

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-SSH/128

<u>Applicant</u>	Mr. LEE Keng Ying
<u>Site</u>	Lots 1109 S.A RP and 1124 RP in D.D. 218, Che Ha Village, Shap Sz Heung, Sai Kung North, New Territories
<u>Site Area</u>	136.5m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Shap Sz Heung Outline Zoning Plan (OZP) No. S/NE-SSH/11
<u>Zonings</u>	“Village Type Development” (“V”) (about 11%) “Comprehensive Development Area” (“CDA”) (about 89%) Development Restrictions for “CDA” zone: <i>Maximum Gross Floor Area (GFA)</i> - 448,576 m ² (domestic); - 8,957 m ² (residents’ club); - 9,290 m ² (commercial facilities including kindergarten/nursery and church) <i>Maximum building height (BH)</i> 24 residential storeys over one storey of residential entrance lobby and a maximum 3 levels for ancillary car park, if the residential building is constructed above the car park. Based on individual merits of a development or development proposal, minor relaxation of the GFA/BH restrictions may be considered by the Town Planning Board (the Board) on application
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House) and Minor Relaxation of GFA Restrictions

1. **The Proposal**

- 1.1 On 6.3.2019, the applicant, who claims himself an indigenous villager of Ping Chau Chau Mei Village with confirmation by the relevant Indigenous Inhabitant Representative (IIR)¹, sought planning permission to build an NTEH (Small House) on the application site (the Site), with minor relaxation of GFA restrictions for the “CDA” zone on the OZP (**Plan A-1**).
- 1.2 Details of the proposed Small House are as follows:
- | | |
|------------------------------------|----------|
| Total floor area (m ²) | : 195.09 |
| No. of storeys | : 3 |
| Building height (m) | : 8.23 |
| Site coverage | : 47.6% |
- 1.3 The uncovered area of the Site is proposed for garden use.
- 1.4 The Site is the subject of a previous application for Small House (Application No. A/NE-SSH/97) submitted by a different applicant, which was approved by the Town Planning Board (the Board) on review on 10.4.2015 but lapsed on 11.4.2019.
- 1.5 In support of the application, the applicant has submitted an application form dated 6.3.2019 (**Appendix I**) with attachments including site location plan, lot index plan and master layout plan (**Drawings A-1 to A-3**).

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in part 9 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the applicant is an indigenous villager of Ping Chau. It is difficult to build a Small House in Ping Chau as it is within country park area and lacks infrastructure and transportation;
- (b) the applicant bought the land from the former landowner who was granted planning permission for building Small House at the Site. The permission was given on 10.4.2015 and will expire after 10.4.2019;
- (c) the applicant will submit a drainage proposal to the relevant department and will comply with all the approval conditions; and
- (d) no on-site works will be commenced before obtaining approval and relevant Certificates of Exemption from Lands Department.

¹ The District Lands Officer/Tai Po, Lands Department advised that the applicant’s eligibility of Small House grant has yet to be ascertained.

3. Background of the Comprehensive Development in the “CDA” zone

- 3.1 The “CDA” zone covering the Site comprises three parcels of land near Che Ha, Tseng Tau and Tai Tung Wo Liu Villages, which are identified to be suitable for residential, commercial and recreational uses with the provision of open spaces and other supporting facilities under the OZP.
- 3.2 There have been 12 applications (No. A/DPA/NE-SSH/12, A/NE-SSH/5, 7, 10, 15, 16, 18, 22, 26, 28, 61 and 120) for comprehensive residential, commercial and recreational development with Government, Institution and Community facilities in the “CDA” zone approved between 1995 and 2019. Except applications No. A/NE-SSH/61 and 120, the planning permissions for other 10 applications were lapsed and no longer valid.
- 3.3 Application No. A/NE-SSH/61 was approved with conditions on 8.5.2009, with subsequent Class B amendments (Application No. A/NE-SSH/61-1) approved on 2.12.2009 and extension of validity period until 8.5.2017 (Application No. A/NE-SSH/61-2). The approved scheme comprises 46 residential towers (16-24 storeys) and 32 houses with a total domestic GFA of 448,576m², commercial GFA of 9,290m² and residents’ club GFA of 8,957 m². The building plans for the scheme were approved by the Building Authority in 2016 and 2017, and the land exchange was executed in 2017². The scheme is deemed to have commenced. The approved MLP is at **Plan A-5a**.
- 3.4 The latest application No. A/NE-SSH/120 was approved by the Committee on 18.1.2019, which involved a proposed development of 46 residential towers (16-31 storeys) with a total domestic GFA of 538,213m², commercial GFA of 12,077m² and residents’ club GFA of 13,446m². A minor relaxation of the restrictions on domestic GFA (+20%), commercial GFA (+30%) and residents’ club GFA (+50%) were approved. Furthermore, a 20-metre wide ecological buffer zone is designated on each side of Tai Tung Wo Liu Stream for preservation and enhancement of the ecological value of the stream. The approved MLP is at **Plan A-5b**.
- 3.5 The proposed Small House under this application is located at the fringe of the North Plain Site of the comprehensive development and annotated as “land to be secured by the applicant” under the MLPs (**Plans A-5a and A-5b**). No specific use or development was proposed for the Site.

4. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

² The Site is not included in the land exchange as it has not been acquired by the applicant of the comprehensive development. According to the approved schemes, a domestic GFA of 12,641m² (under Application No. A/NE-SSH/61) or 15,170m² (under Application No. A/NE-SSH/120) is reserved as ‘Phase 2’ of the comprehensive development to uphold the development right of the owners of private land not yet secured by the applicant of the comprehensive development.

5. **Assessment Criteria**

The set of 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, which was promulgated on 7.9.2007, is at **Appendix II**.

6. **Town Planning Board Guidelines**

The Town Planning Board Guidelines (TPB PG-No. 18A) for 'Submission of Master Layout Plan under section 4A(2) of the Town Planning Ordinance' are relevant to this application. The major relevant points are summarised in **Appendix III**.

7. **Previous Application**

7.1 Besides the applications for comprehensive development mentioned in paragraph 3 above, the Site is the subject of a previous application No. A/NE-SSH/97 for NTEH (Small House) use submitted by a different applicant. The application, was rejected by the Committee on 14.11.2014 for reasons of not complying with the Interim Criteria as there was no general shortage of land in the "V" zone to meet the Small House demand and the setting of an undesirable precedent for other similar developments to proliferate into the "CDA" zone. It was subsequently approved by the Board on review on 10.4.2015 mainly on sympathetic consideration that the proposed Small House would involve a relatively small area at the fringe of the "CDA" zone, which was not incompatible with the approved comprehensive development and would not have significant impact on the overall implementation of the development.

7.2 Details of this previous application are summarized at **Appendix IV**.

8. **Similar Applications**

8.1 There are two similar applications (No. A/NE-SSH/52 and 96) in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000.

8.2 Application No. A/NE-SSH/52 was approved with conditions by the Committee on 3.3.2006 mainly on the consideration that it generally complied with the Interim Criteria; the proposed Small House would not jeopardise the implementation of the comprehensive development as the site was located outside the land exchange boundary; and there was general shortage of land in the "V" zone in meeting the then estimated future demand for Small House development.

8.3 Application No. A/NE-SSH/96 was rejected by the Committee on 14.11.2014 for the same grounds as the previous application (No. A/NE-SSH/97) for the current case and also for a reason that the application was not in line with the planning intention of the "CDA" zone as it involved Government land to be included in the land exchange for implementation of the approved

comprehensive development. The case was subsequently approved by the Board on review on 10.4.2015, based on the same sympathetic consideration as Application No. A/NE-SSH/97.

- 8.4 There is another application for NTEH (Small House) (No. A/NE-SSH/127), covering the same site as Application No. A/NE-SSH/96, which will be considered by the Committee at the same meeting with the current application.
- 8.5 Details of the above applications are summarized at **Appendix V** and their locations are shown on **Plans A-1 and A-2a**.

9. The Site and its Surrounding Area (Plans A-1 to A-4)

9.1 The Site is:

- (a) adjacent to the eastern edge of the Che Ha village proper and entirely within the 'VE' of Che Ha;
- (b) generally flat, vacant and paved; and
- (c) accessible by a vehicular track leading to Sai Sha Road.

9.2 The surrounding areas are generally rural in nature with village houses and scattered tree groups. A section of Tai Tung Wo Liu Stream runs at about 22 metres from the east of the Site. About 50 metres to the east of the Site is an existing golf driving range.

10. Planning Intention

- 10.1 The planning intention of the "CDA" is for comprehensive development of the area for residential, commercial and recreational uses with the provision of open spaces and other supporting facilities. The zoning is to facilitate appropriate planning control over the development mix, scale, design and layout of development, taking account of various environmental, traffic, infrastructure and other constraints.
- 10.2 The planning intention of the "V" zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

11. Comments from Relevant Government Departments

- 11.1 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 Small House - Application site 	<p>-</p> <p>11%</p>	<p>100%</p> <p>89%</p>	<ul style="list-style-type: none"> - About 14.5m² (11%) of the Site falls within the "V" zone, but the footprint of the proposed Small House falls entirely within "CDA" zone.
2.	<p>Within 'VE'?</p> <ul style="list-style-type: none"> - Footprint of the Small House - Application site 	<p>100%</p> <p>100%</p>	<p>-</p> <p>-</p>	<ul style="list-style-type: none"> - The Site falls entirely within the 'VE' of Che Ha. (Plan A-1) - The 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 forecast)?</p>	✓		<ul style="list-style-type: none"> - Land required to meet Small House demand: about 1.15 ha (or equivalent to 46 Small House sites). The outstanding Small House applications for Che Ha are 16 while the 10-year Small House demand forecast for the same village is 30.
	<p>Sufficient land in "V" zone to meet outstanding Small House applications</p>	✓		<ul style="list-style-type: none"> - Land available to meet Small House demand: 2.18 ha (87 Small House sites).
4.	<p>Compatible with the planning intention of "CDA" zone?</p>		✓	<ul style="list-style-type: none"> - The planning intention of the "CDA" zone is for comprehensive development of the area for residential, commercial and recreational uses with the provision of open spaces and other supporting facilities.
5.	<p>Compatible with surrounding area/development?</p>	✓		<ul style="list-style-type: none"> - The Site and the surrounding areas are generally rural in nature with village houses. - The Director of Environmental Protection (DEP) has no comment on the application in view of its small scale.

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 objection to the application.
9.	Traffic impact?		✓	- Commissioner for Transport (C for T) has no objection to the application.
10.	Drainage and sewerage impact?		✓	- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection from drainage point of view. - Approval condition on the submission and implementation of drainage proposal is required.
11.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning point of view, and advises that approval condition on the submission and implementation of landscaping proposal would not be necessary.
12.	Geotechnical impact?		✓	- Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO) of CEDD) has no comment on the application.
13.	Local objections received from DO?		✓	

11.2 Comments from the following Government departments have been incorporated in the above paragraph and **Appendix VI**.

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

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

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

12. Public Comments Received During Statutory Publication Period

On 15.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 6.4.2019, five public comments from Che Ha Village Office and four individuals were received (**Appendix VII**). The commenters raised concerns or objection to the application mainly on the grounds that the applicant is not indigenous villager of Che Ha, the proposed development would cause adverse environmental, ecological and noise impact to the surrounding areas, risks to pedestrian's safety during construction, blockage to access to other houses and was not in line with the planning intention.

13. Planning Considerations and Assessments

13.1 The Site falls mainly (89%) within an area zoned "CDA" which is intended for comprehensive development for residential, commercial and recreational uses with the provision of open spaces and other supporting facilities. The zone is subject to restrictions on development parameters including a maximum domestic GFA of 448,576m². The applicant seeks minor relaxation of that GFA restriction by 195.09m², i.e. from 448,576m² to 448,771.09m² to accommodate the proposed Small House development on the Site.

13.2 The "CDA" zone is also the subject of two valid planning permissions for comprehensive development, under Applications No. A/NE-SSH/61 and No. A/NE-SSH/120. The domestic GFA for the approved scheme under Application No. A/NE-SSH/61 is 448,576m² which is the same as the maximum GFA stipulated for the "CDA" zone. For the Application No. A/NE-SSH/120, a minor relaxation of about 20% from the maximum GFA was granted to accommodate a domestic GFA of 538,213m². The proposed Small House under this current application, with a GFA of 195.09m², will increase the

overall GFA in the area covered by the approved comprehensive development schemes from 448,576m² to 448,771.09m² (for the scheme under Application No. A/NE-SSH/61) or from 538,213m² to 538,408.09m² (for the scheme under Application No. A/NE-SSH/120).

- 13.3 It is stipulated in the Notes of the OZP that an applicant for permission for development on land designated “CDA” shall prepare a MLP together with technical assessments for the approval of the Board. The applicant under this current application has adopted the approved MLP of Application No. A/NE-SSH/61-1 and incorporated his Site thereon (**Drawing A-3**). However, no technical assessment has been submitted.

Implication on the Approved Comprehensive Development

- 13.4 The Site occupies an area of about 136.5m², which is about 0.02% of the development site area of the approved schemes under Applications No. A/NE-SSH/61 and No. A/NE-SSH/120 (both about 65 ha). It is located at the fringe of the approved schemes and is annotated as “land to be secured by applicant” under the MLP of both schemes. No specific use or development is designated on the Site. Furthermore, it is not included in the regrant lot under the land exchange executed in 2017 for the approved comprehensive development scheme under Application No. A/NE-SSH/61-1. The proposed Small House development will unlikely jeopardise the implementation of the approved comprehensive development.

Land Use Compatibility

- 13.5 The Site is located adjacent to the eastern edge of Che Ha Village proper, and the surrounding areas are generally rural in nature. The part of the approved comprehensive development in the vicinity of the Site is mainly designated for conserved woodlands, landscaped areas and golf driving range (for Application No. A/NE-SSH/120) or landscaped area and golf course (for Application No. A/NE-SSH/61). The proposed Small House under this current application is considered compatible with the character of the surrounding environment. Relevant Government departments consulted including DEP, DAFC, C for T, CE/C of WSD, CE/MN of DSD and CTP/UD&L of PlanD have no in-principle objection nor adverse comments on the application.

Previous and Similar Applications

- 13.6 The Site is the subject of planning approval for NTEH (Small House) granted by the Board on review to a different applicant on 10.4.2015 (Application No. A/NE-SSH/97). The application was rejected by the Committee for reasons of being not complying with the Interim Criteria as there was no general shortage of land in the “V” zone to meet the Small House demand, and setting of an undesirable precedent for other similar developments to proliferate into the “CDA” zone. It was subsequently approved by the Board on review mainly on sympathetic consideration that the proposed Small House was not incompatible with the approved comprehensive development and would not affect the overall implementation of the development. Nonetheless, that permission has lapsed on 11.4.2019.

- 13.7 According to the Interim Criteria (d) (**Appendix II**), application with previous planning permission lapsed will be considered on its own merits. In general, proposed development which is not in line with the Criteria would normally not be allowed. Sympathetic consideration may be given if there are special circumstances such as the site is an infill site among existing Small Houses or processing of the Small House grant is already at an advance stage. For this current application, no such special circumstances are applicable. It should also be noted that the previous approval was granted to a different applicant. The current applicant acquired the Site in April 2017 after the previous approval was given. His application for Small House grant, submitted to LandsD in May 2017, is still under processing.
- 13.8 There were also two similar applications approved in the vicinity of the Site, namely Applications No. A/NE-SSH/52 and 96 approved on 3.3.2006 and 10.4.2015 respectively. Application No. A/NE-SSH/52 was approved by the Committee in 2006 mainly on the consideration that the application, involving a site with 87% of area falling within the “V” zone, was generally in compliance with the Interim Criteria and there was a general shortage of land in the “V” zone to meet the estimated Small House demand at the time of consideration. In comparison, only about 11% of the application site under this current application falls within “V” zone and there is sufficient land available in the “V” zone to meet the currently estimated Small House demand. Therefore, the planning circumstances of that approved application are not similar to the current application.
- 13.9 As for Application No. A/NE-SSH/96 adjoining the current application site, it was rejected by the Committee on 14.11.2014 for being not in line with the planning intention of “CDA” zone; not complying with the Interim Criteria as there was no general shortage of land in the “V” zone to meet the Small House demand; and setting of an undesirable precedent. It was subsequently approved by the Board on review on the same sympathetic consideration as Application No. A/NE-SSH/97. That planning permission, however, has also lapsed on 11.4.2019.

Interim Criteria

- 13.10 Regarding the Interim Criteria (**Appendix II**), the Site and the footprint of the proposed Small House fall entirely within the ‘VE’ of Che Ha. However, there is about 2.18 ha of land (equivalent to about 87 Small House sites) available within the “V” zone of Che Ha, which is sufficient to fully meet the total estimated Small House demand (i.e. 46 Small Houses) taking into account the number of outstanding Small House applications (i.e. 16 Small Houses) and the 10-year demand forecast (i.e. 30 Small Houses). In this regard, the current application does not comply with the Interim Criteria in that there is no general shortage of land in meeting the demand for Small House development in the “V” zone of Che Ha.
- 13.11 Furthermore, it should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. Amongst others, 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 application under processing by LandsD. If

the land available for Small House development in the “V” zone is sufficient to meet the number of outstanding Small Housing applications, the Board is of the view that it is 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 infrastructures and services, even though the total estimated Small House demand is unmet. For this case, the land available for Small House development is sufficient to meet not only the number of outstanding applications but also the 10-year demand forecast.

Public comments

13.12 Regarding the public comments received, the Government departments’ comments and planning assessment above are relevant.

14. Planning Department’s Views

14.1 Based on the assessments made in paragraph 13 and having taken into account the public comments mentioned in paragraph 12, the Planning Department does not support the application for the following reasons:

- (a) the proposed Small House development does not comply with the Interim Criteria for assessing planning application for NTEH/Small House development in the New Territories in that there is no general shortage of land in meeting the demand for Small House development in the “V” zone of Che Ha; and
- (b) land is still available within the “V” zone of Che Ha 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.

14.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 3.5.2023, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VIII**.

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 conditions and advisory clauses 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 reason(s) for rejection should be given to the applicants.

16. Attachments

Appendix I	Application form and supporting documents dated 6.3.2019
Appendix II	Relevant Interim Criteria for Assessing Planning Applications for NTEH/Small House Development in the New Territories promulgated on 7.9.2007
Appendix III	Town Planning Board Guidelines No. 18A
Appendix IV	Previous application
Appendix V	Similar applications in the vicinity of the Site within the same "CDA" zone
Appendix VI	Detailed comments from relevant government departments
Appendix VII	Public comments
Appendix VIII	Recommended Advisory Clauses
Drawing A-1	Proposed Small House Location Plan submitted by the applicant
Drawing A-2	Lot Index Plan submitted by the applicant
Drawing A-3	Master Layout 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
Plan A-5a	Location of the Site as shown on the approved MLP for the comprehensive development under Application No. A/NE-SSH/61-1
Plan A-5b	Location of the Site as shown on the approved MLP for the comprehensive development under Application No. A/NE-SSH/120