

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/SK-CWBN/56**

- Applicant:** : Lau Kang Por represented by Everbright Surveyors Limited
- Site:** : Lot 148 S.A ss.2 in D.D. 225, Sheung Yeung, Sai Kung, New Territories
- Site Area:** : 112.6 m<sup>2</sup>
- Land Status:** : Private Lot held under Block Government Lease demised for agricultural use
- Plan:** : Approved Clear Water Bay Peninsula North Outline Zoning Plan (OZP) No. S/SK-CWBN/6
- Zoning:** : “Green Belt” (“GB”)
- Application:** : Proposed House (New Territories Exempted House (NTEH) - Small House)

**1. The Proposal**

- 1.1 The applicant, an indigenous villager of Sheung Yeung, seeks permission for development of a House (NTEH – Small House) at the application site (the Site) (**Plans A-1, A-2a and A-2b**). According to the Notes of the OZP, “House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)” is a column 2 use within the “GB” zone which requires planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant, the proposed NTEH consists of 3 storeys (8.23m) with total gross floor area (“GFA”) of 195.09m<sup>2</sup> and built over area of 65.03m<sup>2</sup>. The uncovered area is proposed for garden use (**Drawing A-2**).
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 8.4.2019 (Appendix I)
  - (b) Further Information (1) from the applicant received on 10.5.2019 (exempted from publication) (Appendix Ia)

## 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 are summarized as follows:

- (a) Sheung Yeung Village is a recognized village in Sai Kung and is entitled for erecting NTEHs. The applicant is an indigenous villager of Sheung Yeung Village;
- (b) the proposed development is considered compatible with the surrounding area, which is predominantly rural in character and surrounded by village houses, storage yards, vacant / unused land and parking of vehicles, and is located within the Village Environ (VE) of Sheung Yeung Village;
- (c) an NTEH had already been erected to the immediate south-west of the Site, which was approved by the District Lands Officer/ Sai Kung in 1999;
- (d) the rationale of the “GB” zone serving as an amenity buffer separating developments from the road is not sound and valid, as there are already existing developments such as JC Studio, the Portofino and the Adventist College along the road. Therefore the view of avoiding degradation of the natural environment in the area is not justified;
- (e) the “GB” zone is a transitional zone rather than a non-building zone, as exemplified by the approval of another rezoning request for residential development in Sham Shui Po that involved a large area zoned “GB”. As such, given the scale of the current scheme under application, it should not be considered to be deemed as setting an undesirable precedent and degrading the natural environment;
- (f) not all of the land within the “Village Type Development” (“V”) zone of Sheung Yeung Village is suitable for Small House development. The land available within Sheung Yeung Village is either government land or private lots that do not belong to the applicant; and
- (g) no adverse impacts are anticipated.

## 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. **Background**

The Site was the subject of a planning enforcement case against Unauthorized Development (“UD”) involving filling of land and excavation of land (**Plan A-2a**). Enforcement Notice (“EN”) and Reinstatement Notice (“RN”) were issued on 2.8.2017 and 24.10.2017 respectively. Subsequent site inspections revealed that the UD had been discontinued and the concerned land had been reinstated. Compliance Notices for the EN and RN were issued on 31.5.2018 and 1.6.2018 respectively.

## 5. Assessment criteria

The set of interim criteria for assessing planning application for NTEH / Small House development in the 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**.

## 6. Town Planning Board Guidelines

The Town Planning Board Guidelines for Application for Development within “GB” Zone (TPB PG-No. 10) are relevant to this application (**Appendix III**). The following specific main planning criteria are relevant:

- (a) there is a general presumption against development in a “GB” zone. In general the Board will only be prepared to approve applications for development in the context of requests to rezone to an appropriate use;
- (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;
- (c) application 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; and
- (f) 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.

## 7. Previous Application

The Site is subject to a previous s.12A application (No. Y/SK-CWBN/9) for rezoning from “GB” to “V” (**Plans A-1 and A-2a**). It was not agreed to by the Rural and New Town Planning Committee (“the Committee”) on 1.2.2019 on the following grounds:

- (a) the Site forms an integral part of the “GB” zone serving as amenity buffer separating developments from the roads. The proposal would result in piecemeal and isolated extension of the “V” zone, affecting the integrity of the “GB” zone. The applicant fails to provide strong planning justifications in the submission to support the rezoning of the Site from “GB” to “V”;
- (b) land is still available within the “V” zone of Sheung Yeung Village, which is primarily intended for NTEH / Small House development. It is more appropriate to concentrate the village type development within the “V” zone for an orderly development pattern, efficient use of land and provision of infrastructure and services; and
- (c) the approval of the application would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving similar applications would result in encroachment of Green Belt area by development and a general degradation of the natural environment.

## **8. Similar Application**

A s.16 application (No. A/DPA/SK-CWBN/11) for proposed Small House development to the southwest of the Site was rejected by the Committee on 17.7.2004 (**Plans A-1 and A-2a**). The s.16 application was rejected on the following grounds:

- (a) the proposed development is not in line with the planning intention of the “GB” zone. There is no strong justification in the submission for a departure from such planning intention;
- (b) sufficient land has been reserved within the “V” zones in Mang Kung Uk Village and Sheung Yeung Village for Small House developments and there is insufficient information in the submission to demonstrate that land cannot be made available for Small House developments within the “V” zones; and
- (c) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such applications would result in encroachment of the “GB” zone by developments.

## **9. The Site and Its Surrounding Areas (Plans A-1 to A-3 and Photos on Plans A-4a to A-4b)**

9.1 The Site is:

- (a) located in the midst of the “GB” zone to the south of Sheung Yeung;
- (b) within the VE of Sheung Yeung; and
- (c) generally flat and mainly occupied by grass.

9.2 The surrounding areas have the following characteristics:

- (a) to its north, south and east are vegetated areas within the “GB” zone. There are some temporary structures to the immediate east of the Site;
- (b) to its immediate south-west is an existing NTEH within the “V” zone; and
- (c) to its further north and west is the Sheung Yeung Village.

**10. 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.

**11. Comments from Relevant Government Departments**

11.1 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 NTEH/Small House - Application Site		- 100%  - 100%	Entirely within the “GB” zone.
2.	Within “VE”  - Footprint of the NTEH/Small House - Application Site	- 100%  - 100%		
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?	✓		<ul style="list-style-type: none"> <li>• Land required to meet Small House Demand: about 0.9ha (equivalent to 36 Small House sites).</li> <li>• Land available to meet Small House demand: about 1.85 ha (equivalent to 74 Small House Sites).</li> <li>• Information on 10-year forecast for Small House Demand is not available.</li> </ul>
4.	Compatible with the planning intention		✓	There is a general presumption against development within this zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	of “GB” zone?			<p>The Site is located in the midst of the “GB” zone, surrounded by vegetated areas to the north, east and south. The proposal would result in piecemeal and isolated Small House development.</p> <p>The applicant has not provided strong justifications.</p>
5.	Compatible with surrounding area / development	✓		Chief Town Planner/ Urban Design & Landscape (CTP/UD&L) states that given the surroundings are largely low-rise residential dwellings of similar heights, the proposed development is considered not incompatible with the surrounding area and significant visual impact is not anticipated.
6.	Within Water Gathering Ground		✓	Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD) has no objection to the application.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	The Director of Fire Services (D of FS) has no comment on the application. The applicant is advised to observe the “New Territories Exempted House – A Guide to fire safety Requirements” published by Lands Department. Detailed fire safety requirements will be formulated upon receipt of formal application referred by Lands Department.
9.	Traffic Impact?	✓		<p>Commissioner for Transport (C for T) has reservation on the application. Such type of development should be confined within the “V” zone as far as possible.</p> <p>Although additional traffic generated by the proposed development is not</p>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>expected to be significant, such type of development at the current “GB” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial.</p> <p>The application only involves construction of one NTEH – Small House. He considers that the application can be tolerated unless it is rejected on other grounds.</p>
10.	Drainage Impact	✓		The applicant has not provided sufficient drainage details but the proposed development may still result in adverse drainage impacts. The Chief Engineer/ Mainland South, Drainage Services Department (CE/MS, DSD) has no objection to the application subject to a planning approval condition for the provision of adequate stormwater drainage collection and disposal facilities to be imposed.
11.	Landscaping Impact?		✓	CTP/UD&L has no objection to the application from the landscape planning point of view.
12.	Local objection conveyed by District Officer/ Sai Kung, Home Affairs Department (DO/SK, HAD)?		✓	DO/SK, HAD has conveyed that the Chairman of the Hang Hau Rural Committee and village representatives of Sheung Yeung support the application. DC member of the relevant constituency and the Chairman of Sai Kung Area Committee hold no comment.

11.2 Comments from the following government departments have been incorporated in the above paragraph. Other comments are at **Appendix IV**

- (a) District Lands Officer/Sai Kung, Lands Department;
- (b) Director of Agriculture Fisheries and Conservation (DAFC);
- (c) CTP/UD&L;
- (d) CE/Construction, WSD;
- (e) D of FS;
- (f) C for T;
- (g) CE/MS, DSD; and
- (h) DO/SK, HAD.

- 11.3 The following government departments have no objection to or no comment on the application:
- (a) Chief Engineer/ New Territories East, Highways Department;
  - (b) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department;
  - (c) Director of Leisure and Cultural Services; and
  - (d) Project Manager/ New Territories East, Civil Engineering and Development Department.

## **12. Public Comments Received During Statutory Publication Period**

- 12.1 The application was published for public inspection on 16.4.2019. During the statutory public inspection period which ended on 7.5.2019, two support comments and four comments objecting to the application were received (**Appendix V**).
- 12.2 The two supporting comments are received from individual members of the public. One of them expresses support to the application as the application is located within a private lot.
- 12.3 Comments objecting to the application are received from the Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong Limited, The Hong Kong Bird Watching Society, and an individual of the public. They object to the application mainly on the following grounds:
- (a) the proposed development is not in line with the planning intention of the “GB” zone, and there is no strong justification for a departure from the planning intention of the “GB” zone;
  - (b) the natural vegetation at the Site has been cleaned up, thus this is a suspected “Destroy First, Develop Later” case that should not be legitimized;
  - (c) sufficient land is still available within the “V” of Sheung Yeung Village for Small House developments;
  - (d) the septic tank system soakaway system proposed by the applicant is very close to a nearby stream, and the water quality of the stream may deteriorate; and
  - (e) approval of the application will set an undesirable precedent for similar applications within the “GB” zone.

## **13. Planning Considerations and Assessments**

- 13.1 The proposed Small House development is not in line with the planning intention of the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption

against development within this zone. No strong planning grounds and justifications have been provided in the submission for a departure from the planning intention.

- 13.2 The Site is located in the midst of the “GB” zone to the south of Sheung Yeung Village. It is surrounded by vegetated areas to the north, east and south. The proposal would result in piecemeal and isolated Small House development within the “GB” zone. While the proposed development is considered not incompatible with the surrounding rural environment, and significant adverse landscape impact to the Site and the surrounding is not anticipated, the small piece of land with area of about 127m<sup>2</sup> to the immediate southwest of the Site zoned “V” is designated so to reflect the NTEH approved on 21.10.1999 before the gazette of the first Clear Water Bay Peninsula North Development Permission Area (“DPA”) Plan No. DPA/SK-CWBN/1 on 22.3.2002.
- 13.3 The Town Planning Board Guidelines for Application for Development within “GB” Zone (TPB PG-No. 10) (**Appendix II**) states that in general the Board will only be prepared to approve applications for development in the context of requests to rezone to an appropriate use. It is noted that a previous s.12A rezoning application from “GB” to “V” covering the Site had not been agreed by the Committee on 1.2.2019 while the current application contains the same proposal and justifications as per the previous s.12A rezoning application.
- 13.4 According to DLO/SK, the total number of outstanding Small House applications for Sheung Yeung is 36. The Indigenous Inhabitants Representative of Sheung Yeung Village has not provided the 10-year forecast for Small House development. According to the latest estimate of PlanD, about 1.85ha of land (or equivalent to about 74 Small House sites) is still available within the “V” zone of Sheung Yeung to meet the 36 outstanding Small House applications (**Plan A-2b**). It is considered more appropriate to locate the Small House development within the “V” zone of Sheung Yeung Village for a more orderly and concentrated development pattern, efficient use of land and provision of infrastructure and services.
- 13.5 Although the current application will not result in adverse landscape, visual, sewerage, drainage, water supply and environmental impacts, and the Site is not within a Water Gathering Ground, C for T has reservation on the application, on the grounds that it will set an undesirable precedent case for similar applications in the future, the resulting cumulative adverse traffic impact could be substantial.
- 13.6 In addition, both the previous s.12A rezoning application from “GB” to “V” covering the Site and the similar s.16 application for development of Small House to the southwest of the Site were not agreed /rejected by the Committee. Approval of this application would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving similar applications would result in encroachment of Green Belt area by development and a general degradation of the natural environment.
- 13.7 Regarding public comments objecting to the application, the planning assessments in paragraphs 13.1 to 13.6 above are relevant. Regarding the public comments supporting the application, the planning assessment in paragraph 13.4 is relevant.

## 14. Planning Department's Views

14.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed Small House development is not in line with the planning intention of the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There are no strong planning grounds and justifications provided in the submission for a departure from the planning intention;
- (b) land is still available within the “V” zone of Sheung Yeung Village, which is primarily intended for NTEH / Small House development. It is more appropriate to concentrate the village type development within the “V” zone for an orderly development pattern, efficient use of land and provision of infrastructure and services; and
- (c) approval of the application would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving similar applications will result in encroachment of Green Belt area by development and a general degradation of the natural environment.

14.2 Alternatively, 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 approval condition and advisory clauses also suggested for Members' reference:

### Approval Condition

- (a) the provision of adequate stormwater drainage collection and disposal facilities to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (b) 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.

### Advisory Clauses

the recommended advisory clauses are attached at **Appendix VI**.

## 15. Decision Sought

15.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

- 15.2 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.
- 15.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

**16. Attachments**

<b>Appendix I</b>	Application Form received on 8.4.2019
<b>Appendix Ia</b>	Further Information (1) from the applicants received on 10.5.2019 (exempted from publication)
<b>Appendix II</b>	Interim Criteria for Consideration of Application for NTEH / Small House in New Territories
<b>Appendix III</b>	Town Planning Board Guidelines for Application for Development within “GB” Zone (TPB PG-No. 10)
<b>Appendix IV</b>	Government departments’ detailed comments
<b>Appendix V</b>	Public comments
<b>Appendix VI</b>	Advisory Clauses
<b>Drawing A-1</b>	Location Plan supplied by the applicant
<b>Drawing A-2</b>	Layout Plan supplied by the applicant
<b>Plan A-1</b>	Location Plan
<b>Plan A-2a</b>	Site Plan
<b>Plan A-2b</b>	Site Plan showing the land available for Small House Development
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
MAY 2019**