

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/143

- Applicant** : Mr. LAU Yat Leung, Alex represented by Aikon Development Consultancy Limited
- Site** : Lots 3032 and 3033 in D.D. 39, Au Ha Village, Sha Tau Kok, New Territories
- Site Area** : 53.8m² (about)
- Lease** : Block Government Lease (with an area of 0.02 acre (i.e. about 80.93m²) recorded as “house”)
- Plan** : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11
- Zonings** : “Green Belt” (“GB”) (about 29.6m² / 55% of the Site); and
“Village Type Development” (“V”) (about 24.2m² / 45% of the Site)
- Application** : Proposed House (New Territories Exempted House (NTEH))

1. The Proposal

- 1.1 The applicant, owner of the application site (the Site), seeks planning permission to build a NTEH at the Site, which falls within an area partly zoned “GB” and “V” on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11 (**Plan A-1**). According to the Notes of the OZP, whilst ‘House (NTEH only)’ is always permitted in “V” zone, such use in “GB” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed NTEH are as follows:
- | | | |
|-------------------|---|----------------------|
| Total Floor Area | : | 161.4 m ² |
| Number of Storeys | : | 3 |
| Building Height | : | 8.23 m |
| Roofed Over Area | : | 53.8 m ² |
- 1.3 Layout of the proposed NTEH (including septic tank) is shown on **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- | | | |
|-----|---|----------------------|
| (a) | Application Form with attachments received on 13.1.2022 | (Appendix I) |
| (b) | Supplementary Information on 20.1.2022 | (Appendix Ia) |

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form at **Appendix I** as summarized below:

- (a) the Site is an Old Scheduled House Lot. The applicant, being the registered owner of the Site, has the development right to build house on the subject lot in accordance with the lease;
- (b) sympathetic consideration should be given to the application as the proposed development is considered in line with the Interim Criteria as more than 50% of the Site and the proposed NTEH's footprint falls within the village 'environs' ('VE') of Au Ha Village;
- (c) the proposed development is compatible with the surrounding area which is rural in character with existing village houses settlement found in proximity;
- (d) the proposed development is in line with the planning intention of "V" zone; and
- (e) the proposed development is small in scale and would not cause adverse traffic and environmental impact to the surrounding areas.

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

The applicant is the sole "current land owner" of the lot. 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 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**.

5. Town Planning Board Guidelines

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

- (a) there is a general presumption against development (other than redevelopment) in a "GB" zone;
- (b) applications 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 the surrounding areas;
- (c) applications for NTEH with satisfactory sewage disposal facilities and access arrangements may be approved if the application site is 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; and
- (f) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area.

6. Previous Application

There is no previous application for the Site.

7. Similar Application

- 7.1 There is one similar application (No. A/NE-LK/71) for NTEH (not Small House) in the same “GB” zone in the vicinity of the Site in the Luk Keng and Wo Hang area. The application was approved by the Committee on 6.1.2012 mainly on sympathetic considerations that the Site was subject to a building entitlement under the lease and the proposed development intensity did not exceed the lease entitlement; and proposed development would not have significant adverse traffic, drainage and environmental impacts on the surrounding areas.
- 7.2 Details of the similar application is summarized at **Appendix III** and their locations are shown on **Plan A-1**.

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

8.1 The Site is:

- (a) vacant and partly covered by wild grass;
- (b) located to the west of the “V” zone of Au Ha village (**Plan A-2a**); and
- (c) accessible by a local road.

8.2 The surrounding areas have the following characteristics:

- (a) rural landscape character dominated by village houses, vacant land, active/fallow agricultural land and tree groups;
- (b) to the immediate north and east are the village proper of Au Ha Village; and

- (c) to the immediate south and west are unused land and vegetated woodland within “Green Belt” (“GB”) zone.

9. Planning Intention

The planning intention of the “GB” zone is intended 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 following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

10.1.1. Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) Lot Nos. 3032 and 3033 in D.D. 39 are Old Schedule House Lots which have a registered area of 0.01 acre house land for each lot;
- (b) her office has received a redevelopment application for Lot Nos. 3032 and 3033 in D.D. 39 submitted by the applicant on 27.11.2019. The redevelopment application is under processing by her office;
- (c) the Site is not covered by any Modification of Tenancy/Building Licence;
- (d) the proposed house is a NTEH under Building Ordinance (Application to the New Territories) Ordinance (Cap. 121);
- (e) she has no adverse comment on the redevelopment proposal; and
- (f) there is no guarantee that the redevelopment application will be approved. If approved, it will be subject to such terms and conditions as imposed by LandsD.

Traffic

10.1.2. 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, he considers that the application only involves development of one house can be tolerated on traffic grounds.

Environment

10.1.3. Comments of the Director of Environmental Protection (DEP):

- he has no objection to the planning application. In view of the small population and nature of the proposed development, septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the Environmental Protection Department (EPD)'s Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the EPD" and are duly certified by an Authorized Person (AP).

Nature Conservation

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

- the Site is currently covered with common herbaceous plants. As such, she has no strong view on the application from nature conservation perspective. Nevertheless, it is also noted the Site is adjacent to a woodland which is zoned as "GB". The applicant should be reminded to avoid impact to the nearby woodland during the construction and operation stage of the proposed use.

Landscape

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

- (a) she has no objection to the application from landscape point of view;
- (b) the Site is located in an area of settled valleys landscape character comprising of farmlands, vegetated areas, small houses at the east within the "V" zone and woodland at the west within the "GB" zone. Based on her site record taken on 28.1.2022, the site is vacant and partly covered by wild grass. Significant adverse impact on existing landscape resources arising from the proposed use is not anticipated; and
- (c) in view of that the Site is not abutting major public frontage and existing vegetation is observed in close proximity to the Site, should the application be approved, 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.

Drainage

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

- (a) he has no objection to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent areas; and
- (c) the Site is in an area where no public sewerage connection is available.

Fire Safety

10.1.7. 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 ‘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.

District Officer’s Comments

10.1.8. Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) he has no comment on the application; and
- (b) he has consulted the locals regarding the application. The Resident Representative of Au Ha objected the application on the grounds that the proposed development would cause adverse drainage impact to the surrounding areas. The Chairman of the Sha Tau Kok District Rural Committee, the incumbent North District Councilor of N16 Constituency and the Indigenous Inhabitant Representative (IIR) of Au Ha had no comment on the application.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

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

On 25.1.2022, the application was published for public inspection. During the statutory public inspection period, one public comment was received. An individual objects the application on the grounds that land is still available within the “V” zone of Au Ha Village and development of NTEH should not encroach onto “GB” zone.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed NTEH development at the Site partly zoned “GB” and “V” on the OZP. While ‘House (NTEH only)’ is always permitted in “V” zone, such use in “GB” zone requiring planning permission. The proposed use is not in line with the planning intention of the “GB” zone which is intended 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 advised that the Site is currently covered with common herbaceous plants and hence has no strong view on the application from nature conservation perspective.
- 12.2 The Site, located to the west of the village proper of Au Ha Village, is currently vacant and covered with grass (**Plans A-3 and A-4**). The surrounding areas are predominantly rural in character with a mix of village houses, active/fallow agricultural land and tree groups (**Plans A-2 and A-3**). CTP/UD&L of PlanD has no objection to the application from landscape point of view as significant adverse impact on existing landscape resources arising from the proposed use is not anticipated.
- 12.3 As advised by DLO/N, LandsD, the Site is entitled for a house use. The proposed development could be regarded as a NTEH under Cap. 121. She has no objection to the development proposal at the Site. It has been the existing practice of the Board to take into account building status under the lease in considering planning application for house development. As each application would be considered on its individual merits, the approval of the subject application would unlikely set an undesirable precedent for similar applications within the “GB” zone.
- 12.4 C for T has general reservation on the application but considers that the application involving development of one NTEH only can be tolerated on traffic grounds. Other relevant Government departments including DEP, CE/C of WSD, CHE/NTE of HyD, DEMS, PM(N) of CEDD and D of FS have no objection to or adverse comment on the application. The application generally complies with the TPB PG-No.10 on Application for Development within “GB” zone in that the scale and intensity of the proposed NTEH is considered compatible with the surrounding areas predominantly rural character comprising a mix of village houses, active/fallow agricultural land and would not have extensive vegetation clearance and significant adverse environmental, traffic, landscape, drainage and sewerage impacts on the surrounding area.
- 12.5 There is one similar application No. A/NE-LK/71 in the same “GB” zone in the vicinity of the Site. That application was approved by the Committee in 2012 mainly on sympathetic considerations that the Site was subject to a building entitlement under the lease and the proposed development intensity did not exceed the lease entitlement; and proposed development would not have significant adverse traffic, drainage and environmental impacts on the surrounding area. The planning circumstances of the current application is similar to the approved application.
- 12.6 Regarding the local objection conveyed by DO(N), HAD and adverse public comments as detailed in paragraphs 10.1.8 and 11 above respectively, the Government departments’ comments and the planning assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the local objections conveyed by DO(N) of HAD and public comments in paragraphs 10.1.8 and 11 above, the Planning Department has no objection to the application.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 4.3.2026, 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 condition of approval and advisory clauses are suggested for Members' reference:

Approval Condition

The submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

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

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

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. There is no strong planning justification in the submission for a departure from the planning intention.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the 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

Appendix I	Application Form with attachments received on 13.1.2022
Appendix Ia	Supplementary Information on 20.1.2022
Appendix II	Relevant revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
Appendix III	Similar Application
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses

Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

PLANNING DEPARTMENT
MARCH 2022