

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-SSH/125

- Applicant** : Mr. HO, Paul represented by T. H. & Associates Limited
- 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), 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 The Site is the subject of a previous application (No. A/NE-SSH/87) for Small House development submitted by the same applicant, which was approved by the Rural and New Town Planning Committee (the Committee) on 7.2.2014 but lapsed on 8.2.2018.

- 1.5 In support of the application, the applicant has submitted the application form with attachments which was received by the Board on 17.9.2018 (**Appendix I**).

2. Justifications from the Applicant

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

- (a) the applicant is an indigenous villager of Kei Ling Ha San Wai;
- (b) the Site falls entirely within the village ‘environs’ (‘VE’) of Kei Ling Ha Wan Wai and is only about 42m away from the “Village Type Development” (“V”) zone;
- (c) it is nearly impossible to purchase land wholly within the “V” zone for Small House development;
- (d) the proposed development is considered compatible with the adjoining rural environment and has no visual impact;
- (e) there is no ditch or stream course near the Site;
- (f) there is a vehicular access road near the Site leading to Sai Sha Road;
- (g) the Site is the subject of a previous application (No. A/NE-SSH/87) approved in 2014. The current application is necessary because the applicant has forgotten to apply for extension of time for commencement of the approved development;
- (h) District Lands Officer/Tai Po of Lands Department (DLO/TP, LandsD) has issued the approval letter for the applicant’s Small House Grant in 2016. The applicant has settled the premium and administrative fee for the Site; and
- (i) there are similar planning approvals (No. A/NE-SSH/40, 45, 58, 73, 81 and 83) for Small House development on Government Land in the vicinity of the Site (**Plan A-2a**).

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/87 submitted by the same applicant for Small House development, which was approved by the Committee on 7.2.2014 mainly on the grounds of being complied with

TPB PG-No. 10 and the Interim Criteria in that more than 50% of the proposed Small House footprint was within the 'VE' and there was a general shortage of land for Small House development within the "V" zone at that time of consideration. The planning approval has lapsed on 8.2.2018 without applying for extension of time for commencement. Compared with the previously approved application, the development parameters and footprint of the proposed Small House under the current application remain the same.

- 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 12 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. Ten of them were approved with conditions by the Committee between 2003 and 2016, and the remaining two applications were rejected in 2018.
- 7.2 Nine applications (No. A/NE-SSH/29, 40, 45, 58, 73, 81, 83, 84 and 86) were approved between 2003 and 2013, 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 of consideration.
- 7.3 Another 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.
- 7.4 The two rejected applications (No. A/NE-SSH/116 and 123) involved the same application site. They were rejected by the Committee in June and October 2018 mainly because of being not in line with TPB-PG No. 10 and the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding areas and there was no shortage of land within the concerned "V" zone.
- 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) situated on a gentle slope covered with grasses;
 - (b) within the 'VE' of Kei Ling Ha Sa Wai;

- (c) adjacent to village houses to its northwest and a dense woodland to its south; and
- (d) 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 40m 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.	Within “V” zone ? - 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.	Within ‘VE’? - Footprint of the proposed Small House - Application site	100%	-	- 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.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?	✓		- 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 five ¹ while the 10-year Small House demand forecast (2016-2025) for the same village is 16. - 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).
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		
4.	Compatible with the planning intention of “GB” zone?		✓	- There is a general presumption against development within the “GB” zone. - Director of Agriculture, Fisheries and Conservation (DAFC) has no comment on the application and advises the applicant to limit the extent of the ancillary site formation to avoid impact on the surrounding vegetation.
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?		✓	

¹ Among the 5 outstanding Small House applications, 4 of them fall within the “V” zone. For the application falling outside the “V” zone, no valid planning approval has been granted by the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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.
12.	Landscape impact?	✓		- 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 approval of the application would further attract similar developments within the "GB" zone; the cumulative effect of approving similar applications would result in degradation of landscape character and cause adverse landscape impact. - Since the footprint of proposed Small House covers the entire Site, there is no space for landscaping within the Site. The standard condition for submission and implementation of landscape proposal is not recommended.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
13.	Geotechnical impact?		✓	- Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO) of CEDD) has no comment on the application.
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 28.9.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received (**Appendix VI**) objecting to the application mainly on the grounds that the proposed development would cause adverse environmental impact and was not in line with the planning intention of “GB” zone, approving the application would set an 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. Applications for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds.
- 12.2 DLO/TP of LandsD advises that 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. 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. 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**). There is no general shortage of land in meeting the demand for Small House in the “V” zone.
- 12.3 The Site is located on a gentle slope partly covered with grasses. It is situated adjacent to a row of village houses to the northwest and a 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. DAFC has no comment on the application from nature conservation point of view but advises the applicant to limit the extent of the ancillary site formation to avoid impact on the surrounding vegetation. CTP/UD&L of PlanD has some reservations on the application from landscape planning point of view as there is no information of site formation to ascertain the impacts on the adjacent woodland and approving the application may further attract similar developments into the “GB” zone. Other concerned departments including C for T, DEP, CE/MN and CE/CM of DSD, CE/C of WSD and H(GEO) of CEDD have no objection to/ adverse comment on the application. In view of the above, the proposed development is generally in compliance with the TPB-PG No. 10 for development within the “GB” zone.
- 12.4 Regarding the Interim Criteria (**Appendix II**), 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 there is no general shortage of land with the concerned “V” zone to meet the Small House demand of the village. It is considered more appropriate to concentrate Small House development within the “V” zone. However, the Site is the subject of a previous approval (No. A/NE-SSH/87) granted to the same applicant for Small House development of the same development parameters and footprint, which was lapsed on 8.2.2018. DLO/TP of LandsD advises that the application for the Small House Grant submitted by the applicant on the Site has been approved and is currently pending execution. As the processing of the applicant’s Small House grant is already at an advance stage, sympathetic consideration may be given to the application.

- 12.5 There are 12 similar applications within the same “GB” zone in the vicinity of the Site (**Plan A-2a**). Nine of them were approved by the Committee between 2003 and 2014 mainly on the grounds of being complied 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 within the concerned “V” zone at that time of the consideration. Another application (No. A/NE-SSH/102) was approved in 2016 on sympathetic consideration of being an infill development and located within the village cluster. The remaining two applications were rejected by the Committee in 2018 mainly because of being not in line with the TPG-PG No. 10 and the Interim Criteria as the proposed development would cause adverse landscape impact on the surrounding areas and there was no shortage of land within the concerned “V” zone. The planning circumstances of the current application are different from the two rejected applications.
- 12.6 Regarding the two public comments objecting to the application which are mainly on the grounds that the proposed development would cause adverse environmental impact and was not in line with the planning intention of “GB” zone, approving the application would set an 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 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 16.11.2022, 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

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 planning justification in the submission for a departure from the planning intention;
- (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that there is no shortage of land in meeting the demand for Small House development in the “V” zone of Kei Ling Ha San Wai; and
- (c) land is still available within the “V” zone of Kei Ling Ha San Wai where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

14. Decision Sought

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

15. Attachments

Appendix I	Application form with attachments received on 17.9.2018
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
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
NOVEMBER 2018**