

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/591

<u>Applicant</u>	Mr. Chan Chit-shun (Manager of Chan Chung Tong Tso)
<u>Site</u>	Lot 784 (part) in D.D. 9, Tai Po, New Territories
<u>Site Area</u>	About 81m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
<u>Zoning</u>	“Green Belt” (“GB”)
<u>Application</u>	Proposed Two Houses (New Territories Exempted Houses (NTEHs))

1. The Proposal

- 1.1 The applicant seeks planning permission to build two houses (NTEHs) on the Site, which falls within an area zoned “GB” on the approved Kau Lung Hang OZP No. S/NE-KLH/11 (**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)’ within the “GB” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board). The Site is currently vacant.
- 1.2 Details of the proposed development are as follows:
- | | | |
|------------------|---|---|
| Number of houses | : | 2 |
| Roofed-over area | | 81m ² (40.5m ² for each NTEH) |
| Total floor area | : | 243m ² (121.5m ² for each NTEH) |
| No. of storeys | : | 3 |
| Building height | : | 8.23m |
- 1.3 The location plans and section plans of the proposed development submitted by the applicant are shown in **Drawings A-1** to **A-4** respectively.

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

- (a) an application form with attachments received on (Appendix I) 21.9.2020
- (b) Further Information (FI) received on 3.3.2021 (Appendix Ia) providing documents relating to the land status of the Site (*accepted and exempted from the publication and recounting requirements*)

1.5 On 20.11.2020 and 5.2.2021, the Rural and New Town Planning Committee (the Committee), upon the applicant's requests, agreed to defer making a decision on the application for two months each to allow time for preparation of further information to support the application. The latest FI was submitted on 3.3.2021 and the application is scheduled for consideration by the Committee at this meeting.

2. **Justifications from the Applicant**

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

- (a) the proposed NTEHs were for self-occupation by the applicant; and
- (b) there were previously two houses, each with a footprint of about 40.5m² built within the lot that the Site falls within. The Government Rent Roll record could serve as an evidence of previous house use allowed by the Government at the Site.

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. **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 23.8.2002, criterion (i) which requires that the application site, if located within the water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

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 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 must comply with the development controls and restrictions of areas designated as WGG;
- (g) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area; and
- (h) any proposed development on a slope or hillside should not adversely affect slope stability.

6. Previous Application

There is no previous application on the Site.

7. Similar Applications

- 7.1 There are 14 similar applications within the same “GB” zone and in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. All of them were for Small House developments by indigenous villagers. Among them, seven applications (No. A/NE-KLH/246, 247, 254, 258, 261, 263 and 264) were approved with conditions by the Committee

before criterion (i) of the Interim Criteria came into effect on 23.8.2002. They were approved mainly on considerations that the proposed Small Houses generally met the Interim Criteria in that the footprints of the proposed Small Houses had more than 50% falling within the 'VE'; and there was a general shortage of land to meet the demand for Small House development in the concerned "V" zone at the time of consideration.

- 7.2 Two other applications (No. A/NE-KLH/395 and 460), covering the same site and submitted by the same applicant of the approved application No. A/NE-KLH/258, were approved in 2010 and 2014 respectively mainly on considerations of being able to be connected to the planned sewerage system in the area and having previous planning permission granted.
- 7.3 The remaining five applications (No. A/NE-KLH/394, 524, 528¹, 550 and 575) were rejected by the Committee/the Board between 2010 and 2019 mainly for a reason of being not in compliance with the Interim Criteria in that the proposed development was not able to be connected to the planned sewerage system in the area. The last four applications, rejected between 2017 and 2019, were also rejected for land being still available within the concerned "V" zone for Small House development at the time of consideration.
- 7.4 Details of the similar applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

8. The Site and Its Surrounding Area (Plans A-1, A-2 and photos on Plans A-3 and A-4)

- 8.1 The Site is:
 - (a) currently vacant with no vegetation;
 - (b) accessible by vehicles via an informal village track;
 - (c) within upper indirect WGG and less than 30m from a streamcourse to the south; and
 - (d) located outside any village 'village environs' (VE).
- 8.2 The surrounding areas are predominantly rural in character with active/fallow agricultural land, plant nursery, open storage of construction materials and unused vehicles, and temporary structures.

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

¹ Application No. A/NE-KLH/528 is the subject of an appeal lodged by the applicant in 2018, which was dismissed by the Town Planning Appeal Board on 20.5.2019.

development within this zone.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) has reservation on the application as no concrete documentary or survey records support there has been a conversion of the subject site from agricultural use to house use. The Government Rent Roll record showing a collection of rent for 0.02 acre of “House” and 2.3 acre of “Agriculture Land”, as claimed by the applicant in application and FI as an evidence of “House” use on the Site serves only as one of the factors to be considered. In processing each application, other information such as aerial photos, land registry and other historical records will be considered to ascertain whether there was any structure on the Site. On this basis, there is currently insufficient evidence to demonstrate a building/house entitlement of the Site at this stage;
- (b) the Site is not covered by Modification of Tenancy or Building License; and
- (c) an application for redevelopment of houses at the Site has been submitted by the applicant on 6.7.2020 to LandsD and is under processing. There is no guarantee at this stage that the application would be approved or any right of way would be given.

Nature Conservation

10.1.2 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- the Site falls within a “GB” zone. Although the Site is currently not covered with major vegetation, it is located adjacent to an area largely covered with natural vegetation. He has reservation on the application from nature conservation point of view.

Urban Design and Landscape

10.1.3 Comments of Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) has reservation on the application from the landscape planning

perspective;

- (b) the Site is situated in an area of settled valleys landscape character comprising clusters of trees and vegetated areas. Although the Site and its surroundings are mostly hard paved, no similar development in close proximity to the Site has previously been approved by the Board within the same “GB” zone. Should the application be approved, it would encourage more similar developments within the area, and the cumulative impact of approving such applications would further degrade the landscape quality of the subject “GB” zone; and
- (c) since there is no major public frontage along the site boundary, and there is limited space within the site for meaningful landscaping, should the Board approve this application, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

Environment

10.1.4 Comments of the Director of Environmental Protection (DEP):

- (a) does not support the application; and
- (b) the Site is within WGG. There is no existing or planned public sewer in the immediate vicinity of the Site. The applicant proposes the use of septic tank and soakaway system to treat wastewater generated on-site, which should be avoided within WGG according to Chapter 9 of the Hong Kong Planning Standards and Guidelines.

Water Supply

10.1.5 Comment of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) objects to the application;
- (b) the Site is located within upper indirect WGG and is about 30m from the nearest stream; and
- (c) there is no existing or planned public sewer in the immediate vicinity of the Site. The applicant proposes the use of septic tank/soakaway system as sewage disposal method, which could not meet the Interim Criteria Item (i) in that the Site located within WGG would not be able to be connected to the existing or planned public sewerage system in the area and the applicant cannot demonstrate that the water quality within WGG will not be affected by the proposed development.

Traffic

10.1.6 Comments of the Commissioner for Transport (C for T):

- (a) in general, he has reservation on the application. Such type of development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the “V” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial; and
- (b) notwithstanding the above, the application only involves development of two NTEHs and he considers that this application can be tolerated on traffic grounds.

Drainage

10.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, an approval condition on submission and implementation of drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact to the adjacent area;
- (c) there is no existing DSD maintained public drain available for connection in the area. The applicant should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from the surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The applicant should neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (d) public sewers are not available near the Site; and

- (e) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant lot owners should be sought.

Fire Safety

10.1.8 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application; and
- (b) the applicant is reminded to observe “NTEHs - a Guide to Fire Safety Requirements” published by LandsD. Detailed fire safety requirement will be formulated upon receipt of formal application referred by LandsD.

10.2 The following Government departments have no comment/no objection to the application:

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (c) Project Manager (North), Civil Engineering and Development Department (PM/N, CEDD);
- (d) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (e) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD); and
- (f) District Officer/Tai Po, Home Affairs Department (DO/TP, HAD).

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

On 29.9.2020, the application was published for public inspection. During the statutory publication period, four public comments were received from Hong Kong Bird Watching Society, WWF-Hong Kong, The Designing Hong Kong Limited, and an individual raising objection to the application mainly on the grounds of not being in line with the planning intention of “GB” zone; land is still available in the nearby “V” zones; potential sewerage and ecological impacts; being a ‘destroy first, develop later’ case; and setting undesirable precedent.

12. Planning Considerations and Assessments

12.1 The application is for two proposed NTEHs (not Small Houses) at the Site zoned “GB” on the OZP (**Plan A-1**). The proposed 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 this zone. DAFC has

reservation on the application from nature conservation point of view as the Site is located adjacent to an area largely covered with natural vegetation. There is no strong justification in the applicant's submission for a departure from the planning intention.

- 12.2 The Site is an old schedule agricultural lot under Block Government lease. DLO/TP, LandsD advises that there is currently no concrete documentary or survey records support there has been a conversion of the Site from agricultural use to house use. The Government Rent Roll record as claimed by the applicant in his submission as an evidence of "House" use serves only as one of the factors to be considered. Other information such as aerial photos, land registry and other historical records will be considered to ascertain whether there was any structure on the Site. As there is insufficient evidence to demonstrate a building/house entitlement of the Site, DLO/TP has reservation on the application.
- 12.3 The Site falls within the upper indirect WGG and is less than 30m away from the nearest streamcourse. There is no existing or planned public sewer in the immediate vicinity of the Site, and the effluent generated from the proposed development will have the potential to cause water pollution to the WGG. The applicant proposes to adopt septic tank and soakaway systems to treat waste water generated on-site. Both DEP and CE/C of WSD object to the application. The application does not comply with the Interim Criteria in that the Site located within WGG would not be able to be connected to the existing or planned public sewerage system in the area, and the applicant fails to demonstrate that the proposed development would not cause adverse water quality impact in the area. The application also does not comply with the TPB Guidelines No. 10 for 'Application for Development within "GB" zone under section 16 of the Town Planning Ordinance' in that the proposed development does not meet the development controls and restrictions of areas designated as WGG.
- 12.4 The Site is currently vacant and is accessible by an informal village track. The surrounding areas are predominantly rural in character with active/fallow agricultural land, plant nursery and temporary structures (**Plans A-3 and A-4**). CTP/UD&L of PlanD has reservation on the application from the landscape planning perspective. Should the application be approved, it would encourage more similar developments within the area, and the cumulative impact of such approval would further degrade the landscape quality of the subject "GB" zone.
- 12.5 C for T in general has reservation on the application but considers that the application involving development of only two NTEHs can be tolerated. CE/MN of DSD advises that should the application be approved, a condition requiring the submission and implementation of drainage proposal should be imposed. Other departments consulted, including H(GEO) and PM/N of CEDD, D of FS, CHE/NTE of HyD, DO/TP of HAD and DEMS have no adverse comments on the application.
- 12.6 There are 14 similar applications for NTEH development within the same "GB" zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-1**). Nonetheless, they were all for Small House development under

different planning circumstances from the current application for NTEH (non-Small House) development.

- 12.7 Regarding the public comments as detailed in paragraph 11 above, Government departments' comments and the planning assessments in the above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments 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 the "Green Belt" 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 justification given in the submission for a departure from the planning intention of the "GB" zone; and
- (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 Site located within WGG would not be able to be connected to the existing or planned public sewerage system in the area. The applicant fails to demonstrate that the proposed development would not cause adverse water quality impact in the area.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 30.4.2025, 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 submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or the Town Planning Board.

Advisory Clauses

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

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

15. Attachments

Appendix I	Application form and attachments received on 21.9.2020
Appendix Ia	Further Information received on 3.3.2021
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
Appendix III	Similar applications
Appendix IV	Public comments
Appendix V	Recommended advisory clauses
Drawings A-1 to A-4	Location plans and section plans submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
APRIL 2021**

