

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TT/8

- Applicant** : Mr. WONG Kim-kong
- Site** : Lot 1004 in D.D. 289, Ko Tong, Tai Po, New Territories
- Site Area** : 65.03m²
- Land Status** : New Grant Lot
- 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 villager¹, 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). The Site is currently occupied by a NTEH under construction without valid planning permission.

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

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

The layout of the proposed Small House is shown on **Drawing A-2**.

¹ 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 20.12.2018.

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) an excavation permit for the proposed Small House was obtained from District Lands Office/Tai Po on 6.5.2013 but had been expired on 31.5.2014;
- (b) the construction works for the proposed Small House was delayed due to the Site being accessible only by footpath for transporting the construction materials; and personal financial problem; and
- (c) should the application be approved by the Committee, the proposed construction works for the Small House would be completed within a short period of time.

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. Background

- 4.1 The subject Small House was approved by DLO/TP, LandsD in 2000 and the Small House grant was executed in 2002 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 on 8.11.2013.
- 4.2 The permission to enter Government land for carrying out excavation/ stabilization/ site formation works was issued by LandsD on 6.5.2013 for completion on or before 31.5.2014. However, as the Small House development was not in existence immediately before the first publication of the DPA plan in November 2013, planning permission from the Board is required.

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 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.

6. 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**.

7. Previous Application

There is no previous application for the Site.

8. Similar Applications

- 8.1 There are two similar applications (No. A/NE-TT/1 and A/NE-TT/7) for proposed House (NTEH - Small House) within the same “GB” zone in the Ko Tong area (**Plan A-1**). The applications were rejected by the Committee on 8.9.2017 and 18.1.2019 on similar grounds that the proposed developments were 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; and setting of undesirable precedent. The application No. A/NE-TT/1 was also rejected on the ground that land was still available within the “V” zone of Ko Tong Village where land was primarily intended for Small House development.
- 8.2 Details of the similar applications are at **Appendix III** and their locations are shown on **Plan A-1**.

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

- 9.1 The Site is:
- (a) a Small House under construction (**Plan A-4**); and
 - (b) 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**).
- 9.2 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**).

10. 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.

11. Comments from Relevant Government Departments

- 11.1 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.	<p>Within “V” zone?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - Application site 		<p>✓</p> <p>✓</p>	<ul style="list-style-type: none"> - The Site and the footprint of the proposed Small House fall entirely within the “GB” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - Application site 	<p>100%</p> <p>100%</p>		<ul style="list-style-type: none"> - DLO/TP, LandsD advises that he has no objection to the application. The Small House application was first received from the applicant on 8.8.1992. The application was approved in 2000 when the Site was not covered by any statutory plan at that time. - Should the application be approved by the Committee, the applicant will be required to apply for an excavation permit for carrying out excavation/ stabilization/ site formation works for development and construction of the Small House from his Office before the commencement of works as the previous permission to enter Government land had been expired on 31.5.2014.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?</p>		✓	<ul style="list-style-type: none"> - 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 31² while the 10-year Small House demand forecast for the same village is 100.
	<p>Sufficient land in “V” zone to meet outstanding Small House application?</p>	✓		<ul style="list-style-type: none"> - 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) (Plan A-2b).
4.	<p>Compatible with the planning intention of the “GB” zone?</p>		✓	<ul style="list-style-type: none"> - There is a general presumption against development within the “GB” zone.
5.	<p>Compatible with surrounding area/</p>		✓	<ul style="list-style-type: none"> - The proposed Small House is incompatible with the surrounding

² 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>
	development?			environment which is natural and rural in character comprising the woodland hillslope in the immediate environs of the Site.
6.	Within Water Gathering Ground?		✓	
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.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
11.	Drainage impact?	✓		<ul style="list-style-type: none"> - Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advises that he has no in-principle objection to the proposed Small House development.
12.	Sewerage/ Environmental impact?		✓	<ul style="list-style-type: none"> - CE/MN, DSD advises that there is no existing public sewerage in the vicinity of the Site. - 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.
13.	Ecological impact	✓		<ul style="list-style-type: none"> - Director of Agriculture, Fisheries and Conservation (DAFC) advises that the Site has been occupied by a Small House and examination of aerial photos revealed that the Site was part of the surrounding woodland vegetation before the house was built in 2014. The nearby area of the Site has undergone extensive unauthorized felling of trees and vegetation clearance since 2013. - Nevertheless, given that the Small House has been granted by DLO/TP, LandsD before the gazettal of the first DPA plan of the area in November 2013, he has no particular comment for this special case.
14.	Landscape impact	✓		<ul style="list-style-type: none"> - 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. - According to her site inspection in January 2019, the proposed Small House is already built. No existing tree is found within the Site.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				- Comparing the aerial photos taken between 2012 and 2013, it is noted that vegetation clearance had been carried out gradually within the Site and its immediate surroundings since 2012. Approval of the application would encourage similar site modification prior to approval, and would set an undesirable precedent for other similar applications within the “GB” zone. 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.
15.	Local objection received from District Officer?		✓	- District Officer (Tai Po), Home Affairs Department (DO(TP), HAD) has no comment from the departmental point of view.

11.2 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).

11.3 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).

12. Public Comments Received During Statutory Publication Period

On 28.12.2018, the application was published for public inspection. During the first three weeks of the statutory publication period, seven public comments were received from The Hong Kong Bird Watching Society, Kadoorie Farm and Botanic Garden Corporation, World Wide Fund for Nature Hong Kong, Friends of Sai Kung and three 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.

13. Planning Considerations and Assessments

- 13.1 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. However, according to DLO/TP of LandsD, the subject Small House grant was approved in 2000 and executed in 2002 before the gazetting of the first statutory plan on 8.11.2013. Hence, sympathetic consideration could be given to this case based on its exceptional circumstances in that the implementation of the approved Small House development is already at an advance stage.
- 13.2 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).
- 13.3 The Site is currently occupied by a Small House under construction located on a densely vegetated hillslope linking with Sai Kung West Country Park (**Plan A-2a, A-3 and A-4**). 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 vegetation clearance had been carried out gradually within the Site and its immediate surroundings since 2012. Approval of the application would encourage similar site modification prior to approval, and would set an undesirable precedent for other similar applications within the “GB” zone. 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. However, given the permission to enter Government land was granted by LandsD in May 2013 for carrying out excavation/ stabilization/ site formation works for the Small House development, vegetation clearance at the Site may not be considered as setting a precedent of vegetation clearance for development prior to obtaining planning permission. DAFC has no particular comment on the application as the Small House was granted before the gazettal of the DPA plan.

- 13.4 The Site is located on a formed platform about 28m to the west of the existing village cluster of Ko Tong (**Plans A-2a to A-4**). C for T 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. In addition, DLO/N, LandsD advises that the Small House grant has imposed the requirements on provision of septic tank and drainage proposal. 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.
- 13.5 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. Although the application does not meet the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding area and it does not meet the TPB PG-No. 10 that the proposed Small House would affect the existing natural landscape, it should be noted that the Small House grant was executed in 2002 well before the Site and its vicinity were included in the DPA plan that came into effect in 2013. Owing to the exceptional circumstance of the case, it is unlikely that the approval of the subject application would result in adverse impacts on the natural environment and landscape character of the area.
- 13.6 The Site is not the subject of any previous planning application, whereas two similar applications (No. A/NE-TT/1 and A/NE-TT/7) for proposed House (NTEH - Small House) within the same "GB" zone in Ko Tong area were rejected by the Committee on 8.9.2017 and 18.1.2019 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. The planning circumstance of the subject application which involves a Small House approved and executed before the publication of the first DPA plan for the area is different from those rejected similar applications. As such, the approval of the current application would not form a precedent case for other similar applications in "GB" zone of Ko Tong.

- 13.7 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.

14. Planning Department’s Views

- 14.1 Based on the assessment made in paragraph 13 and having taken into account the public comments mentioned in paragraph 12, the Planning Department has no objection to the application.
- 14.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 1.2.2023, 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.
- 14.3 The recommended advisory clauses suggested for Members’ reference are attached at **Appendix VI**.
- 14.4 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 “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 and 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 cause adverse landscape impact on the surrounding area; and
 - (c) 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.

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 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.
- 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 applicant.

16. Attachments

Appendix I	Application Form with Attachment received on 20.12.2018
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories
Appendix III	Similar Application for Proposed House (NTEH – Small House) within the “GB” zone in the Ko Tong Area
Appendix IV	Detailed Comments from Relevant Government Departments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Proposed Small House Layout Plan
Drawing A-2	Stormwater Drainage Plan
Plan A-1	Location Plan
Plans A-2a and A-2b	Site Plans
Plan A-3	Aerial Photo
Plan A-4	Site Photo

**PLANNING DEPARTMENT
FEBRUARY 2019**