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

## **APPLICATION NO. A/NE-TK/654**

**Applicant** Mr. Wong Yuk Wa represented by Prudential Surveyors International Limited

<u>Site</u> Lot 602 s.A in D.D. 28, Tai Mei Tuk, Tai Po, New Territories

Site Area About 78 m<sup>2</sup>

<u>Lease</u> Block Government Lease (demised for agricultural use)

Plan Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19

**Zoning** "Green Belt" ("GB")

**Application** Proposed House (New Territories Exempted House (NTEH) - Small House)

## 1. The Proposal

- 1.1 The applicant, who claims to be an indigenous villager<sup>1</sup> of Tai Mei Tuk, 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)' use 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 : 176.37m<sup>2</sup>

Number of storeys : 3
Building height : 8.23m
Roofed over area : 58.79m²

- 1.3 Layout of the proposed Small House with septic tank location and section plan showing the proposed site formation level and retaining wall are shown on **Drawings A-1** to **A-3**. The uncovered area of the Site is proposed for garden use.
- 1.4 The Site is the subject of a previous application (No. A/NE-TK/449) for the same Small House development submitted by the same applicant, which was approved with conditions by the Rural and New Town Planning Committee

As advised by DLO/TP, LandsD, the applicant's eligibility of Small House grant has yet to be ascertained.

(the Committee) on 19.7.2013. However, the planning permission lapsed on 20.7.2017 as the approved development did not commence within the validity period. Compared with the previous application, there are slight changes to the major development parameters which are summarised below:

Major Development Parameters	Previous Application No. A/NE-TK/449	Current Application No. A/NE-TK/654		
Site Area	80.16m <sup>2</sup>	78m <sup>2</sup>		
Total Floor Area	193.5m <sup>2</sup>	176.37m <sup>2</sup>		
Roofed Over Area	64.5m <sup>2</sup>	58.79m <sup>2</sup>		
No. of Storey	3	3		
Building Height	8.23m	8.23m		

1.5 In support of the application, the applicant has submitted the following documents:

(a) an application form

(Appendix I)

(b) justifications, site plan, drawings and photos

(Appendix Ia)

(c) further information received on 5.11.2018 with minor (Appendix Ib) clarification (accepted and exempted from the publication)

## 2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendix Ia**. They can be summarised as follows:

- (a) Small House erected on agricultural lot is common at this location and the proposed development is compatible with the open and green character of the area;
- (b) the Site is vacant with no tree. No pond filling / diversion of stream / tree felling will be involved;
- (c) minor site formation works will be carried out to level the Site. It is expected that Certification of Exemption for Site Formation Works will be issued by Lands Department (LandsD);
- (d) similar applications for Small House in the vicinity were approved by the Board from 2014 to 2018 and approval of this application is in line with those approved applications;
- (e) according to the guidelines issued by Lands Department, Emergency Vehicular Access provision is provided adjacent to the Site;

- (f) the Site is sandwiched by other private lots to the north, south and east. It is just sufficient for the erection of a Small House with roofed over area of 58.79m<sup>2</sup>. The layout of the proposed Small House has been refined due to comments from LandsD;
- (g) the Site can be accessed by a village road connecting to Ting Kok Road. The proposed development will have minimal impact on local road network which is not busy. Moreover, this road with a width of about 5m can be used as fire-fighting and emergency access;
- (h) septic tank will be constructed within the Site which is acceptable in rural area; and
- (i) removable planters can be placed on roof level of the proposed house to provide shades and amenities.

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

The applicant is the sole "current land owner". Detailed information would be deposited at the meeting for Members' inspection.

## 4. Town Planning Board Guidelines

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

- (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 ground. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas. With the exception of NTEH, a plot ratio up to 0.4 for residential development may be permitted;
- (c) applications 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;

- (f) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area; and
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

### 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 promulgated on 7.9.2007 is at **Appendix II**.

## 6. Previous Application

- 6.1 The Site is the subject of a previous application (No. A/NE-TK/449) for proposed Small House development submitted by the same applicant, which was approved with conditions by the Committee on 19.7.2013. However, the planning permission lapsed on 20.7.2017 as the approved development did not commence within the validity period. Compared with the previous application, the site area, roofed over area and total floor area of the current application have been slightly reduced.
- 6.2 Details of the previous application are summarized at **Appendix III**.

## 7. Similar Applications

- 7.1 Within the same "GB" zone, there are 78 similar applications (including 62 within "GB" zone only and 16 straddling on both "GB" and "V" zones) (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. Out of the 78 similar applications, 46 cases were approved and 32 were rejected.
- 7.2 A total of 40 applications (No. A/NE-TK/140, 177, 179, 192, 204, 211, 213, 217, 226, 243, 259 - 262, 275 - 278, 294, 327, 328, 344, 362, 363, 367, 373,375, 392, 393, 419, 425, 440, 450, 473, 476, 521, 522, 531, 540 and 545) were approved with conditions by the Committee between 2002 and April 2015 before the Board's adoption of a more cautious approach in approving applications for Small House development in August 2015. These applications were approved mainly on the considerations of generally in compliance with the Interim Criteria in that the proposed Small House footprint fell mostly within the village 'environs' ('VE'); there was a general shortage of land to meet the demand for Small House development in the "V" zone of the concerned village at the time of consideration; no significant adverse impact on the surrounding areas; and/or being the subject of previously approved application. Although some proposed Small Houses under Application No. A/NE-TK/204 (applied for 37 Small Houses) were not in line with the Interim Criteria in that less than 50% of their footprints fell within the 'VE', the application was approved on sympathetic consideration in that planning permission for Small Houses had previously been granted by the Board in 2000 before the first promulgation of

- the Interim Criteria on 24.11.2000 and the related Small House grant applications had been approved by LandsD in 2001.
- 7.3 After the Board's adoption of a more cautious approach, five applications (No. A/NE-TK/573, 580, 582, 585 and 618) were approved in 2016 and 2017 on sympathetic considerations in that the site was the subject of previously approved application (No. A/NE-TK/580, 582 and 618); the proposed house was located in close proximity to the existing village cluster (No. A/NE-TK/573, 582 and 585); and the processing of Small House land grant was at an advanced stage (No. A/NE-TK/618).
- 7.4 For the remaining approved application (No. A/NE-TK/432), it was the subject of an appeal case (No. 5/2014) allowed by the Town Planning Appeal Board on 22.10.2015 mainly on considerations of the unique characteristics of the appeal site, i.e. located on agricultural land not covered by dense vegetation; well separated from the edge of the Pat Sin Leng Country Park; close to adjacent Small House developments; and being able to be connected to public sewer.
- 7.5 Regarding the 32 rejected applications (No. A/NE-TK/258, 263, 273, 274, 279, 372, 401, 426, 443, 444, 486 493, 519, 520, 524, 555, 557 559\*, 570\*, 571\*, 577, 578, 598\*, 622 and 635), they were rejected by the Committee/the Board on review from 2009 to 2018 mainly for reasons of being not in line with the planning intention of "GB" zone; not complying with the Interim Criteria and the TPB PG-No. 10 for development within "GB" zone in that the applicants failed to demonstrate that the proposed Small House would not cause adverse landscape, sewerage, water quality and/or geotechnical impacts on the surrounding areas. Moreover, the proposed Small House footprint under applications No. A/NE-TK/372, 443, 444, 519 and 520 fell outside both the "V" zone and the 'VE'. Applications No. A/NE-TK/555, 557, 558, 559, 570, 571, 577, 578, 598, 622 and 635 were also rejected as land was still available within the "V" zone for Small House development.
- 7.6 Details of the similar applications are summarized 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-3 and A-4)

- 8.1 The Site is:
  - (a) vacant and covered with grass and weeds;
  - (b) within the 'VE' of Tai Mei Tuk and Lung Mei Villages; and
  - (c) accessible by a local track.
- 8.2 The surrounding areas are predominantly rural in character with the village

Applications No. A/NE-TK/559, 570, 571 and 598 are the subject of Town Planning Appeals lodged by the respective applicants in 2016 and 2017. The Appeals of applications No. A/NE-TK/559, 570 and 571 were dismissed by the Town Planning Appeal Board on 22.3.2017 and 17.10.2017 respectively. Decision of the Appeal of application No. A/NE-TK/598 is pending.

proper of Tai Mei Tuk to the south of the Site and a cluster of village houses to the west of the Site. There are two village houses located to the immediate north of the Site. To the further north and east, there are vegetated natural slopes forming backdrop to the Site.

# 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 summarized in the following table:

	<u>Criteria</u>	Yes	<u>No</u>	<u>Remarks</u>
1.	Within "V" zone? - Footprint of the Small House - Application site		100% 100%	- The Small House footprint and the Site fall entirely within the "GB" zone.
2.	Within 'VE'? - Footprint of the Small House - Application site	100%		<ul> <li>The Small House footprint and the Site fall entirely within the 'VE' of Lung Mei and Tai Mei Tuk.</li> <li>District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.</li> </ul>
3.	Sufficient land in "V" zone to satisfy outstanding Small House applications and 10-year Small House demand?		<b>✓</b>	- Land required to meet Small House demand: about 8 ha (equivalent to 320 Small House sites). The outstanding Small House applications are 73 <sup>2</sup> while the 10-year Small House demand forecast is 247.
	Sufficient land in "V" zone to meet outstanding Small House applications?	<b>*</b>		- Land available to meet Small House demand within the "V" zone of the villages concerned: about 2.31 ha (or equivalent to 92 Small House sites)

<sup>&</sup>lt;sup>2</sup> Among the 73 outstanding Small House applications, 35 of them fall within the "V" zone, 32 straddle or outside the "V" zone and 6 cannot be classified (i.e. Small House plans of 5 sites have not been provided by the applicants and the location of a Small House is yet to be confirmed by LandsD). For those 32 applications straddling or being outside the "V" zone, 12 of them have obtained valid planning approval from the Board.

<u>-</u>

	<u>Criteria</u>	Yes	<u>No</u>	<u>Remarks</u>
				(Plan A-2b).
4.	Compatible with the planning intention of "GB" zone?		<b>✓</b>	<ul> <li>There is a general presumption against development within the "GB" zone.</li> <li>The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application as the Site is covered with common grass and weeds.</li> </ul>
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character with village houses located to the south and west of the Site.
6.	Within Water Gathering Ground (WGG)?		<b>✓</b>	
7.	Encroachment onto planned road networks and public works boundaries?		<b>√</b>	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		<b>√</b>	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?		<b>✓</b>	- The Commissioner for Transport (C for T) has no in-principle objection to the application from traffic engineering point of view.
10.	Drainage impact?	<b>√</b>		- The 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 submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	- The Director of Environmental

	<u>Criteria</u>	Yes	<u>No</u>	<u>Remarks</u>
				Protection (DEP) has no objection to the application provided that the applicant will connect the house to the existing public sewer at his own costs; and adequate land should be reserved for the sewer connection work. In case where connection is not feasible and the use of septic tank and soakaway system is proposed for sewerage disposal, the design and construction need to comply with the requirements as stipulated in Environmental Protection Department's Practice Note for Professional Persons (ProPECC PN) 5/93.
				- Nonetheless, as there is an existing public sewer about 5m away from the proposed Small House, the applicant should be advised to connect the house to the existing public sewer at his own costs and reserve adequate land for sewer connection works.
12.	Landscape impact?		<b>✓</b>	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning perspective as the Site is cleared and adverse impact to existing landscape resources is not anticipated.
				- Since the footprint of the proposed house covers most of the Site, there is inadequate space for landscaping within the Site. Approval condition on submission and implementation of landscape proposal is not recommended.
13.	Geotechnical impact		<b>✓</b>	
14.	Local objections conveyed by DO?		<b>✓</b>	

- 10.2 Comments from the following Government departments have been incorporated in paragraph 10.1 above. Other detailed comments are at **Appendix V**.
  - (a) District Lands Officer/Tai Po, Lands Department;
  - (b) Commissioner for Transport;
  - (c) Chief Engineer/Construction, Water Supplies Department;
  - (d) Chief Engineer/Mainland North, Drainage Services Department;
  - (e) Chief Engineer/Consultant Management, Drainage Services Department;
  - (f) Director of Agriculture, Fisheries and Conservation;
  - (g) Director of Environmental Protection;
  - (h) Director of Fire Services;
  - (i) Director of Electrical and Mechanical Services; and
  - (j) Chief Town Planner/Urban Design and Landscape, Planning Department.
- 10.3 The following Government departments have no comment on/ no objection to the application:
  - (a) Chief Highway Engineer/New Territories East, Highways Department;
  - (b) Project Manager/North, Civil Engineering and Development Department;
  - (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department; and
  - (d) District Officer/Tai Po, Home Affairs Department.

# 11. Public Comments Received During Statutory Publication Period (Appendix VI)

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 from Designing Hong Kong Limited and an individual were received objecting to the application mainly for the reasons of being not in line with the planning intention of the "GB" zone; undesirability of using septic tank; setting of undesirable precedent; and land is still available in the "V" zone.

### 12. Planning Considerations and Assessments

- 12.1 The Site falls entirely within an area zoned "GB" (Plan A-2a). The proposed development is not in line with the planning intention of "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. DAFC has no strong view on the application as the Site is covered with grass and weeds.
- 12.2 According to the DLO/TP, LandsD's record, the total number of outstanding Small House applications for Lung Mei and Tai Mei Tuk is 73 while the 10-year Small House demand forecast for the concerned villages is 247. Based on the latest estimate by the Planning Department, about 2.31 ha (or equivalent to about 92 Small House sites) of land are available within the "V" zone of Lung Mei and Tai Mei Tuk. As the proposed Small House footprint falls entirely within the "VE" of the concerned villages, DLO/TP, LandsD has no objection

to the application.

- 12.3 The Site is vacant and covered with grass and weeds. The proposed Small House development is considered not incompatible with the surrounding areas which are predominantly rural in character with village houses located to the south and west (Plan A-3). CTP/UD&L, PlanD has no objection to the application from landscape planning point of view as the Site is cleared and adverse impact to existing landscape resources is not anticipated.
- DEP has no objection to the application provided that the applicant will connect the house to the existing public sewer at his own costs; and adequate land should be reserved for the sewer connection work. In case where connection is not feasible and the use of septic tank and soakaway system is proposed for sewerage disposal, the design and construction need to comply with the requirements as stipulated in Environmental Protection Department's Practice Note for Professional Persons (ProPECC PN) 5/93. Nonetheless, as there is an existing public sewer about 5m away from the proposed Small House, the applicant should be advised to connect the house to the existing public sewer at his own costs and reserve adequate land within the Site for sewer connection works. Other concerned Government departments, including C for T, CE/MN of DSD, CE/C of WSD, CHE/NTE of HyD, PM/N of CEDD and D of FS have no objection to/adverse comment on the application.
- 12.5 Regarding the Interim Criteria (Appendix II), more than 50% of the proposed Small House footprint is located within the 'VE' of Lung Mei and Tai Mei Tuk. Whilst land available within the "V" zone for Small House development (about 2.31 ha or equivalent to 92 Small House sites) (Plan A-2b) is insufficient to fully meet the future Small House demand, it is capable to meet the 73 outstanding Small House applications. 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 applications provided by LandsD. In this regard, 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 infrastructures and services. Nonetheless, the Site is the subject of a previously approved application (No. A/NE-TK/449) submitted by the same applicant. The applicant has slightly reduced the site area, total floor area and roofed over area of the proposed Small House in the current application in response to LandsD's comments. According to DLO/TP of LandsD, the Small House grant application is under active processing with the revised proposal circulated to concerned departments for comment. As the planning permission lapsed on 20.7.2017, the applicant needs to submit a fresh application. sympathetic consideration could be given to the current application.
- 12.6 There are 30 similar applications in close vicinity of the Site (**Plan A-2a**), of which 18 were approved and 12 were rejected. A total of 14 applications (No. A/NE-TK/177, 179, 204, 211, 213, 217, 226, 294, 419, 521, 522, 531, 540 and 545) were approved with conditions between 2004 and April 2015 before the Board's adoption of a more cautious approach in approving applications for Small House development in August 2015. Although some proposed Small

Houses under Application No. A/NE-TK/204 (applied for 37 Small Houses) were not in line with the Interim Criteria in that less than 50% of their footprints fell within the 'VE', the application was approved on sympathetic consideration in that planning permission for Small Houses had previously been granted by the Board in 2000 before the first promulgation of the Interim Criteria on 24.11.2000 and the related Small House grant applications had been approved by LandsD in 2001. After the Board's adoption of a more cautious approach, three applications (No. A/NE-TK/573, 582 and 585) were approved in 2016 on sympathetic considerations in that the proposed houses were located in close proximity to the existing village cluster, and the site of Application No. A/NE-TK/582 was the subject of a previously approved application. planning circumstances of Application No. A/NE-TK/582 are similar to the For the remaining approved application (No. A/NEcurrent application. TK/432), it was the subject of an appeal case (No. 5/2014) allowed by the Town Planning Appeal Board on 22.10.2015 mainly on considerations of the unique characteristics of the appeal site, i.e. located on agricultural land not covered by dense vegetation; well separated from the edge of the Pat Sin Leng Country Park; close to adjacent Small House developments; and being able to be connected to public sewer.

- 12.7 The other 12 similar applications (No. A/NE-TK/372, 401, 443, 444, 519, 520, 570, 571, 577, 598, 622 and 635) were rejected between 2011 and March 2018 mainly for the reasons of being not in line with the planning intention of "GB" zone; not complying with the Interim Criteria and the TPB PG-No. 10 in that the applicants failed to demonstrate that the proposed Small House would not cause adverse landscape, sewerage, water quality and/or geotechnical impacts on the surrounding areas; and/or the proposed Small House footprint fell outside both the "V" zone and the 'VE. Applications No. A/NE-TK/570 and 571 were also the subject of appeal cases which were dismissed by the Town Planning Appeal Board on 17.10.2017.
- 12.8 Regarding the public comments objecting to the application mainly for the reasons of being not in line with the planning intention of the "GB" zone, undesirability of using septic tank; setting of undesirable precedent; and land is still available in the "V" zone, Government departments' comments and the planning assessments above are relevant.

### 13. Planning Department's Views

- Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department <u>has no objection</u> 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 "Green Belt" zone for the area 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 this planning intention; and
  - (b) land is still available within the "Village Type Development" ("V") zone of Lung Mei and Tai Mei Tuk which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within "V" zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

## 14. <u>Decision Sought</u>

- 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 Ia

Application form dated 17.9.2018

Justifications, site plan, drawings and photos submitted

by the applicant

Appendix Ib Further information received on 5.11.2018

Appendix II Interim Criteria
Appendix III Previous application
Appendix IV Similar applications

Appendix V Government departments' detailed comments

Appendix VI Public comments

Appendix VII Recommended Advisory Clauses

Drawings A-1 to A-3 Drawings 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 "V" zone

Plan A-3 Aerial photo
Plan A-4 Site photos

# PLANNING DEPARTMENT NOVEMBER 2018

