

TOWN PLANNING APPEAL BOARD

Application for Review under Section 17 of the Town Planning Ordinance

Appellant: James Herbert Stewart

Application No.: A/NE-TKP/2

Site: Government Land adjoining Lot No. 369 in D.D. 255, Pak Tam Au, Tai Po District

Proposed Use: Temporary Private Garden for a Period of 3 Years

1. INTRODUCTION

- 1.1. This is an appeal against the decision of the Rural and New Town Planning Committee (“RNTPC”) of the Town Planning Board (“TPB”) on 13 March 2026 to reject Application No. A/NE-TKP/2 (the “Application”), which sought planning permission for the temporary use of land as a private garden for a period of three (3) years on Government land adjoining the Appellant’s property at 16 Pak Tam Au.
- 1.2. The Application is modest in scope and carefully framed. It involves no building development, no residential intensification and no change in land formation, but instead relates solely to the temporary use of land which has historically been used as a private garden ancillary to an existing New Territories Exempted House (“NTEH”).
- 1.3. The decision under appeal is respectfully submitted to be unsound in planning terms, in that it:
 - failed to carefully consider material evidence and considerations;
 - involved a misapplication of planning principles;
 - is inconsistent with comparable TPB decisions;
 - was based on unsupported and incorrect factual assumptions; and
 - placed weight on irrelevant considerations, including unsubstantiated public comments that are irrelevant from a planning perspective.
- 1.4. This appeal has been prepared in a manner consistent with the principles set out in the Town Planning Board Guidelines, including TPB PG-No. 32B, and does not involve any material change to the nature of the Application.

2. BACKGROUND AND SITE HISTORY

- 2.1. The Application Site was previously the subject of Short Term Tenancy No. 751, granted from 1990 to 2014 for use as a private garden.
- 2.2. That tenancy covered approximately 380 m², significantly larger than the current proposal (approximately 177 m²).
- 2.3. The tenancy was voluntarily terminated by the previous owner, and not due to enforcement, breach or planning concerns.
- 2.4. It is evident that, but for that voluntary termination, the garden use would have continued administratively without requiring planning permission.
- 2.5. The present Application therefore represents a reinstatement of a long-standing and previously accepted use, albeit at a materially reduced scale.
- 2.6. The proposed use is:
 - purely ancillary to the adjoining Small House;
 - to provide a modest amount of protection from wild and feral animals and privacy from intrusions by members of the public who frequent the area;
 - temporary in nature (3 years); and
 - involves no permanent development.
- 2.7. Importantly, as stated in RNTPC Paper No. A/NE-TK/2 (the “Paper”) prepared for the meeting on 13 March 2026, “**all government departments consulted have no objection or no adverse comment on the application**” [emphasis added]. According to the Paper, this includes: the District Lands Officer/Tai Po (DLO/TP) of the Lands Department; the Chief Town Planner/Urban Design and Landscape Department of the Planning Department; the Chief Engineer/Construction of the Water Supplies Department; the Commissioner for Transport; the Director of Environmental Protection; the Chief Engineer/Mainland North of Drainage Services Department; and, the Director of Fire Services.

3. THE RNTPC DECISION

- 3.1. The RNTPC rejected the application on the basis that:
 - the proposed use is not in line with the planning intention of the “Village Type Development” (“V”) zone, which is to provide land primarily intended for development of Small Houses by indigenous villagers. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and,

- the proposed use at the application site is excessive in size and scale and is out of proportion to the adjoining house. There is no strong justification in the submission for utilising a large piece of land in the “V” zone for the proposed use.

4. GROUNDS OF APPEAL

Failure to Properly Consider Material Evidence and Considerations

- 4.1. The Application was supported by detailed submissions addressing all relevant technical issues.
- 4.2. No Government department raised any objection. As set out in the Paper, this includes: the District Lands Officer/Tai Po (DLO/TP) of the Lands Department; the Chief Town Planner/Urban Design and Landscape Department of the Planning Department; the Chief Engineer/Construction of the Water Supplies Department; the Commissioner for Transport; the Director of Environmental Protection; the Chief Engineer/Mainland North of Drainage Services Department; and, the Director of Fire Services.
- 4.3. Notwithstanding this:
 - the minutes record no recognition of the lack of objections and no adverse comments;
 - the minutes record no questions from Members; and,
 - there is no indication that the Applicant’s submissions were meaningfully considered.
- 4.4. The decision appears to rely, without question and with minimal commentary, solely on the Planning Department’s decision to not support the application “having taken into account the public comments” without significant regard to the input from relevant government agencies.
- 4.5. This constitutes a failure to carefully consider material planning evidence, including authoritative departmental views.

Misapplication of Planning Principles

- 4.6. The minutes of the RNTPC meeting commented that:
 - the Application Site “was not irregular in shape and could be used for Small House development”; and,
 - “residual land and/or land in irregular shape not suitable for Small House Development might be considered for temporary garden use with justification”.

- 4.7. Interpreting these comments in the context of the rejection of the Application, it appears from the Committee’s reasoning that the site was assessed to not be ‘irregular’ in shape and, solely as a result of being ‘regular’ in shape, was suitable for Small House development.
- 4.8. Assessing suitability for Small House development solely by reference to site shape is arbitrary and not supported by planning practice.
- 4.9. Land suitability must be assessed having regard to:
- infrastructure constraints;
 - environmental limitations;
 - access; and,
 - topography.
- 4.10. The Committee did not appear to consider the unambiguous evidence presented that the subject land was not suitable for Small House development due to the strictly enforced septic and sewerage constraints.
- 4.11. When properly assessed, the Site is clearly not suitable for Small House development due to the strictly enforced septic and sewerage constraints, and therefore falls within the category of land that should have been acknowledged by the Committee as land “not suitable for Small House development” and, therefore, “residual land” which “might be considered for temporary private garden use with justification”.

Failure to consider the lack of Historical NTEH Applications in the Area

- 4.12. A review of TPB and RNTPC minutes from 2010 to 2026 indicates that applications for NTEH / Small House development in Pak Tam Au are extremely limited and not recent.
- 4.13. The only identified cases comprise:
- a single approval in 2011 under exceptional circumstances; and,
 - a series of applications in 2012 (A/DPA/NE-TKP/7, 8, 9, 10, 11 and 13), all rejected solely on sewerage and water quality grounds.
- 4.14. No subsequent applications of this nature have been identified in over a decade.
- 4.15. In the absence of any recent NTEH applications in the area, the argument from the Planning Department that the current Application is not in line with the planning intention of the “V” zone, which is to provide land primarily intended for development of Small Houses by indigenous villagers, is misplaced and irrelevant in the absence of any such applications.

Inconsistency with Comparable Decisions

4.16. Recent TPB decisions demonstrate that temporary private garden use is accepted in principle.

4.17. For example, in the cases cited:

- Application No. A/SK-HC/348 (approved 15 March 2024) — approved on a temporary basis for a period of 3 years on the terms of the application;
- Application No. A/SK-TLS/63 (approved 24 May 2024) — approved without reliance on any “irregular shape” criterion.

4.18. And, for example, in another case not cited:

- Application No. A/NE-TK/849 (approved 27 February 2026) — approved with standard conditions;

4.19. These decisions do not support any requirement that:

- approval is limited to “exceptional circumstances”; or
- site shape is determinative.

4.20. The rejected case cited (A/SK-HC/354) is not comparable, as it concerned zoning incompatibility rather than site characteristics.

4.21. The Appellant has also reviewed other recent decisions of the Rural and New Town Planning Committee concerning applications for temporary private garden use within “Village Type Development” zones, including in the Sai Kung District.

4.22. In particular, applications No. A/SK-PK/269–272 (Sha Kok Mei, Sai Kung, 2022) involved sites of comparable size (approximately 217m² to 258m²) for temporary private garden use with ancillary facilities.

4.23. The Planning Department expressly advised that such temporary uses “could be tolerated for a period of three years”, noting that:

- there was no Small House application under processing;
- the uses were not incompatible with the surrounding environment; and,
- relevant Government departments had no objection.

4.24. The applications ultimately were not approved, but this was not due to the principle of private garden use or the size of the sites. Rather, the concerns related to additional development elements (notably swimming pools and associated structures) and departure from the temporary planning intention in that specific context.

4.25. Importantly, the Planning Department’s assessment in that case confirms that:

- temporary private garden use is, in principle, capable of being acceptable within the “V” zone; and,
- such use may be supported where there are no adverse departmental comments and no competing Small House demand.

4.26. The present Application is materially more supportable on the evidence in that:

- it involves no additional permanent structures;
- it involves no swimming pools or engineering works;
- there are no environmental or drainage implications;
- there are no governmental objections or adverse comments; and,
- there is no competing Small House demand.

4.27. Accordingly, the above case supports the position that the current Application represents a less intensive and more acceptable form of temporary use, and that refusal cannot be justified by reference to planning principle.

Reliance on Irrelevant Considerations (Public Objections)

4.28. The Paper states that “the public comments as detailed in paragraph 9 above” are relevant and states that the Planning Department’s view was based on “having taken into account the public comments in paragraph 9 above”. The Paper also states that the “concerns on the nuisance arising from the adjoining House No. 16 at Pak Tam Au ... are not relevant to the proposed use of the Site”.

4.29. The public comments primarily came from the owner of the contiguous property at 15 Pak Tam Au, including on the following issues:

- drainage concerns;
- nuisance during the renovation process;
- construction activities that concluded in late 2024; and,
- alleged impacts on the adjacent property.

4.30. Such matters are not, in planning terms, material considerations in assessing the proposed use.

4.31. The Applicant has addressed all relevant matters related to the renovation with the appropriate Government departments, including full compliance with requirements of the Lands Department and the Buildings Department.

4.32. Furthermore, all relevant Government departments have been consulted on this Application, and all have confirmed that they have:

- no objections to the Application; and
 - no adverse comments on the Application.
- 4.33. Where competent authorities have raised no objection, allegations contained in public submissions should not outweigh objective technical assessment by the relevant authorities. In these circumstances, the public comments do not identify any planning harm arising from the proposed use.
- 4.34. In the absence of any identified planning harm, reliance on such objections would not be consistent with established planning principles.
- 4.35. For historical perspective, attached in Appendix A to this Appeal is a summary of the interactions between the owner of the property at 15 Pak Tam Au and the Applicant dating back to 2014-2015 when he bought and renovated the property at 14 Pak Tam Au against her express wishes.
- 4.36. To the extent that any concern may arise regarding potential future changes to the use of the Site, such matters can be appropriately addressed, if necessary, by the imposition of suitable planning conditions.
- 4.37. The temporary and controllable nature of the proposed use further supports the conclusion that no unacceptable planning impact would arise.

Proportionality and Reduced Scale

- 4.38. The Paper states that “the proposed Site is excessive in size and scale and is out of proportion to the adjoining house”. This statement is not consistent with many examples of the use of government land for private gardens in the area and around Hong Kong.
- 4.39. A similar argument was put forth by the Planning Department in the first application in 2024 and repeating it here ignores the fact that the current Application has been substantially reduced in size compared to both the previous STT and earlier submission.
- 4.40. The current scale is modest and proportionate in relation to the former STT No. 751 (380.0 m²) and by reference to comparable STTs in the Sai Kung and Tai Po districts. Attached to the Applicant’s Planning Statement and reproduced for ease of reference as Appendix B, is a non-exhaustive sample of STT and SX sites in the Sai Kung and Tai Po regions compiled by the Applicant from publicly available Government mapping resources.
- 4.41. Except for SX1312, which relates to the Clover Lodge development and comprises 4,040.0 m², the Applicant believes that each of the STT or SX sites listed relates to private gardens associated with a single Small House.
- 4.42. Excluding SX1312, there are 20 examples of active STT or SX sites in excess of the size of the site in the current Application. Ten of those sites exceed 400 m².

4.43. As noted above, in the case referenced as (A/SK-PK/269-272), with site areas ranging in size from 217 m² to 258 m², the Planning Department recommended approval of those applications without reference to the size or shape of the sites, all of which were significantly larger than the Site in the current Application and quite regular in shape.

5. CONCLUSION

5.1. There is no evidence of any adverse planning impact and the Application is:

- modest in scope;
- temporary in nature;
- free of adverse impact; and,
- consistent with the proper use of otherwise idle or residual Government land.

5.2. The Application involves:

- no additional population;
- no sewage generation;
- no change in drainage;
- no excavation or land filling; and,
- no environmental impact.

5.3. The absence of objection from all relevant Government departments confirms that the proposal would not give rise to adverse planning implications.

5.4. Planning decisions must be based on evidence and relevant considerations and in this case:

- no harm has been identified;
- no government department objects; and,
- the proposed use is temporary and reversible.

5.5. The rejection by the RNTPC is therefore unsupported by the evidence.

5.6. There are no identified competing or alternative uses for the Site which:

- lies outside the Village Environs Boundary;
- has been rendered unsuitable for Small House development having regard to established septic and sewerage constraints in the area; and,
- has historically been used as a private garden.

- 5.7. No adverse impact has been identified in respect of drainage, environmental, traffic or infrastructure considerations.
- 5.8. The proposal represents a practical and beneficial interim use of the related government land.
- 5.9. The Appellant has engaged constructively with all relevant Government departments and has taken steps to address and resolve all matters raised.
- 5.10. In contrast, the decision appears to have been heavily influenced by unsubstantiated public objections, rather than objective planning evidence.
- 5.11. In circumstances where:
- there is no identified planning harm; and
 - all relevant authorities raise no objection,
- it would be unfair and inconsistent with proper planning practice for the Application to be rejected based on matters which are not material planning considerations.
- 5.12. The RNTPC's decision seems to rely heavily on the recommendation of the Planning Department which appears to have been influenced by public comments and, as a result, their decision fails to properly apply established planning principles and does not reflect the evidence related to this Application.
- 5.13. The Appeal Board is therefore respectfully invited to allow the appeal and grant planning permission for the proposed temporary private garden use, subject to such conditions as it considers appropriate.

Dated: 14 April 2026

Appellant: James Herbert Stewart

Signed: _____

A handwritten signature in black ink, appearing to read 'J. Stewart', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

APPENDIX A

Background to Public Comments and Context

This Appendix provides factual background to the public comments submitted in relation to the Application, based primarily on statements made by the principal objector in her own submissions.

1. Long-standing history between parties

The principal objector's submissions confirm that:

- she has owned and resided at 15 Pak Tam Au since approximately 1991;
- the three houses at 14, 15 and 16 Pak Tam Au “were built together”;
- the houses at 14 and 16 Pak Tam Au both obtained STT grants circa 1990-1991;
- there has not been any STT associated with the house at 15 Pak Tam Au;
- she made inquiries with the Lands Department about blocking any STT application for 16 Pak Tam Au even before it was sold to the Applicant;
- her inquiries with the Lands Department led her to believe that “an STT must be free of objection”;
- she believed that providing an objection to any planning applications for a private garden around 16 Pak Tam Au was likely to block the application;
- that her dispute with the Applicant dates back to 2014-2015 when she objected to his purchase and renovation of the adjoining property at 14 Pak Tam Au.

The objector's own statements indicate that her personal animosity toward the Applicant dates back to 2014-2015 in connection with the Applicant's purchase and renovation of the adjoining property at 14 Pak Tam Au and that her objection submission primarily appears directed toward preventing the Applicant from legally obtaining the temporary right to enjoy a private garden around his property at 16 Pak Tam Au.

2. Previous interactions with Government departments

In her submissions, the principal objector acknowledges contacting multiple Government departments in relation to the renovation of the Applicant's property.

These contacts relate primarily to historical construction and operational matters associated with the adjoining property, rather than any relevant planning related issues pertaining to the future use of the current application site as a private garden by the owner of 16 Pak Tam Au.

3. Nature of issues raised in public comments

The principal objector's submissions include extensive material relating to:

- drainage concerns that more appropriately relate back to the property at 14 Pak Tam Au starting from 2015 against which the principal objector has apparently taken no steps to mitigate since then;
- construction activities related to the renovation at 16 Pak Tam Au that concluded in late 2024;
- alleged nuisance during the renovation process that has long since concluded; and,
- structural and environmental matters unrelated to the Application.

There are no current, unresolved governmental orders supporting any objections raised in any of the public comments.

4. Relationship of these issues to the Application

As noted in the RNTPC Paper, “public comments ... are relevant”, but “concerns on nuisance arising from the adjoining House No. 16 ... are not relevant to the proposed use at the Site”.

The matters raised in the principal objector’s public comments:

- largely relate to past construction activities that were completed in late 2024;
- appear directed toward opposing the Application to hinder the Applicant’s ability to legally obtain a private garden around his property at 16 Pak Tam Au rather than addressing planning considerations;
- stem from past disputes rather than valid, relevant issues related to the future proposed use of the Application Site; and,
- have all been considered by relevant government authorities, none of whom object to the Application.

5. Planning relevance

The issues raised in the public comments:

- are not supported by any Government department;
- do not relate to the future proposed temporary use of the Site as a private garden; and,
- do not identify any planning harm arising from the Application.

6. Conclusion

This Appendix is provided solely to assist the Board in assessing the planning relevance of the public comments and is not intended to raise any separate dispute between the parties.

STT and SX Grants in Sai Kung and Tai Po Districts

APPENDIX B

STT or SX Reference No.	Size of STT / SX (Sq. M.)	General Area	District	Start Date	Monthly Rental (HKD)	Lease Renewal Date	Monthly Rental / sq. m.
SX1312	4040.00	Tai Mong Tsai, Clover Lodge	SK	1991	28,850	Jan-2021	7.14
SX1144	1050.00	Tai Mong Tsai, David Tang (x)	SK	2015	5,946	Nov-2020	5.66
SX3918	904.50	Tai Mong Tsai, Lake View Villa	SK	2008	20,913	Jul-23	23.12
SX4271	893.30	Yan Yee Road	SK	2011	15,513	Aug-21	17.37
STTSK0324	614.70	Tai Mong Tsai, Chi Fai Path	SK	2020	16,363	Nov-2020	26.62
SX1953	570.00	Pak Tam Villas	SK	1994	7,120	Jun-2019	12.49
STT1416	494.00	Brookside-Ko Tong	TP	2006	9,630	Apr-2021	19.49
SX4027	465.00	Tai Mong Tsai	SK	2006	6,253	Nov-2021	13.45
SX4433	463.00	Tai Mong Tsai, Chi Fai Path	SK	2011	10,010	Jul-21	21.62
SX4094	424.30	Tai Mong Tsai, Chi Fai Path	SK	2009	8,143	Jul-19	19.19
STT1801	400.00	Uk Tau	TP	2011	7,006	Jun-2021	17.52
SX3917	330.70	Tai Mong Tsai, Lake View Villa	SK	2008	7,360	Jul-23	22.26
SX3987	308.50	Tai Mong Tsai, Chi Fai Path	SK	2007	6,923	Jan-23	22.44
SX2694	301.00	Pak Tam Villas	SK	2000	4,850	Jun-2019	16.11
STT1633	288.00	Tai Tan	TP	2009	5,723	Jun-2024	19.87
SX3919	263.50	Tai Mong Tsai, Chi Fai Path	SK	2008	6,703	Jun-23	25.44
SX3414	211.00	Tai Mong Tsai, Surf Villa	SK	2005	4,850	Jul-2020	22.99
SX5018	203.00	Tsak Yue Wu	SK	2015	5,946	Nov-2020	29.29
STT1842	198.00	Hoi Ha	TP	2018	3,466	Aug-2023	17.51
STTSK0270	187.00	Tsak Yue Wu	SK	2024	7,983	Apr-2024	42.69
SX4822	183.00	Tai Mong Tsai, Surf Villa	SK	2010	3,633	Jan-2020	19.85
SX4176	173.30	Tai Mong Tsai, Lake View Villa	SK	2010	4,270	Jun-20	24.64
SX4050	172.00	Yan Yee Road	SK	2010	3,206	May-20	18.64
SX4124	170.40	Tai Mong Tsai, Lake View Villa	SK	2010	3,720	Jan-20	21.83
SX4304	170.00	Tai Mong Tsai, Surf Villa	SK	2006	4,810	Jul-2021	28.29
STT1307	166.00	Brookside-Ko Tong	TP	2002	2,906	Dec-2022	17.51
SX3364	164.00	Tai Mong Tsai, Chi Fai Path	SK	2004	2,946	Nov-19	17.96
STT0870	155.00	Brookside-Ko Tong	TP	1991	2,713	Apr-2023	17.50
SX4018	151.00	Pak Tam Villas	TP	2006	2,530	Jan-2022	16.75
STT1682	148.00	Ko Tong Ha Yeung	TP	2010	2,590	Aug-2025	17.50
STTTP0128	132.00	Pak Tam Au	TP	2022	2,383	Jul-2022	18.05
SX3958	121.20	Tai Mong Tsai, Lake View Villa	SK	2008	2,296	Jan-23	18.94
SX4547	120.00	Pak Tam Villas	SK	2012	1,930	Oct-2022	16.08
STT1054	103.00	Brookside-Ko Tong	TP	1998	1,940	Jul-2021	18.83
STT1681	103.00	Brookside-Ko Tong	TP	2013	1,803	Jun-2023	17.50
STT1598	100.00	Brookside-Ko Tong	TP	2006	1,666	Oct-2021	16.66
SX4636	84.00	Tai Mong Tsai, Lake View Villa	SK	2014	1,316	Apr-19	15.67
STT1673	64.00	Brookside-Ko Tong	TP	2013	1,220	Aug-2023	19.06
STT0787	60.00	Brookside-Ko Tong	TP	1990	1,000	Jan-2022	16.67
STT1748	48.00	Brookside-Ko Tong	TP	2015	800	Nov-2020	16.67