conveyed by DO(N), HAD and the public comments mentioned in paragraphs 10.1 and 11 above, the Planning Department has no objection to the application.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 31.5.2023, 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 VI**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following

reason for rejection is suggested for Members' reference:

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. No strong justifications are provided in the submission to support a departure from the planning intention.

14. Decisions Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, 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 reasons for rejection should be given to the applicant.

15. Attachments

Appendix I	Application form with attachments received on 1.4.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories (NTEH)/Small House in New Territories
Appendix III	Similar s.16 Applications for Proposed House (NTEH-Small House within the Same "Green Belt" Zone on the Fanling/Sheung Shui Outline Zoning Plan
Appendices IVa to IVh	Public Comments
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Proposed Small House Layout Plan
Plan A-1	Location Plan
Plans A-2a & A-2b	Site Plans
Plan A-2c	Estimated amount of land available for Small House development within the "V" zone
Plan A-3	Aerial Photo
Plan A-4	Site Photos