

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

**APPLICATION NO. A/NE-SSH/148**

- Applicant** : Mr. HO Lup Heng represented by Heng Fai Consulting Ltd.
- Site** : Government Land in D.D. 209, Kei Ling Ha San Wai, Sai Kung North, New Territories
- Site Area** : 65.03m<sup>2</sup>
- Land Status** : Government Land (GL)
- Plan** : Approved Shap Sz Heung Outline Zoning Plan (OZP) No. S/NE-SSH/11
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

**1. The Proposal**

- 1.1 The applicant, who is an indigenous villager of Kei Ling Ha San Wai<sup>1</sup> as confirmed by the respective Indigenous Inhabitant Representative, seeks planning permission to build a NTEH (Small House) on the application site (the Site) falling within an area zoned “GB” on the OZP (**Plans A-1 and A-2a**). According to the Notes of the OZP, ‘House within “GB” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed Small House are as follows:
- |                   |   |                      |
|-------------------|---|----------------------|
| Total Floor Area  | : | 195.09m <sup>2</sup> |
| Number of Storeys | : | 3                    |
| Building Height   | : | 8.23m                |
| Roofed Over Area  | : | 65.03m <sup>2</sup>  |
- 1.3 According to the applicant, the Site is accessible via a local track leading to Sai Sha Road and no parking space is proposed. The proposed layout of Small House and location of the septic tank are shown in **Drawing A-1**.
- 1.4 The Site is the subject of a previous application (No. A/NE-SSH/84) submitted by the same applicant of the current application for the same use which was approved by the Rural and New Town Planning Committee (the Committee) on

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<sup>1</sup> District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the applicant’s eligibility of Small House grant has been ascertained.

5.10.2012. Details of the previous application are set out in paragraph 6.1 below.

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

(a) Application Form with attachments received on 3.4.2023 (Appendix I)

(b) Supplementary Information (SI) received on 4.4.2023 and 11.4.2023 (Appendix Ia)

(c) Further Information (FI) received on 23.6.2023 # (Appendix Ib)

(d) FI received on 4.8.2023 # (Appendix Ic)

# accepted but not exempted from publication and recounting requirements

1.6 On 19.5.2023, the Committee agreed to defer consideration of the application for two months, upon request of the applicant, to allow time for preparation of FI to address departmental comments.

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the Application Form at **Appendix I**, as summarized below:

- (a) the applicant is an indigenous villager who wishes to build a Small House;
- (b) the Site falls entirely within the village ‘environs’ (‘VE’) of Kei Ling Ha San Wai and is only about 12m away from the “Village Type Development” (‘V’) zone of Kei Ling Ha San Wai;
- (c) the proposed development is considered compatible with the rural environment. There are no ditches or streamcourses within 30m from the Site and the proposed development will not cause any drainage impacts on surrounding areas; and
- (d) the Site is the subject of a previously approved application and the Small House grant application has been approved.

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

As the Site involves GL only, the “owner’s consent/notification” requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) are not applicable to this application.

#### **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. The latest set of Interim Criteria, which was revised on 7.9.2007, 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 at **Appendix III**.

#### **6. Previous Application**

6.1 The Site is the subject of a previous planning application (No. A/NE-SSH/84) for the same use submitted by the same applicant which was approved by the Committee on 5.10.2012 mainly on consideration that the proposed development was in line with the Interim Criteria in that more than 50% of the footprint of proposed Small House fell within the ‘VE’ of Kei Ling Ha San Wai and there was insufficient land within the “V” zone to meet the demand for Small House at the time of consideration. The planning permission lapsed on 5.10.2016. Compared with the previous application, the major planning parameters of the proposed Small House remain unchanged, except for minor adjustment in the location of Small House footprint.

6.2 Details of the previous application are summarized at **Appendix IV** and its location is shown on **Plans A-1 and A-2a**.

#### **7. Similar Applications**

7.1 There are seven similar applications involving six sites for Small House development within the same “GB” zone in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. All of them were approved.

7.2 Among the seven approved cases, six applications (No. A/NE-SSH/40, 45, 58, 81, 86 and 87) were approved by the Committee between December 2004 and February 2014 before the Board’s formal adoption of a more cautious approach<sup>2</sup> in considering Small House applications mainly on similar considerations for approval of the previous application as mentioned in paragraph 6.1 above. The remaining one (No. A/NE-SSH/125) was approved on 16.11.2018 mainly on sympathetic consideration for being the subject of a previously approved application and the Small House grant application was already at an advance stage.

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<sup>2</sup> Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting should be put on the number of outstanding Small House applications provided by LandsD.

7.3 Details of the similar applications are summarized at **Appendix V** and their locations are shown on **Plan A-2a**.

**8. The Site and Its Surrounding Areas (Plans A-1 to A-4)**

8.1 The Site is:

- (a) situated on a gentle slope partially hard-paved and partially covered with groundcovers;
- (b) located entirely within the ‘VE’ of Kei Ling Ha San Wai; and
- (c) accessible via a local track leading to Sai Sha Road.

8.2 The surrounding areas are predominantly rural in character comprising village houses and woodland. The nearest village house is about 15m to the northeast.

**9. Planning Intention**

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

**10. Comments from Relevant Government Departments**

10.1 The application has been assessed against the assessment criteria at **Appendix II**. The assessment is summarized in the following table:

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
1.	Within “V” zone?  - Footprint of the proposed Small House  - The Site	-  -	100%  100%	- The Site and footprint of the proposed Small House falls entirely within the “GB” zone.
2.	Within ‘VE’?  - Footprint of the proposed Small House  - The Site	100%  100%	-  -	- The Site and footprint of the proposed Small House fall entirely within the ‘VE’ of Kei Ling Ha San Wai.

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?	✓		<u>Land Required</u> - Land required to meet Small House demand in Kei Ling Ha San Wai: about 0.78ha (equivalent to 31 Small House sites). The number of outstanding Small House applications is 15 <sup>3</sup> while the 10-year Small House demand forecast is 16.  <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of concerned village: about 1ha (equivalent to about 40 Small House sites) ( <b>Plan A-2b</b> ).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		
4.	Compatible with the planning intention of “GB” zone?		✓	- There is a general presumption against development within the “GB” zone.  - Director of Agriculture, Fisheries and Conservation (DAFC) has no comment on the application from nature conservation perspective in that the Site is covered with common plant species.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character comprising village houses and woodlands.
6.	Within water gathering grounds?		✓	
7.	Sewerage impact?		✓	- Director of Environmental Protection (DEP) advises that in view of small scale of the proposed development, the application alone is unlikely to cause major pollution.

<sup>3</sup> Among the 15 outstanding Small House grant applications, 12 fall within “V” zone. The remaining 3 straddle or fall outside the “V” zone without valid planning permission, of which one is subject to the current application and one is subject to a planning application under processing.

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
8.	Encroachment onto planned road networks and public works boundaries?		✓	
9.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no objection to the application.
10.	Traffic impact?	✓		- Commissioner for Transport (C for T) advises that Small House 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 cumulative adverse traffic impact could be substantial. Notwithstanding the above, the application only involving development of one Small House could be tolerated on traffic grounds.
11.	Drainage impact?		✓	- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application. If the application is approved, an approval condition requiring the submission and implementation of drainage proposal is required.
12.	Landscape impact?		✓	- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning perspective.  - the Site is partially hard-paved

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				and partially covered with groundcovers. Significant adverse impact on existing landscape resources arising from the proposed use is not anticipated
13.	Geotechnical impact?	✓		<ul style="list-style-type: none"> <li>- Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) advises that the Site is overlooked by steep natural terrain and meets the alert criteria for a natural terrain hazard study (NTHS).</li> <li>- Should the application be approved, an approval condition requiring the submission of a NTHS and implementation of mitigation measures recommended therein is required.</li> </ul>
14.	Local objections conveyed by DO?		✓	<ul style="list-style-type: none"> <li>- District Officer (Tai Po), Home Affairs Department (DO(TP), HAD) has no comments on the application.</li> </ul>

10.2 Comments from the following government departments have been incorporated in paragraph 10.1 above. Other detailed comments are provided at **Appendix VI**.

- (a) DLO/TP, LandsD;
- (b) DAFC;
- (c) DEP;
- (d) D of FS;
- (e) C for T;
- (f) CE/MN, DSD;
- (g) H(GEO), CEDD;
- (h) CTP/UD&L, PlanD; and
- (i) DO(TP), HAD.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (c) Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD); and
- (d) Director of Electrical and Mechanical Services (DEMS).

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

On 25.4.2023, 4.7.2023 and 18.8.2023, the application and FIs were published for public inspection. During the statutory publication period, a total of four public comments were received (**Appendix VII**). One of them was submitted by an individual objecting the application mainly on the grounds that there is no general shortage of land within the “V” zone concerned to meet the Small House demand; and the access and septic tanks would encroach onto GL. The remaining three were submitted by Kadoorie Farm and Botanic Garden Corporation on the application and FIs dated 23.6.2023 and 4.8.2023 respectively, raising concern on large scale vegetation clearance and tree felling that may be associated with the application.

## **12. Planning Considerations and Assessment**

- 12.1 The application is for a proposed Small House development on the Site zoned “GB” on the OZP. 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 also a general presumption against development within this zone. Nevertheless, since the Site is covered with common plant species, DAFC has no comment on the application from nature conservation perspective.
- 12.2 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Kei Ling Ha San Wai. According to DLO/TP of LandsD’s record, the total number of outstanding Small House applications for Kei Ling Ha San Wai is 15 while the 10-year Small House demand forecast is 16. Based on the latest estimate by PlanD, about 1 ha of land (or equivalent to about 40 Small House sites) is available within the “V” zone of Kei Ling Ha San Wai (**Plan A-2b**). In this regard, there is sufficient land within the “V” zone to fully meet the future Small House demand (about 0.78ha or equivalent to about 31 Small House sites). It is considered more appropriate to concentrate the proposed Small House development within “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services. Notwithstanding the above, the Site is the subject of a previous application (No. A/NE-SSH/84) approved on 5.10.2012. DLO/TP of LandsD advises that the Small House grant application for the Site has been approved with the basic terms offer already accepted by the same applicant in February 2016. In this regard, the Small House grant application is already at an advance stage, and sympathetic consideration could be given to the current application.

- 12.3 The Site is partially hard-paved and covered with groundcovers. The proposed Small House is not incompatible with the surrounding areas which is predominantly rural in character comprising village houses and woodlands. CTP/UD&L of PlanD has no objection to the application as significant adverse impact on existing landscape resources arising from the proposed use is not anticipated. C for T considers that the application involving only one Small House could be tolerated. CE/MN of DSD recommends approval condition requiring the submission and implementation of drainage proposal. H(GEO) of CEDD advises that an approval condition on the submission of a NTHS and implementation of the mitigation measures recommended therein is required. Other government departments including DEP, D of FS, CHE/NTE of HyD and DO(TP) of HAD have no objection to or no adverse comment on the application. In view of the above, the application is generally in line with TPB-PG No. 10.
- 12.4 Since the Board's formal adoption of a more cautious approach in considering Small House applications in August 2015, one similar application (No. A/NE-SSH/125) was approved on sympathetic consideration for being the subject of a previous planning approval. The circumstances of the current application are largely the same as this similar application.
- 12.5 Regarding the public comments as detailed in paragraph 11 above, the comments of government departments and planning assessment above are relevant.

### **13. Planning Department's Views**

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11 above, 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 22.9.2027, 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; and
- (b) the submission of natural terrain hazard study and implementation of the mitigation measures identified therein to the satisfaction of the Head of the Geotechnical Engineering Office, Civil Engineering and Development Department or of the Town Planning Board.

#### Advisory Clauses

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

13.3 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 the "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; 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 there is no general shortage of land in meeting the demand for Small House development within the "Village Type Development" ("V") zone of Kei Ling Ha San Wai.

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

#### **15. Attachments**

<b>Appendix I</b>	Application Form received on 3.4.2023
<b>Appendix Ia</b>	SI received on 4.4.2023 and 11.4.2023
<b>Appendix Ib</b>	FI received on 23.6.2023
<b>Appendix Ic</b>	FI received on 4.8.2023
<b>Appendix II</b>	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
<b>Appendix III</b>	Extract of 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
<b>Appendix IV</b>	Previous Application
<b>Appendix V</b>	Similar Applications
<b>Appendix VI</b>	Detailed Comments from Relevant Government Departments
<b>Appendix VII</b>	Public Comments
<b>Appendix VIII</b>	Recommended Advisory Clauses

<b>Drawing A-1</b>	Proposed Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2a</b>	Site Plan
<b>Plan A-2b</b>	Estimated Amount of Land Available within “V” Zone of Kei Ling Ha San Wai for Small House Development
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photo

**PLANNING DEPARTMENT  
SEPTEMBER 2023**