

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

**APPLICATION NO. A/NE-TT/7**

- Applicant** : Mr. WAN Sze Ki
- Site** : Government land in D.D. 289, Ko Tong, Tai Po, New Territories
- Site Area** : 65.03m<sup>2</sup>
- Land Status** : Government Land
- Plan** : Approved Tai Tan, Uk Tau, Ko Tong and Ko Tong Ha Yeung Outline Zoning Plan (OZP) No. S/NE-TT/2
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

**1. The Proposal**

1.1 The applicant, who is an indigenous villager<sup>1</sup>, seeks planning permission to build a NTEH (Small House) at the application site (the Site) in Ko Tong, Tai Po (**Plans A-1 and A-2a**). The Site falls within an area zoned “Green Belt” (“GB”) on the approved Tai Tan, Uk Tau, Ko Tong and Ko Tong Ha Yeung OZP No. S/NE-TT/2. 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 “GB” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) are as follows:

Total Floor Area	:	195.09 m <sup>2</sup>
Number of Storeys	:	3
Building Height	:	8.23 m
Roofed Over Area	:	65.03 m <sup>2</sup>

The layout of the proposed Small House is shown on **Drawing A-1**.

---

<sup>1</sup> As advised by District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD), the applicant is an indigenous villager of Ko Tong Village of Sai Kung North Heung, as confirmed by the respective Indigenous Inhabitant Representative.

1.3 In support of the application, the applicant has submitted Application Form with attachment (**Appendix I**) which was received on 20.11.2018.

**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) there is no other site available for Small House development but only the vacant land within the “GB” zone; and
- (b) there is also a Small House built adjoining the Site.

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

As the 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) are not applicable to the application.

**4. 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 summarized below:

- (a) there is a general presumption against development (other than redevelopment) in a “GB” zone;
- (b) an application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. 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 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 vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or

other natural landscape features. Tree preservation and landscaping proposals should be provided;

- (f) 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;
- (g) the proposed development should not overstrain the overall provision of Government, institution or community 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.

## 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. Previous Application

There is no previous application for the Site.

## 7. Similar Application

- 7.1 There is one similar application (No. A/NE-TT/1) for proposed House (NTEH - Small House) within the same “GB” zone in the Ko Tong area (**Plan A-1**). The application was rejected by the Committee on 8.9.2017 on the grounds that the proposed development was not in line with the planning intention of “GB” zone; the proposed development did not comply with the TPB PG-No. 10 for development within “GB” zone; the proposed development did not meet the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding area; land was still available within the “V” zone of Ko Tong Village where land was primarily intended for Small House development; and setting of undesirable precedent.
- 7.2 Details of the similar application are at **Appendix III** and its location is shown on **Plan A-1**.

**8. The Site and Its Surrounding Area (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plans A-4a and A-4b)**

8.1 The Site is:

- (a) situated on a hillslope and is about 28m to the west of the existing village cluster of Ko Tong (**Plan A-2a and A-3**);
- (b) formed and currently vacant (**Plan A-4b**);
- (c) only accessible by an unauthorized track (**Plan A-2a and A-4a**); and
- (d) adjacent to a Small House under construction<sup>2</sup> (**Plan A-4b**).

8.2 The surrounding areas are natural and rural in character comprising the woodland hillslope in the immediate environs of the Site and the existing village cluster of Ko Tong to the east (**Plans A-3**).

**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 Interim Criteria at **Appendix II**. The assessment is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone?  - Footprint of the proposed Small House  - Application site		✓  ✓	- 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	100%		- DLO/TP, LandsD advises that Small House application was first received from the applicant on 15.8.1990. The application was approved in 2000 when the Site was not covered by any statutory

<sup>2</sup> The Small House was approved by DLO/TP, LandsD in 2000 before the publication of the draft Tai Tan, Uk Tau, Ko Tong and Ko Tong Ha Yeung Development Permission Area (DPA) Plan No. DPA/NE-TT/1. The owner of the Small House has submitted a planning application to regularise the Small House, which has been scheduled for consideration by the Committee on 1.2.2019.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	- Application site	100%		<p>plan at that time, and still pending for execution. The Site is on sloping land. An unauthorized track in the vicinity is under land control action by his Office and approval will not be given to the applicant to form or disturb Government land for the formation of new access road to facilitate the applicant's Small House development.</p> <p>- DLO/TP, LandsD has reservation on the application since there are ongoing complaints against the unauthorized track and the applicant could not demonstrate how he can make proper access to the Site.</p>
3.	Sufficient land in "V" zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	- Land required to meet the Small House demand in Ko Tong: about 3.28 ha (equivalent to 131 Small House sites). The outstanding Small House applications for Ko Tong Village are 31 <sup>3</sup> while the 10-year Small House demand forecast for the same village is 100.
	Sufficient land in "V" zone to meet outstanding Small House application?	✓		- Land available to meet the Small House demand within the "V" zone of Ko Tong Village: about 0.78 ha (equivalent to 31 Small House sites) ( <b>Plan A-2b</b> ).
4.	Compatible with the planning intention of the "GB" zone?		✓	- There is a general presumption against development within the "GB" zone.
5.	Compatible with surrounding area/ development?		✓	- The proposed Small House is incompatible with the surrounding environment which is natural and rural in character comprising the woodland hillslope in the immediate environs of the Site.
6.	Within Water Gathering Ground?		✓	

<sup>3</sup> Among the 31 outstanding Small House applications, 15 of them fall within the "V" zone and 16 straddle or outside the "V" zone. For those 16 applications straddling or being outside the "V" zone, none of them has obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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. The applicant is reminded to observe the “New Territories Exempted Houses – A Guide to Fire Safety Requirements” published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.
9.	Geotechnical impact?		✓	- Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) has no comment on the application.
10.	Traffic impact?	✓		- Commissioner for Transport (C for T), in general, has reservation on the application and advises that Small House development should be confined within the “V” zone as far as possible.  - Notwithstanding the above, the application only involves construction of one Small House. C for T considers that the application can be tolerated unless it is rejected on other grounds.  - The existing village access on and near the Site is not under TD’s management. The applicant should clarify with the relevant lands and maintenance authorities accordingly regarding the land status, management and maintenance responsibilities of the village access in order to avoid potential land disputes.
11.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advises that he has no in-principle objection to the proposed Small House development.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				- Should the application be approved, an approval condition on the submission and implementation of drainage proposal is required.
12.	Sewerage/ Environmental impact?		✓	<ul style="list-style-type: none"> <li>- CE/MN, DSD advises that there is no existing public sewerage in the vicinity of the Site.</li> <li>- Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.</li> </ul>
13.	Ecological impact	✓		<ul style="list-style-type: none"> <li>- Director of Agriculture, Fisheries and Conservation (DAFC) advises that the Site and its vicinity have undergone extensive unauthorized felling of trees and vegetation. The Site is largely paved, but a few trees on Government land will be affected by the proposed Small House and its ancillary works. As the Site is on Government land that has been degraded by unauthorized activities, it is more appropriate to allow natural regeneration to take place to facilitate ecological restoration.</li> <li>- He further advises that approval of the application may set an undesirable precedent for similar illegal acts of environmental damage on Government land and encourage further destruction of an otherwise intact woodland. In view of the above, he has reservation on the application from the nature conservation point of view.</li> </ul>
14.	Landscape impact	✓		- According to the Chief Town Planner/Urban Design and Landscape (CTP/UD&L, PlanD), the Site is situated in an area of rural landscape character comprising an extensive hillside woodland which links with the Sai Kung West Country Park to its west. Therefore, the proposed Small House is considered incompatible with the surrounding environment.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<ul style="list-style-type: none"> <li>- According to her site inspection dated in December 2018, the Site is currently vacant with two existing trees <i>Aporosa dioica</i> (銀柴) and <i>Ilex cinerea</i> (灰冬青) in fair and good condition along the eastern boundary. According to the proposed layout plan, both trees are in direct conflict with the footprint of the proposed Small House and tree felling is necessary. However, there is no space for landscaping within the Site to alleviate the potential adverse impact to the surrounding environment due to the proposed development. Adverse landscape impact due to the proposed use is expected.</li> <li>- In addition, vegetation clearance has been taken place gradually within the Site. Approval of the application would set an undesirable precedent for similar vegetation removal prior to obtaining planning permission. The cumulative effect of approving such application would result in general degradation of the surrounding environment and undermine its function to conserve the natural landscape of the area. She objects to the application from the landscape planning perspective.</li> <li>- She further advises that imposition of landscape approval condition is considered not practicable as the proposed Small House will occupy the entire Site.</li> </ul>
15.	Local objection received from District Officer?		✓	<ul style="list-style-type: none"> <li>- District Officer (Tai Po), Home Affairs Department (DO(TP), HAD) has no comment from the departmental point of view.</li> </ul>

10.2 Comments from the following Government departments on the application have been incorporated in the above paragraph. Other detailed comments are at **Appendix IV**.

- (a) District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD);
- (b) Commissioner for Transport (C for T);



- (c) Director of Environmental Protection (DEP);
- (d) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (e) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (f) Director of Fire Services (D of FS);
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (h) Director of Agriculture, Fisheries and Conservation (DAFC); and
- (i) District Officer (Tai Po), Home Affairs Department (DO(TP), HAD).

10.3 The following Government departments have no particular comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Project Manager/North, North Development Office, Civil Engineering and Development Department (PM/N, CEDD);
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
- (d) Director of Electrical and Mechanical Services (DEMS).

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

On 27.11.2018, the application was published for public inspection. During the first three weeks of the statutory publication period, five public comments were received from Kadoorie Farm and Botanic Garden Corporation, World Wide Fund for Nature Hong Kong, Designing Hong Kong and two individuals (**Appendix V**). They all object to the application mainly on the grounds that the application is not in line with the planning intention of the “GB” zone; the proposed development does not comply with the TPB PG-No. 10/Interim Criteria; it is a “destroy first, build later” case; the proposed development would cause adverse landscape, ecological and drainage impacts; there is no proper access to the Site and no ancillary facilities/ infrastructure near the Site; and the setting of undesirable precedent.

## **12. Planning Considerations and Assessments**

12.1 The Site falls entirely within the “GB” zone (**Plan A-1a**). The proposed Small House development is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within the “GB” zone. There is no strong planning justification in the submission for a departure from the planning intention of the “GB” zone.

12.2 The Tai Tan, Uk Tau, Ko Tong and Ko Tong Ha Yeung area (the Area) is a Country Park Enclave surrounded by Sai Kung East and West Country Parks and fronting Ko Tong Hau in the northeast (**Plan A-1**). Given the natural environment, its ecological and landscape values coupled with its potential natural terrain landslide hazards, an incremental approach has been adopted for

designation of “V” zones for Small House development with an aim to guiding Small House development at suitable locations around the existing village clusters so as to avoid undesirable disturbances to the natural environment and to achieve a more orderly development pattern, efficient use of land and provision of infrastructure and services.

- 12.3 According to the DLO/TP, LandsD’s records for Ko Tong, the total number of outstanding Small House applications is 31 while the 10-year Small House demand forecast is 100. Based on the latest estimate by the PlanD, about 0.78 ha (equivalent to about 31 Small House sites) of land is available within the “V” zone of Ko Tong on the OZP. Although there is sufficient land within the “V” zone to meet the outstanding Small House applications, it cannot fully meet the future Small House demand for about 3.28 ha of land (equivalent to about 131 Small House sites).
- 12.4 The Site is a piece of vacant Government land located on a densely vegetated hillslope linking with Sai Kung West Country Park (**Plan A-2a, A-3 and A-4b**). The proposed Small House is incompatible with the surrounding environment which is natural and rural in character. CTP/UD&L, PlanD objects to the application from the landscape planning perspective as the footprint of the proposed Small House is in direct conflict with two existing trees along the eastern boundary of the Site. Furthermore, the Site and its vicinity have undergone extensive unauthorized felling of trees and vegetation removal. Approval of the application would set an undesirable precedent for similar vegetation removal prior to obtaining planning permission. The cumulative effect of vegetation removal would result in adverse impact on the surrounding environment and undermine the function of the “GB” zone to conserve the natural landscape of the area. DAFC also has reservation on the application from the nature conservation point of view for similar reasons and considers it more appropriate to allow natural regeneration to take place on the Site to facilitate ecological restoration.
- 12.5 The Site is located on a formed platform about 28m to the west of the existing village cluster of Ko Tong, and is only accessible via an unauthorized track (**Plans A-2a to A-4**). DLO/TP, LandsD advises that there are ongoing complaints against this unauthorized track, and the applicant could not demonstrate how he could make proper access to the Site. She thus has reservation on the application. C for T also has reservation on the application as the cumulative adverse traffic impact could be substantial but considers that the proposed development involving one house only can be tolerated. Other relevant Government departments including DEP, CE/MN of DSD, CHE/NTE of HyD, PM/N of CEDD, H(GEO) of CEDD, CE/C of WSD, D of FS and DEMS have no objection to or no adverse comment on the application.
- 12.6 Regarding the Interim Criteria (**Appendix III**), the footprint of the proposed Small House falls entirely within the ‘VE’ of Ko Tong. While land available within the “V” zone of Ko Tong is insufficient to fully meet the future demand of 131 Small Houses, it is noted that land (about 0.78 ha or equivalent to 31 Small House sites) is still available within the “V” zone to meet the 31 outstanding Small House applications. Furthermore, the application does not meet the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding area. The application also does

not meet the TPB PG-No. 10 as the proposed Small House would affect the existing natural landscape. The approval of the application would set an undesirable precedent for similar applications in the area, the cumulative effect of which would result in adverse impacts on the natural environment and landscape character of the area.

- 12.7 The Site is not subject of any previous planning application, whereas one similar application (No. A/NE-TT/1) for proposed House (NTEH - Small House) within the same “GB” zone in Ko Tong area was rejected by the Committee on 8.9.2017 on the grounds that the proposed development was not in line with the planning intention of “GB” zone; the proposed development did not comply with the TPB PG-No. 10 for development within “GB” zone; the proposed development did not meet the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding area; land was still available within the “V” zone of Ko Tong Village where land was primarily intended for Small House development; and setting of undesirable precedent. There is no change in planning circumstances since the rejection of the similar application.
- 12.8 Regarding the adverse public comments mainly on the grounds of being not in line with the planning intention of the “GB” zone; not complying with the TPB PG-No. 10/Interim Criteria; being a “destroy first, build later” case; adverse landscape, ecological and drainage impacts; no proper access to the Site and no ancillary facilities/ infrastructure near the Site; and the setting of undesirable precedent, the comments from concerned Government departments and the planning assessment 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 “Green Belt” (“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 of the “GB” zone;
  - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that the proposed development would cause adverse landscape impact on the surrounding area;
  - (c) the proposed development does not comply with the Town Planning Board Guidelines No. 10 for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ in that the proposed development would affect the existing natural landscape; and

- (d) the approval of the application would set an undesirable precedent for similar applications in the area. The cumulative effect of approving such applications would result in adverse impacts on the natural environment and landscape character of the area.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 18.1.2023, 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 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 VI**.

### **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 condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.
- 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**

<b>Appendix I</b>	Application Form with Attachment received on 20.11.2018
<b>Appendix II</b>	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories
<b>Appendix III</b>	Similar Application for Proposed House (NTEH – Small House) within the “GB” zone in the Ko Tong Area
<b>Appendix IV</b>	Detailed Comments from Relevant Government Departments
<b>Appendix V</b>	Public Comments

<b>Appendix VI</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Proposed Small House Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plans A-2a and A-2b</b>	Site Plans
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a and A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
JANUARY 2019**