

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-CWBS/41

Applicant: Mr. LAU Chun Fai represented by Ted Chan & Associates Limited

Site: Lots 26 S.D and 27 S.B in D.D. 233, Leung Fai Tin, Sai Kung, New Territories

Site Area: 103m² (about)

Lease: Block Government Lease (demised for agricultural use)

Plan: Approved Clear Water Bay Peninsula South Outline Zoning Plan (OZP) No. S/SK-CWBS/2

Zonings: “Green Belt” (“GB”) (about 99%)
“Village Type Development” (“V”) (about 1%)

Application: Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, an indigenous villager of Ha Yeung, seeks planning permission to build a NTEH (Small House) at the application site (the Site) (**Plans A-1 and A-2a**). The Site falls predominantly within the “GB” zone (about 99%) with a very minor portion falling within the “V” zone (about 1%) on the approved Clear Water Bay Peninsula South OZP No. S/SK-CWBS/2. 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 “GB” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed Small House are as follows:

Built Over Area	:	59.78m ²
Gross Floor Area	:	179.34m ²
No. of Storeys	:	3
Building Height	:	8.23m

1.3 The location plan and layout plan of the proposed development (including septic tank and soakaway pit) submitted by the applicant are shown at **Drawings A-1 and A-2** respectively.

1.4 In support of the application, the applicant had submitted an Application Form with attachments (**Appendix I**) which was received by the Board on 10.12.2021.

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**. They can be summarised as follows:

- (a) the applicant is an indigenous villager of Ha Yeung, which is a recognised village. The Site is the only piece of land owned by the applicant and located entirely within the village ‘environs’ (‘VE’) of Ha Yeung;
- (b) the proposed development is compatible with the surrounding area;
- (c) the application is in line with the Chief Executive’s 2021 Policy Address in that the development potential of land within “GB” zones with lower ecological value and on steeper slopes could be further reviewed to meet the housing need;
- (d) the built-over area of the proposed Small House is smaller than the standard and ordinary area of 65.03m². There is no mature tree within the Site and the applicant is willing to provide landscaping within the Site;
- (e) the Site is accessible from Clear Water Bay Road and served by public transport. The proposed development does not include any car parking space and thus will not generate adverse traffic impact on the surrounding area;
- (f) the proposed development will include septic tank and soakaway pit for sewage disposal; and
- (g) the proposed development will not cause adverse environmental, traffic, drainage, sewerage and landscape impacts on the surrounding area.

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

The applicant is the sole “current land owner” of the land. 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. The latest set of the Interim Criteria promulgated 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 Green Belt Zone under Section 16 of the Town Planning Ordinance’

(**Appendix III**) is relevant to the application. The relevant assessment criteria are summarised as follows:

- (a) there is a general presumption against development in a “GB” zone;
- (b) an application 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 surrounding areas;
- (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 vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features. Tree preservation and landscaping proposals should be provided;
- (f) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area;
- (g) the proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution; and
- (h) any proposed development on a slope or hillside should not adversely affect slope stability.

6. Previous Application

There is no previous application at the Site.

7. Similar Application

There is a similar application (No. A/SK-CWBS/8) for Small House development straddling the same “V” and “GB” zones (**Plan A-1**) since the Interim Criteria was revised on 7.9.2007. The application was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 6.11.2009 mainly on the grounds that over 50% of the proposed Small House footprint was located within the “V” zone; there was a general shortage of land in meeting the demand for Small House

development in Ha Yeung; and the proposed development was not incompatible with the surrounding land uses and was in close proximity to the villager proper of Ha Yeung. Details of the similar application are at **Appendix IV**.

8. **The Site and its Surrounding Areas** (Plans A-1, A-2a, and photos on Plans A-3 and A-4)

8.1 The Site is:

- (a) located entirely within the ‘VE’ of Ha Yeung;
- (b) currently vacant and covered with grass and bushes;
- (c) located on a gentle slope; and
- (d) not connected directly to any footpath or road.

8.2 The surrounding areas have the following characteristics:

- (a) to its immediate north and east is a strip of vacant land within the “V” zone with a number of approved Small House grants (**Plan A-2b**). To its further north and northeast is the village proper of Ha Yeung within the “V” zone; and
- (b) to its immediate south, southwest and west is a natural vegetated upslope within the “GB” zone. To its further southwest across Clear Water Bay Road is a densely vegetated upslope within the “CA” zone.

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 as set out in **Appendix II**. The assessment of the application is summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone?			The entire footprint of the proposed Small House and about 99% of the Site fall within the “GB” zone.
	- Footprint of the proposed Small House	-	100%	
	- The Site	1%	99%	

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
2.	Within 'VE'? - Footprint of the proposed Small House - The Site	100% 100%	- -	The footprint of the proposed Small House and the Site fall entirely within the 'VE' of Ha Yeung. The District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD) has no objection to the application.
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 Ha Yeung: about 1.98ha (equivalent to 79 Small House sites). The number of outstanding Small House applications is 19 ¹ while the 10-year Small House demand forecast is 60.
	Sufficient land in "V" zone to meet outstanding Small House applications?	✓		<u>Land Available</u> Land available to meet Small House demand in Ha Yeung: about 3.1ha (equivalent to 124 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of "GB" zone?		✓	There is a general presumption against development within the "GB" zone. The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application as the Site is vacant and covered with common vegetation. Nevertheless, it is noted that there is no vehicular access serving the Site. The applicant should advise how construction materials would be transported to the Site.
5.	Compatible with surrounding area/development?	✓		The proposed Small House is not incompatible with the surrounding area which is rural in character with a mix of village houses and vacant land.
6.	Within Water Gathering Ground (WGG)?		✓	The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.
7.	Encroachment onto planned road networks and public works boundaries?		✓	

¹ All of the 19 outstanding Small House applications are within the "V" zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic Impact?	✓		The Commissioner for Transport (C for T) advises that the proposed 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, the proposed 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. Meanwhile, vehicles parked on government land in the vicinity are observed. Notwithstanding the above, the application only involves development of one Small House and can be tolerated on traffic grounds.
10.	Drainage Impact?	✓		The Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD) has no in-principle objection to the application and advises that an approval condition on the provision of stormwater drainage collection and disposal facilities is required should the application be approved.
11.	Sewerage Impact?		✓	The Director of Environmental Protection (DEP) considers that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Geotechnical Impact?	✓		The Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) advises that the Site is overlooked by steep natural hillside and meets the alert criteria for a natural terrain hazard study (NTHS). The GEO would normally tender in-principle objection to the proposed Small House development unless the applicant is prepared to undertake a NTHS. The maximum gradient across the Site from boundary to boundary is greater than 15 degrees. If the applicant wishes to proceed with the proposed development, the applicant is required to submit a Geotechnical Planning

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				Review Report (GPRR) in support of the application. The GPRR should, among other things, indicate the recommended extent of the NTHS study area and a commitment to undertake and assess the geotechnical feasibility of the proposed development.
13.	Landscaping Impact?	✓		The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has reservation on the application. The “GB” zone is primarily intended to promote the conservation of the natural environment with a general presumption against development. No information in terms of landscape treatment proposal is provided in the application.
14.	Local objection conveyed by DO?		✓	The District Officer (Sai Kung), Home Affairs Department (DO(SK), HAD) has no comment on the application.

10.2 Comments from the following government departments have been incorporated in the above paragraph. Detailed comments are at **Appendix V**.

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

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

- (a) Chief Building Surveyor/New Territories East (2) and Rail, Buildings Department;
- (b) Chief Engineer (Works), HAD;
- (c) Chief Highway Engineer/New Territories East, Highways Department; and
- (d) Project Manager (East), CEDD.

11. Public Comments Received During Statutory Publication Period

On 17.12.2021, the application was published for public inspection. During the statutory public inspection period, nine public comments were received (**Appendix VI**). Six comments received from the Chairman of Hang Hau Rural Committee, the Indigenous Inhabitant Representative (IIR) of Ha Yeung and individuals support the application on grounds that there is insufficient land available for Small House development in Ha Yeung and the proposed development will cause limited landscape impact. Three comments received from Kadoorie Farm & Botanic Garden Corporation and individuals object to the application for the following reasons:

- (a) the Site is predominantly within the “GB” zone and not close to the village cluster. The proposed development is not in line with the planning intention of the “GB” zone;
- (b) land is still available within the “V” zone for Small House development; and
- (c) the area has been subject to site formation and road construction works. Approval of the application will encourage such activities.

12. Planning Considerations and Assessments

12.1 The application is for a proposed Small House development at the Site falling predominantly within an area zoned “GB” (about 99%) with a very minor portion falling within the “V” zone (about 1%) on the OZP. The Site forms part of a wider “GB” zone adjoining the “CA” zone to its southwest across Clear Water Bay Road. 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 the “GB” zone. The proposed development is not in line with the planning intention of the “GB” zone. Whilst DAFC has no strong view on the application as the Site is vacant and covered with common vegetation, he notes that there is no vehicular access serving the Site and raises concern on how construction materials would be transported to the Site.

12.2 Regarding the Interim Criteria (**Appendix II**), according to DLO/SK, LandsD, the number of outstanding Small House applications for Ha Yeung is 19 while the 10-year Small House demand forecast is 60 as advised by the IIR of Ha Yeung as at 24.12.2016. Based on the latest estimate by the Planning Department, about 3.1ha of land (equivalent to 124 Small House sites) is available within the “V” zone of Ha Yeung. There is no shortage of land in meeting the demand for Small House development in the “V” zone of Ha Yeung. It is considered more appropriate to concentrate Small House developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

12.3 The Site is currently vacant and covered with grass and bushes. Although the proposed development is considered not incompatible with its surrounding area

which is rural in character with a mix of village houses and vacant land, CTP/UD&L, PlanD has reservation on the application from landscape planning perspective as no information on landscape treatment is provided in the application. Furthermore, H(GEO), CEDD advises that the Site is overlooked by steep natural hillside and meets the alert criteria for a NTHS. The GEO would normally tender in-principle objection to the proposed Small House development unless the applicant is prepared to undertake a NTHS. Besides, as the maximum gradient across the Site from boundary to boundary is greater than 15 degrees, the applicant is required to submit a GPRR in support of the application. In view of the above, the proposed development is considered not in line with TPB-PG No. 10 in that the applicant fails to demonstrate no adverse landscape and geotechnical impacts of the proposed development on the surrounding area.

- 12.4 C for T advises that although additional traffic generated by the proposed Small House development is not expected to be significant, the proposed Small House development outside “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 that, the application only involves the development of one Small House and can be tolerated on traffic grounds. Besides, CE/MS, DSD advises that an approval condition on the provision of stormwater drainage collection and disposal facilities is required should the application be approved. Other relevant government departments have no objection to or no adverse comment on the application on technical aspects.
- 12.5 There is a similar application (No. A/SK-CWBS/8) for Small House development in an area straddling the same “V” and “GB” zones since the Interim Criteria was revised on 7.9.2007. The similar application was approved with conditions by the Committee on 6.11.2009 mainly on grounds including that over 50% of the footprint of the proposed Small House fell within the “V” zone and there was a general shortage of land in meeting the demand for Small House development in Ha Yeung at that time. The circumstances of the current application are different as the entire footprint of the proposed Small House falls outside the “V” zone and land is still available within the “V” zone of Ha Yeung to meet the Small House demand according to the latest assessment.
- 12.6 The supporting comments on the application are noted. Regarding the objecting comments raising concerns on departure from the planning intention of the “GB” zone and sufficient land within the “V” zone for Small House development, the planning considerations and assessments in paragraphs 12.1 to 12.5 above are relevant.

13. Planning Department’s View

- 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 in the submission for a departure from the planning intention;

- (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 in the “Village Type Development” zone of Ha Yeung; and
- (c) the proposed development is not in line with the Town Planning Board Guidelines No. 10 for ‘Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance’ in that the applicant fails to demonstrate the proposed development would not cause adverse impacts on the existing natural landscape and slope stability of the area.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 28.1.2026, 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 conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) the submission of a drainage proposal and the provision of stormwater drainage collection and disposal facilities identified therein to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (b) the submission of a Geotechnical Planning Review Report and implementation of the necessary geotechnical remedial works identified therein to the satisfaction of the Director of Civil Engineering and Development or of the Town Planning Board.

Advisory Clauses

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

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 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 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.

15. Attachments

Appendix I	Application Form received on 10.12.2021
Appendix II	Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories
Appendix III	Town Planning Board Guidelines No. 10 for ‘Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance’
Appendix IV	Similar planning application for Small House
Appendix V	Comments from relevant government departments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses
Drawing A-1	Location Plan
Drawing A-2	Layout Plan
Plan A-1	Location Plan
Plans A-2a & A-2b	Site Plans
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JANUARY 2022**