

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/FSS/277

- Applicant** : Mr. Lau Tim Sau represented by Access Consulting Limited
- Site** : Lot 1375 S.F in D.D. 92, Tsung Pak Long, Sheung Shui, New Territories
- Site Area** : 172.8m²
- Land Status** : Old Schedule Agricultural Lot held under Block Government Lease
- Plan** : Approved Fanling/Sheung Shui Outline Zoning Plan (OZP) No. S/FSS/24
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

- 1.1 The applicant¹ seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Tsung Pak Long, Sheung Shui. The Site falls within an area zoned “GB” on the approved Fanling/Sheung Shui OZP No. S/FSS/24 (**Plans A-1, A-2a to 2b, 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 trees, shrubs and grass (**Plan A-4**).
- 1.2 The Site is the subject of a previous application (No. A/FSS/243) for the same use submitted by the same applicant, which was approved by the Rural and New Town Planning Committee (the Committee) of the Board with conditions on 23.10.2015. The planning permission lapsed on 23.10.2019.
- 1.3 The layout of the proposed Small House development together with a septic tank to the immediate south of the house is shown in **Drawing A-1**. No parking space is proposed within the Site. The applicant indicates that the uncovered area of the Site will be used as garden. Vehicular access to the Site is via an access road leading to Castle Peak Road. There is no change in the layout and development parameters as compared with the previously approved scheme (Application No. A/FSS/243). Details of the proposed NTEH (Small House) are as follows:

¹ As advised by the District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant is an indigenous villager of Tsung Pak Long Village. His eligibility for Small House concessionary grant has been ascertained.

Covered Area	:	65.03 m ²
Total Domestic Floor Area	:	195.09 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 26.6.2020 **(Appendix I)**
- (b) Further Information (FI) received on 22.7.2020 **(Appendix Ia)**
[Exempted from publication requirement]

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix I**, and the FI at **Appendix Ia**, which are briefly summarized as follows:

- (a) The applicant stated that he is an indigenous inhabitant in the New Territories and has only one chance to apply for a NTEH (Small House) in his lifetime.
- (b) The Small House application submitted to the Lands Department (LandsD) is currently under processing while the planning permission for the Small House development under the previous application (No. A/FSS/243) has lapsed. Hence, the applicant re-submitted an application for Small House development.
- (c) In response to the Director of Agriculture, Fisheries and Conservation (DAFC)'s comments as stated under Criteria 4 in paragraph 10.1 below, the applicant indicated that the proposed Small House development would not affect the existing tree (i.e. *Ficus microcarpa*) and watercourse located to the southeast and west of the Site respectively (**Plan A-2**).

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. **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 in a “GB” zone;

- (b) 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 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, 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 and Community 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 has been revised subsequently. The latest set of Interim Criteria, promulgated on 7.9.2007, is at **Appendix II**.

6. Previous Application

- 6.1 The Site is the subject of one previous application (No. A/FSS/243) for a Small House development submitted by the same applicant. Details of this previous application are summarised at **Appendix III** and its location is shown on **Plan A-2a**.
- 6.2 Application No. A/FSS/243 was approved by the Committee on 23.10.2015 mainly on the grounds that the application complied with the Interim Criteria in that both the application sites and the footprint of the proposed Small House fell entirely within the village ‘environs’ (‘VE’) of Tsung Pak Long Village; there was a general

shortage of land within the “Village Type Development” (“V”) zone of the same village in meeting the demand for outstanding Small House applications; the application complied with TPB PG-No. 10 in that the application site was in close proximity to the village proper of Tsung Pak Long and there was insufficient land to meet the Small House demand; the proposed development was not incompatible with the surrounding land uses which were situated in an area of rural landscape character dominated by village houses; and the proposed development would not have significant adverse impacts on the traffic, environment and drainage of the surrounding area.

7. Similar Applications

- 7.1 Since the promulgation of the revised Interim Criteria on 7.9.2007, there have been 18 similar applications for Small House development in the vicinity of the Site, which are partly or wholly within the same “GB” zone in Tsung Pak Long area. 13 were approved with conditions while 5 were rejected (**Plan A-1**).

13 Approved Applications

- 7.2 13 applications (Nos. A/FSS/192, 207, 213, 214, 215, 216, 217, 228, 229, 230, 231, 232 and 244) were approved by Committee between 2010 and 2015 mainly on the grounds that the applications complied with the Interim Criteria in that both the application sites and the footprints of the proposed Small Houses fell entirely within the village ‘environs’ (‘VE’) of Tsung Pak Long (for Applications Nos. A/FSS/192, 207, 214, 215, 216, 228, 229, 230, 231, 232 and 244); more than 50% of the footprint of the proposed Small Houses fell within the “V” zone of Tsung Pak Long (for Applications No. A/FSS/213 and 217) and there was a general shortage of land within the “V” zone of the same village in meeting the demand for outstanding Small House applications at that time; the applications complied with TPB PG-No. 10 in that the application sites were in close proximity to the village proper and there was insufficient land to meet the Small House demand; the proposed development was not incompatible with the surrounding land uses which were situated in an area of rural landscape character dominated by village houses; and the proposed developments would not have significant adverse impacts on the traffic, environment and drainage of the surrounding area.

5 Rejected Applications

- 7.3 The remaining 5 applications (Nos. A/FSS/193, 266, 267, 271 and 272) covering 3 separate sites (**Plan A-1**) were rejected by the Committee in 2010, 2018 and 2019. For Application No. A/FSS/193, it was rejected on the grounds that the application did not comply with the Interim Criteria as both the application site and footprint of the proposed Small House fell entirely outside the ‘VE’; approval of the application which did not comply with the Interim Criteria might set an undesirable precedent for other similar applications in the “GB” zone, and the cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.
- 7.4 Applications Nos A/FSS/266, 267, 271 and 272 were rejected mainly on the grounds that the proposed development was not in line with the planning intention of “GB”; land available within the “V” zone was sufficient to meet the outstanding

Small House applications at that time²; the proposed development was not in-line with TPB PG-No. 10 for ‘Application for Development within “GB” Zone’; and approval of the application which did not comply with the Interim Criteria might set an undesirable precedent for other similar applications in the “GB” zone; and the cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.

7.5 Details of the applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

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) located about 20m to the southwest of the “V” zone for Tsung Pak Long and entirely within the ‘VE’ of Tsung Pak Long;
- (b) covered by trees, shrubs and grass; and
- (c) accessible via a local access road leading from/to Castle Peak Road.

8.2 The surrounding areas are predominantly rural in character with a mix of village houses, temporary structures, open storage, grave, dumping of earth/construction waste, and vacant/unused land:

- (a) to the immediate north is a development site for a planned Small House³ under a planning application (No. A/FSS/244) approved by the Committee in 2015. To the further north and north-east is the village proper of Tsung Pak Long mainly occupied by existing Small Houses;
- (b) to the east are some domestic structures, grave and unused land. To the further east across the vehicular access road are the development sites for three planned Small Houses⁴ under planning applications (No. A/FSS/207, 228 and 229) approved by the Committee between 2012 and 2015;
- (c) to the south across the vehicular access road is Fanling Highway; and
- (d) to the immediate west is a vehicular access, and further west is a hill slope with graves which is zoned “GB” on the approved Kwu Tung North OZP No. S/KTN/2.

² For the approved similar applications mentioned in paragraph 7.2, the land available within “V” zone was insufficient to meet the outstanding Small House applications at that time. However, for the four applications mentioned in paragraph 7.4, there was sufficient land available to meet the then outstanding small house applications.

³ The Building Licence for the Small House development was executed in 2019.

⁴ The Building Licences for the three Small House developments were executed between 2014 and 2017.

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 assessment is summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House		100% 100%	- The Site and the footprint of the proposed Small House fall entirely within the “GB” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%		- The Site and the footprint of the proposed Small House fall entirely within the ‘VE’ of Tsung Pak Long Village.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small house demand)?		✓	<u>Land required</u> - Land required to meet Small House demand in Tsung Pak Long Village: about 6.83ha (equivalent to 273 Small House sites). The outstanding Small House applications for the Tsung Park Long Village are 53 while the 10-year Small House demand forecast for Tsung Pak Long Village is about 220. <u>Land available</u> - Land available to meet the Small House demand within “V” zone of Tsung Pak Long Village: about 1.75ha (equivalent to about 70 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”		✓	- There is a general presumption against development within “GB” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	zone?			- The Director of Agriculture, Fisheries and Conservation (DAFC) advised that the watercourse located to the west of the Site and a mature <i>Ficus microcarpa</i> 細葉榕 located to the southeast of the Site might be adversely affected by the proposed development (Plan A-2a). The applicant is advised to adopt good site practice so as to avoid adverse impact on the subject tree and the watercourse nearby.
5.	Compatible with surrounding area/development?	✓		- The Site is located to the immediate southwest of Tsung Pak Long Village and adjoining a site with an approved planning application (No. A/FSS/244) for Small House development. The proposed development is not incompatible with the surrounding area which is rural in character dominated by village houses, temporary structures and vacant/unused land.
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)?		✓	- The Director of Fire Services (D of FS) advises that the applicant should be reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by Lands Department.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) has reservation on the application and advised that the 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, Small House development outside the "V" zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<ul style="list-style-type: none"> - Notwithstanding the above, the application only involves construction of one Small House. He considers that the application can be tolerated.
10.	Drainage impact?		✓	<ul style="list-style-type: none"> - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection from the public drainage viewpoint. - Should the application be approved, condition should be included to request the applicant to submit and implement the drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area.
11.	Sewerage impact?		✓	<ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) advised that in view of the small scale of the proposed developments, the application is unlikely to cause major pollution. - Septic 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 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 reservation from landscape planning perspective on the grounds that the proposed development would encourage more similar developments encroaching into the "GB" zone and the cumulative impact of such approval would further degrade the landscape quality of the surrounding environment. - There is limited space within the Site for meaningful landscaping, should the Board approve the application, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.
13.	Local objections		✓	<ul style="list-style-type: none"> - The District Officer (North), Home Affairs

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	conveyed by DO(N)?			Department (DO(N), HAD) has consulted the locals from 13.7.2020 to 27.7.2020. The incumbent North District Council member of N15 Constituency and one Indigenous Inhabitant Representatives (IIRs) of Tsung Pak Long Village supported the proposal. The Chairman of Sheung Shui District Rural Committee, the other two IIRs and the Resident Representative of Tsung Pak Long Village had no comment.

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) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) CTP/UD&L, PlanD;
- (e) DAFC; and
- (f) D of FS.

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

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

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

The application was published for public inspection from 3.7.2020 to 24.7.2020. During the three-week statutory publication period, four public comments were received. One comment (**Appendix VI-1**) from an individual indicates no comment on the application. The remaining three comments (**Appendix VI-2 to VI-4**) submitted by Designing Hong Kong and two individuals object to the application on the grounds that the proposed Small House development is not in line with the planning intention of the “GB” zone; the Site has been destroyed and developed without prior planning approval; land is still available within “V” zone of Tsung Pak Long Village; the approval of the application will set an undesirable precedent for other similar application within the “GB” zone; and the use of septic tanks should be discontinued.

12. **Planning Considerations and Assessments**

Planning Intention

- 12.1 The application is for Small House development (one NTEH) at the Site which falls entirely within the “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 criteria 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 an existing village and in keeping with the surrounding uses, and is to meet the demand from an indigenous villager.

Interim Criteria

- 12.2 Regarding the Interim Criteria (**Appendix II**), the Site is entirely within the ‘VE’ of Tsung Pak Long Village. According to the record from DLO/N, LandsD, the total number of outstanding Small House applications in Tsung Pak Long Village is 53, and the 10-year Small House demand forecast is 220. In recent years, the Board has adopted a more cautious approach in considering applications for Small House development. Amongst other, 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. Based on the last estimation by the Planning Department, about 1.75ha (or equivalent to about 70 Small House sites) of land is available within “V” zone of Tsung Pak Long Village (**Plan A-2b**). There is sufficient land within the subject “V” zone to meet the 53 outstanding Small House applications, though the 10-year Small House demand forecast cannot be fully met. Nevertheless, the Site is the subject of a previously approved planning application No. A/FSS/243 for the same use submitted by the same applicant. As advised by DLO/N, LandsD, there is a Small House grant application at the Site approved in principle by his office in October 2018 pending execution of licence document. Since the processing of the Small House grant is already at an advanced stage, according to the Interim Criteria, sympathetic consideration may be given to application for Small House with planning permission lapsed.

Local Planning Context

- 12.3 According to TPB-PG No. 10, 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 criteria under the TPB-PG No. 10 in respect of NTEH. The Site is currently largely vacant with trees/shrubs/grass. The proposed development is not incompatible with surrounding environment which is predominantly rural in character with a mix of village houses, temporary structures, grave and vacant/unused land.
- 12.4 Regarding DAFC’s concerns on the possible adverse impact on a mature *Ficus microcarpa* adjacent to the Site (**Plans A-2a and A-4**), with applicant’s confirmation in his FI (**Appendix Ia**) that the *Ficus microcarpa* will not be affected by the proposed Small House, DAFC has no further comment on the application. The applicant is advised to adopt good site practice so as to avoid the adverse impact on the subject tree and watercourse nearby. As for the concern on cumulative traffic impacts, C for T noted that the application involves one Small

House only, and therefore he considers that the application could be tolerated. Regarding CTP/UD&L, PlanD's reservation on the application in relation to encroachment of similar developments into the "GB" zone and the potential adverse cumulative impact on landscape quality should this application be approved, this application is subject to special circumstances as stated in paragraph 12.2 to which sympathetic consideration could be given. Other departments including DEP, DSD and WSD have no adverse comment on the application.

Similar Applications

- 12.5 There are 18 similar applications for proposed Small House development within the "V" zone of Tsung Pak Long (**Plans A-1 and 2a**). As detailed in paragraph 7, 13 applications including one adjoining this application site were approved and five applications were rejected. The current application is subject to special circumstances as mentioned in paragraph 12.2.

Public Comments

- 12.6 Three public comments objecting to the application were received during the statutory publication period as stated in paragraph 11 above. The departmental comments and planning considerations and assessments as stated above are relevant.

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 paragraph 10.1 and 11 respectively, 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 21.8.2024, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following 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 "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 justification in the submission for a departure from the planning intention;

- (b) the proposed development is not in line with the Town Planning Board Guidelines No. TPB PG-No.10 for 'Application for Development within "GB" Zone' in that there are no exceptional circumstances or strong planning grounds to justify the application;
- (c) land is still available within the "V" zone of Tsung Pak Long where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services; and
- (d) approval of the application will set an undesirable precedent for other similar applications within the "GB" zone. The cumulative effect of approving such applications will result in a general degradation of the landscape character of the area.

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 26.6.2020
Appendix Ia	FI received on 22.7.2020
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories (NTEH)/Small House in New Territories
Appendix III	Previous s.16 Application
Appendix IV	Similar s.16 Applications for Proposed House (NTEH-Small House within the Same "Green Belt" Zone on the Approved Fanling/Sheung Shui Outline Zoning Plan No. S/FSS/24
Appendix V	Detailed Comments from Relevant Government Departments
Appendices VI-1 to VI-4	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Proposed Small House Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan

Plan A-2b	Estimated amount of land available for Small House development within the "V" zone
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2020**