

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-SSH/123

- Applicant** : Mr. HO Koon Sing
- Site** : Government land in D.D. 209, Kei Ling Ha San Wai, Shap Sz Heung, New Territories
- Site Area** : About 65.03m²
- Land Status** : Government land
- Plan** : Approved Shap Sz Heung Outline Zoning Plan (OZP) No. S/NE-SSH/11
- 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 Kei Ling Ha San Wai Village as confirmed by the respective Indigenous Inhabitant Representative (IIR)¹, seeks planning permission to build an NTEH (Small House) on the application site (the Site) (**Plan A-1**). 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)’ in the “GB” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed Small House development are as follows:
- | | | |
|-------------------|---|----------------------|
| Total floor area | : | 195.09m ² |
| Number of storeys | : | 3 |
| Building height | : | 8.23m |
| Roofed over area: | : | 65.03m ² |
- 1.3 Layout of the proposed Small House development including septic tank is shown on **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the application form with attachments on 20.8.2018 (**Appendix I**).

¹ The 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.

2. **Justifications from the Applicant**

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

- with reference to the previous application (No. A/NE-SSH/116) rejected by the Board, the layout of the proposed Small House and the location of septic tank is revised to minimise the adverse impact to the surrounding environment and to meet the Board's requirements.

3. **Compliance with the "Owner's Consent/Notification" Requirements**

The application 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. 31A) is not applicable.

4. **Assessment Criteria**

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

5. **Town Planning Board Guidelines**

The Town Planning Board Guidelines No. 10 (TPB PG-No. 10) for 'Application for Development within "GB" zone under section 16 of the Town Planning Ordinance' is relevant to this application. The relevant assessment criteria are summarised below:

- (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 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;
- (c) applications for NTEHs with satisfactory sewage disposal facilities and access arrangements may be approved if the application site is 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 areas. 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, road and water supply. It should not adversely affect drainage or aggravate flooding in the area;
- (f) the proposed development must comply with the development controls and restrictions of areas designated as water gathering grounds;
- (g) the proposed development should not overstrain the overall provision of Government, Institution or Community (G/IC) facilities in the general area;
- (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; and
- (i) any proposed development on a slope or hillside should not adversely affect slope stability.

6. Previous Application

- 6.1 The Site is the subject of a previous application No. A/NE-SSH/116 submitted by the same applicant for Small House development, which was rejected by the Rural and New Town Planning Committee (the Committee) on 15.6.2018 mainly for the reasons of being not in line with the planning intention of the “GB” zone, the TPB PG-No. 10 and the Interim Criteria in that the proposed Small House would cause adverse landscape impact on the surrounding areas and there was no general shortage of land in meeting the demand for Small House development in the “V” zone of Kei Ling Ha San Wai. Compared with the previous application, the major development parameters of the proposed Small House remain the same except slight changes in the layout and location of septic tank.
- 6.2 Details of the previous application are summarised at **Appendix III** and its location is shown on **Plans A-1** and **A-2a**.

7. Similar Applications

- 7.1 There are 11 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. All of them were approved with conditions by the Committee between 2003 and 2016.
- 7.2 Application No. A/NE-SSH/29 for three proposed Small Houses straddling “GB”, “V” and “G/IC” zones was approved in 2003. The application complied with TPG PG-No. 10 and the Interim Criteria in that the footprint of the Small Houses was mostly within ‘VE’ and there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at that time. Only a very minor portion of the application site fell within “G/IC” zone, of which the use was undesignated.

- 7.3 Nine applications (No. A/NE-SSH/40, 45, 58, 73, 81, 83, 84, 86 and 87) were approved between 2004 and 2014. They all complied with TPB PG-No. 10 and the Interim Criteria in that more than 50% of the proposed Small House footprint was within 'VE' or 'V' zone and there was a general shortage of land for Small House development within the "V" zone at that time.
- 7.4 The last similar Application No. A/NE-SSH/102 was approved by the Committee in 2016 on sympathetic consideration as the proposed Small House was an infill development and located within the village cluster. There was no general shortage of land to meet the Small House demand within the "V" zone at that time.
- 7.5 Details of the above similar applications are summarised at **Appendix IV** and their locations are shown on **Plans A-1** and **A-2a**.

8. The Site and Its Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3b and A-4)

- 8.1 The Site is:
- (a) located on a gentle slope, currently vacant and covered with grasses;
 - (b) situated adjacent to a row of village houses to the east and dense woodland to the immediate south; and
 - (c) accessible via a local track leading to Sai Sha Road.
- 8.2 The surrounding areas are predominantly rural in character with village houses and scattered tree groups. The village cluster of Kei Ling Ha San Wai and a local track is located about 30m and 15m to the northeast respectively.

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. 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.	<p>Within “V” zone ?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - Application site 	-	100%	- The Site and the footprint of the proposed Small House fall entirely within the “GB” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - Application site 	100%	-	<ul style="list-style-type: none"> - The proposed Small House footprint falls entirely within the ‘VE’ of Kei Ling Ha San Wai. - District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?</p>	✓		<ul style="list-style-type: none"> - Land required to meet Small House demand in Kei Ling Ha San Wai: about 0.525 ha (or equivalent to 21 Small House sites). The outstanding Small House applications are five² while the 10-year Small House demand forecast (2016-2025) for the same village is 16.
	<p>Sufficient land in “V” zone to meet outstanding Small House application?</p>	✓		<ul style="list-style-type: none"> - Land available to meet Small House demand within the “V” zone of the village concerned: about 1.09 ha (or equivalent to 43 Small House sites).
4.	<p>Compatible with the planning intention of “GB” zone?</p>		✓	<ul style="list-style-type: none"> - There is a general presumption against development within the “GB” zone. - Director of Agriculture, Fisheries and Conservation (DAFC) advises that the Site is in close proximity to a wooded area comprising mature trees to its southwest. The applicant should provide the site formation plan to clarify the potential impact of the proposed

² These include the proposed Small House under this Application No. A/NE-SSH/123 and four others falling within “V” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				Small House to nearby trees and vegetation on the Government land.
5.	Compatible with surrounding area/ development?	✓		- The proposed Small House is not incompatible with the surrounding areas which are rural in character with village houses and scattered tree groups.
6.	Within WGG?		✓	- Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.
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 no in-principle objection to the application.
9.	Traffic impact?	✓		- Commissioner for Transport (C for T) has general reservation on the application but considers the application only involving development of a Small House can be tolerated.
10.	Drainage impact?	✓		- 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 drainage proposal is required.
11.	Sewerage impact?		✓	- Director of Environmental Protection (DEP) has no objection to the proposed development as it is small in scale and unlikely to cause major pollution.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
12.	Landscape impact?	✓		<p>- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from the landscape planning point of view as the proposed development would inevitably involve site formation and/or slope works. With no related information such as formation level or extent of slope works, adverse impact arising from site formation and/or slope works to the adjacent woodland cannot be ascertained.</p> <p>- There was vegetation clearance within the Site and approval of the application would set an undesirable precedent to encourage unauthorised removal of vegetation.</p>
13.	Geotechnical impact?		✓	<p>- Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO) of CEDD) has no comment on the application.</p>
14.	Local objection received from DO?		✓	

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

- (a) District Lands Officer/Tai Po, Lands Department;
- (b) Director of Environmental Protection;
- (c) Chief Engineer/Mainland North, Drainage Services Department;
- (d) Chief Engineer/Consultants Management, Drainage Services Department;
- (e) Chief Engineer/Construction, Water Supplies Department;
- (f) Chief Town Planner/Urban Design & Landscape, Planning Department;
- (g) Commissioner for Transport;
- (h) Director of Agriculture, Fisheries and Conservation;
- (i) Director of Fire Services;
- (j) Director of Electrical and Mechanical Services; and

- (k) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.

10.3 The following Government departments have no objection to/no adverse comment on the application:

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

11. Public Comments Received During Statutory Publication Period

On 31.8.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received (**Appendix VI**) from World Wide Fund for Nature Hong Kong, Kadoorie Farm and Botanic Garden, The Hong Kong Bird Watching Society, Designing Hong Kong and two individuals objecting to the application mainly on the grounds of being not in line with the planning intention of “GB” zone; having adverse landscape, environmental, ecological and drainage impacts; setting of undesirable precedent; and land was still available within the “V” zone of Kei Ling Ha San Wai for Small House development.

12. Planning Considerations and Assessments

- 12.1 The Site falls entirely within the “GB” zone. 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 the “GB” zone. There is no strong planning justification in the submission for a departure from the planning intention.
- 12.2 According to DLO/TP, LandsD’s records, there are five outstanding Small House applications in Kei Ling Ha San Wai and the 10-year Small House demand forecast for the same village is 16. Based on the latest estimate by the Planning Department, about 1.09 ha (or equivalent to about 43 Small House sites) of land are available within the “V” zone of Kei Ling Ha San Wai (**Plan A-2b**). As the proposed Small House footprint falls entirely within the ‘VE’ of the concerned village, DLO/TP of LandsD has no objection to the application.
- 12.3 The Site is located on a gentle slope, currently vacant and covered with grasses. It is situated adjacent to a row of village houses to the east and dense woodland to the immediate south (**Plans A-2a and A-4**). The proposed development is not incompatible with the surrounding area which is predominantly rural in character with village houses and scattered tree groups.
- 12.4 The application does not comply with the TPB PG-No. 10. DAFC advises that the applicant should submit site formation plan to clarify the potential impact

of the proposed Small House to the nearby trees and vegetation in the vicinity (**Plan A-3b**). CTP/UD&L of PlanD has some reservations on the application from landscape planning point of view as the proposed development would inevitably involve site formation and/or slope works, of which the impact to the adjacent woodland cannot be ascertained in the lack of information such as formation level or extent of slope works. Furthermore, approval of the application will set an undesirable precedent to encourage unauthorised removal of vegetation which may have occurred within the Site (**Plan A-3a**); and the cumulative effect of approving similar applications would result in degradation of landscape character and cause adverse landscape impact to the area.

- 12.5 C for T has general reservation on the application but considers the application only involving the development of a Small House can be tolerated. Other Government departments consulted including DEP, H(GEO) of CEDD, CE/MN and CE/CM of DSD, CHE/NTE of HyD and D of FS have no objection to or adverse comment on the application.
- 12.6 More than 50% of the footprint of the proposed Small House falls within the 'VE' of Kei Ling Ha San Wai (**Plan A-1**) but land available within the "V" zone (about 1.09 ha or equivalent to about 43 Small House sites) can fully meet the demand for Small House development (about 0.525 ha or equivalent to about 21 Small Houses) (**Plan A-2b**). The proposed development does not comply with the Interim Criteria (**Appendix II**) in that there is no general shortage of land in meeting the demand for Small House development in the concerned "V" zone and it would cause adverse landscape impact to the area.
- 12.7 The Site is the subject of a previous application No. A/NE-SSH/116 which was rejected on 15.6.2018 by the Committee mainly because of being not in line with the planning intention of the "GB" zone, the TPG PG-No. 10 and the Interim Criteria in that it would cause adverse landscape impact on the surrounding areas and there was no general shortage of land in meeting the demand for Small House development in the "V" zone of Kei Ling Ha San Wai. Compared with the previously rejected application No. A/NE-SSH/116, the major development parameters of the proposed Small House remain the same except slight changes in the layout and location of septic tank. In this regard, there is no change in the planning circumstances.
- 12.8 There are 11 similar applications within the same "GB" zone in the vicinity of the Site. Ten of them were approved by the Committee between 2003 and 2014 mainly on the grounds of complying with the TPG-PG No. 10 and the Interim Criteria in that more than 50% of the footprint of the proposed Small House was 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 that time of the consideration. For application No. A/NE-SSH/102, it was approved by the Committee in 2016 on sympathetic consideration of being an infill development and located within the village cluster. The planning circumstances of the current application are different from the approved similar applications as the current application does not comply with the TPB PG-No. 10; there are currently no shortage of land within the "V" zone for Small House development; and the proposed Small House could not be considered as an infill development.

- 12.9 Regarding the five public comments objecting to the application mainly on the grounds of being not in line with the planning intention of “GB” zone, having adverse landscape, environmental, ecological and drainage impacts, setting of undesirable precedent, and land was still available within the “V” zone of Kei Ling Ha San Wai, Government departments’ comments and the planning assessments above are relevant.

13. Planning Department’s Views

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

- (a) the proposed development is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention;
- (b) the proposed development is not in line with the Town Planning Board Guidelines for Application for Development within “GB” zone under section 16 of the Town Planning Ordinance in that the proposed development will involve clearance of vegetation and generate adverse landscape impact to the area;
- (c) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that it would cause adverse landscape impact on the surrounding areas and there is no general shortage of land in meeting the demand for Small House development in the “V” zone of Kei Ling Ha San Wai; and
- (d) land is still available within the “V” zone of Kei Ling Ha San Wai which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 19.10.2022, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; 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

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

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application form with attachments received on 20.8.2018
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	Site 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 the “V” zone
Plans A-3a and 3b	Aerial photos
Plan A-4	Site photo