

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

**APPLICATION NO. A/NE-SSH/158**

- Applicant** : Mr. HO Ching Kau represented by T.H. & Associates Limited
- Site** : Government Land (GL) in D.D. 209, Kei Ling Ha San Wai, Sai Kung North, New Territories
- Site Area** : About 65.03m<sup>2</sup>
- Land Status** : GL
- Plan** : Approved Shap Sz Heung Outline Zoning Plan (OZP) No. S/NE-SSH/11
- Zonings** : (i) “Village Type Development” (“V”) (about 66% of the Site)  
(ii) “Green Belt” (“GB”) (about 34% of the Site)
- 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) in Kei Ling Ha San Wai. The Site falls within an area zoned “V” (about 66%) and “GB” (about 34%) on the OZP (**Plans A-1** and **A-2a**). According to the Notes of the OZP, ‘House (NTEH only)’ is a Column 1 use always permitted within the “V” zone, while ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ is a Column 2 use within the “GB” zone requiring planning permission from the Town Planning Board (the Board). The Site is partly hard-paved and partly covered with self-seeded vegetation (**Plans A-3** and **A-4**).

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>  |

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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.

- 1.3 The layout of the proposed Small House (including the proposed septic tank) is shown in **Drawing A-1**. The Site is accessible via a local track leading to Sai Sha Road. No car parking space is proposed on site.
- 1.4 The Site is the subject of a previous application (No. A/NE-SSH/102) submitted by the same applicant as the current application for the same use, which was approved by the Rural and New Town Planning Committee (the Committee) of the Board on 10.6.2016. 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 24.5.2024 (**Appendix I**)
  - (b) Further Information (FI) received on 16.9.2024<sup>#</sup> (**Appendix Ia**)
- <sup>#</sup> *accepted but not exempted from publication and recounting requirements*
- 1.6 On 19.7.2024, the Committee agreed to defer making a decision on the application for two months in order to allow time for the applicant to prepare 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 the Application Form and FI at **Appendices I** and **Ia** as summarised below:

- (a) the applicant is an indigenous villager of Kei Ling Ha San Wai who wishes to apply for planning permission to build a Small House;
- (b) the Site falls entirely within the village ‘environs’ (‘VE’) of Kei Ling Ha San Wai and largely within “V” zone;
- (c) GL within the “V” zone of Kei Ling Ha San Wai is limited, and it is nearly impossible to identify a suitable site completely within “V” zone;
- (d) the proposed Small House is considered compatible with the rural environment. No tree felling is required, and there is no ditches or stream courses within 30m of the Site;
- (e) the Site is the subject of a previously approved application (A/NE-SSH/102). The applicant missed the deadline of applying for extending the validity of the planning permission. Also, a couple of similar applications for Small House development within “GB” zone were approved by the Board; and
- (f) a Geotechnical Assessment Report (GAR) for site formation works is submitted in support of the application.

**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. 31B) 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 promulgated on 7.9.2007, is at **Appendix II**.

**5. Town Planning Board Guidelines**

The Town Planning Board Guidelines No. 10 for Application for Development within “GB” Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) 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/102) submitted by the same applicant for the same use which was approved with conditions by the Committee on 10.6.2016, mainly on considerations 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 the Site is situated right between two existing village houses and within the village cluster which could be considered as an infill development. The planning permission lapsed on 11.6.2020<sup>2</sup>. Compared with the previous application, the major planning parameters of the proposed Small House remain unchanged.

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 14 similar applications falling partly within the same “V” and/or “GB” zones in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Out of 14, 12 applications were approved with

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<sup>2</sup> As advised by DLO/TP, LandsD, the Small House application by way of private treaty grant (PTG) for the Site was approved on 18.9.2017 subject to such terms and conditions as imposed by LandsD, i.e. the applicant is required to submit a GAR to the satisfaction of Geotechnical Engineering Office, Civil Engineering and Development Department (GEO, CEDD) before the execution of the PTG. Although the offer letter from LandsD was accepted by the applicant on 9.10.2017, according to the then Town Planning Board Guidelines No. 35C for Extension of Time for Commencement of Development, the approved development under previous planning application No. A/NE-SSH/102 has yet commenced.

conditions by the Committee between 2003 and 2023 on similar considerations as stated in paragraph 6.1.

- 7.2 Among the 12 approved cases, 10 applications (No. A/NE-SSH/29, 40, 45, 58, 73, 81, 83, 84, 86 and 87) were approved by the Committee between 2003 and 2014 before the Board's formal adoption of a more cautious approach<sup>3</sup> in considering Small House applications in August 2015. The remaining two (No. A/NE-SSH/125 and 148) were approved in 2018 and 2023 respectively, mainly on sympathetic consideration for being the subject of previously approved applications and the Small House grant applications were already at an advance stage.
- 7.3 Two applications (No. A/NE-SSH/116 and 123) which largely overlap the same application site were rejected by the Committee in 2018 mainly on consideration that the proposed developments do not comply with the Interim Criteria in that they would cause adverse landscape impact on the surrounding areas and there is no general shortage of land in meeting the demand for Small House development in the "V" zone of Kei Ling Ha San Wai.
- 7.4 Details of the similar applications are summarised 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 partly hard-paved and partly covered with self-seeded vegetation;
  - (b) located entirely within the 'VE' of Kei Ling Ha San Wai;
  - (c) sandwiched by two existing small houses; and
  - (d) accessible via a local track leading to Sai Sha Road.
- 8.2 The surrounding areas are rural in character mainly comprising village houses, parking of vehicles and fallow agricultural land. The clusters of village houses within the "V" zone of Kei Ling Ha San Wai are located to the immediate north and east of the Site.

## **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.

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<sup>3</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.

# 10. Comments from Relevant Government Departments

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

|    | <u>Criteria</u>  | <u>Yes</u>       | <u>No</u>      | <u>Remarks</u>  |
|----|--|------------------|----------------|---|
| 1. | Within “V” zone?<br><br>- Footprint of the proposed Small House<br><br>- The Site  | 66%<br><br>66%   | 34%<br><br>34% | - 34% of the Site and 34% of footprint of the proposed Small House fall within “GB” zone.   |
| 2. | Within ‘VE’?<br><br>- Footprint of the proposed Small House<br><br>- The Site  | 100%<br><br>100% | -<br><br>-     | - The Site and footprint of the proposed Small House fall entirely within the ‘VE’ of Kei Ling Ha San Wai.  |
| 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><br>- 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 while the 10-year Small House demand forecast is 16.<br><br><u>Land Available</u><br>- Land available to meet Small House demand within the “V” zone of concerned village: about 0.95ha (equivalent to about 37 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.<br><br>- Director of Agriculture, Fisheries and Conservation (DAFC) has no comment on the application from nature conservation perspective in that the Site is developed and   |

|     | <b><u>Criteria</u></b>  | <b><u>Yes</u></b> | <b><u>No</u></b> | <b><u>Remarks</u></b>   |
|-----|---|-------------------|------------------|---|
|     |   |                   |                  | surrounded by other developed area.   |
| 5.  | Compatible with surrounding area/ development?  | ✓                 |                  | - The surrounding areas are predominantly rural in character mainly comprising village houses, parking of vehicles and fallow agricultural land.  |
| 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.   |
| 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 in-principle 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 resulting cumulative adverse traffic impact could be substantial. Notwithstanding the above, the application only involving development of one Small House and could be tolerated on traffic grounds. |

|     | <u>Criteria</u>                  | <u>Yes</u> | <u>No</u> | <u>Remarks</u>   |
|-----|----------------------------------|------------|-----------|--|
| 11. | Drainage impact?                 |            | ✓         | - Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application.  |
| 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 as significant adverse impact on the landscape character and the existing landscape resources within the Site arising from the proposed development is not anticipated.   |
| 13. | Geotechnical impact?             | ✓          |           | <ul style="list-style-type: none"> <li>- Head of GEO, CEDD (H(GEO), CEDD) advises that the maximum gradient across the Site is greater than 15 degrees which meets the criteria of the GEO Advice Note for Planning Applications under Town Planning Ordinance (Cap. 131). The applicant is required to submit a Geotechnical Planning and Review Report (GPRR) in support of the planning application.</li> <li>- It is noted that the submitted GPRR is a revised GAR (<b>Appendix Ia</b>) which was previously submitted to DLO/TP, LandsD for the issue of Certificate of Exemption for the site formation works for the proposed house at the Site. His office has no geotechnical comment on the GPRR and the planning application.</li> </ul> |
| 14. | Local objections conveyed by DO? |            | ✓         | - District Officer (Tai Po), Home Affairs Department (DO(TP), HAD) has no adverse comment on the application.  |

10.2 Comments from the following government departments have been incorporated in paragraph 10.1 above. Other detailed comments and recommended advisory clauses are provided at **Appendices VI** and **VII** respectively.

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

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

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

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

On 31.5.2024 and 4.10.2024, the application and the FI were published for public inspection. During the statutory public inspection period, no public comments were received.

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

12.1 The application is for proposed Small House development on the Site partly zoned “V” (about 66%) and partly zoned “GB” (about 34%) 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 a general presumption against development within this zone. Nevertheless, since the Site is developed and surrounded by other developed area, DAFC has no comment on the application from nature conservation perspective.

12.2 Regarding the Interim Criteria (**Appendix II**), the footprint of the proposed Small House falls entirely within the ‘VE’ of Kei Ling Ha San Wai. According to DLO/TP, LandsD’s records, 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 0.95 ha of land (or equivalent to about 37 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/102) approved on 10.6.2016. DLO/TP, LandsD advises that the Small House grant application for the Site was approved on 18.9.2017 subject to such terms and conditions as imposed by LandsD, i.e. the applicant is required to submit a GAR to the satisfaction of GEO, CEDD before the execution of the Small House grant. In this connection, the applicant has submitted the GAR/GPRR under the current planning application and H(GEO), CEDD has no geotechnical comment on the GAR/GPRR and the planning application. As such, the processing of the Small House grant is already at an advance stage, and sympathetic consideration could be given to the current application.

- 12.3 The Site is partly hard-paved and covered with self-seeded vegetation. The proposed Small House is not incompatible with the surrounding areas which are predominantly rural in character comprising village houses, parking of vehicles and fallow agricultural land. CTP/UD&L, PlanD has no objection to the application as significant adverse impact on the landscape character and existing landscape resources within the Site arising from the proposed development is not anticipated. C for T considers that the application involving only one Small House could be tolerated. Other government departments including DEP, D of FS, CE/MN, DSD and CHE/NTE, HyD 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, two similar applications (No. A/NE-SSH/125 and 148) were approved on sympathetic consideration for being the subject of previous planning approvals. The circumstances of the current application are largely the same as these similar applications.

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

- 13.1 Based on the assessments made in paragraph 12 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 8.11.2028, 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 recommended advisory clauses are attached at **Appendix VII**.
- 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” 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” 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 24.5.2024   |
| <b>Appendix Ia</b>  | FI received on 16.9.2024   |
| <b>Appendix II</b>  | Relevant Revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories   |
| <b>Appendix III</b> | Relevant Extract of the Town Planning Board Guidelines No. 10 for Application for Development within “GB” Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) |
| <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> | Recommended Advisory Clauses   |
| <b>Drawing A-1</b>  | Layout Plan submitted by the Applicant   |
| <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 the “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 Photos  |