

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

**APPLICATION NO. A/TM-SKW/111**

<b><u>Applicant</u></b>	:	Mr. Ching Hoi Wah represented by Gender Consultants Limited
<b><u>Application Site</u></b>	:	Lots 399 RP and 412 RP in D.D. 378, So Kwun Wat, Tuen Mun, New Territories
<b><u>Site Area</u></b>	:	About 125.4m <sup>2</sup>
<b><u>Lease</u></b>	:	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	:	Approved So Kwun Wat Outline Zoning Plan (OZP) No. S/TM-SKW/13
<b><u>Zoning</u></b>	:	“Green Belt” (“GB”)
<b><u>Application</u></b>	:	Proposed House (New Territories Exempted House (NTEH) - Small House)

**1. The Proposal**

1.1 The applicant, who claims to be an indigenous villager of So Kwun Wat Village<sup>1</sup>, seeks planning permission to build a NTEH (Small House) on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP for “GB” zone, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently used for farming with a temporary structure.

1.2 Details of the proposed Small House development 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 The applicant indicated that uncovered area of the Site will be for garden use. Layout of the proposed Small House development (with a septic tank) is shown

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<sup>1</sup> District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD) advises that the applicant’s eligibility of Small House grant has yet to be verified.

on **Drawing A-1**.

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

- (a) Application form with a layout plan received on 29.4.2021 **(Appendix I)**
- (b) Further information (FI) received on 21.7.2021 providing responses to comments of the Commissioner for Transport (C for T) and Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) **(Appendix Ia)**
- (c) FI received on 29.7.2021 providing responses to comments of the CTP/UD&L, PlanD **(Appendix Ib)**
- (d) FI received on 25.8.2021 providing responses to comments of the C for T **(Appendix Ic)**  
*[(b), (c) and (d) above exempted from publication and recounting requirements]*

1.5 On 25.6.2021, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer making a decision on the application for two months as requested by the applicant. With the FI received on 21.7.2021, 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 the application form at **Appendix I**. They are summarised as follows:

The applicant has owned this piece of land since 2018. He intends to live in the proposed Small House for the rest of his life as he cannot afford to rent a flat outside the village.

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

The applicant is the sole “current land owner” of the Site. 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 the New Territories (the Interim Criteria) was first promulgated on 24.11.2000. Relevant assessment criteria of the latest set of Interim Criteria promulgated on 7.9.2007 are 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) is relevant to the application. The relevant assessment criteria are summarised as follow:

- (a) there is a general presumption against development in a "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 grounds. The scale and integrity 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 site is in close proximity to existing village 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 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
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

## 6. **Background**

The Site is not subject to any planning enforcement action.

## 7. **Previous Application**

The Site together with a large piece of land to the east is the subject of a previous application (No. A/TM-SKW/62) for a Temporary Place of Recreation (War Game Playground) submitted by a different applicant (**Plan A-1**). The application was approved with conditions on a temporary basis for a period of three years by the Committee on 19.6.2009 mainly on the considerations that the applied use which was based on a natural setting without substantive structures was not incompatible with the natural and rural character of the surroundings, was generally in line with the Board's guideline for development within "GB" zone in that no significant adverse impact on

the natural landscape and visual quality was anticipated as all existing trees would be preserved, and had no significant adverse impact on the infrastructural provision. The planning permission was revoked on 19.5.2012 as the applicant failed to comply with the condition regarding the implementation of drainage proposal.

## 8. Similar Applications

- 8.1 There are ten similar applications (No. A/TM-SKW/38, 41, 51, 87, 88, 91, 92, 95, 96 and 97) for NTEH/Small House development within or straddling the same “GB” zone. Four of them were approved with conditions and the remaining six were rejected by the Committee or the Board. Details of the applications are summarized in **Appendix III** and locations of the sites are shown on **Plan A-1**.

### Approved Applications

- 8.2 Applications No. A/TM-SKW/38, 41 and 51 were approved with conditions by the Committee on 16.5.2003, 30.1.2004 and 29.9.2006 respectively since the first promulgation of the Interim Criteria on 24.11.2000, on consideration that the applications were generally in line with the Interim Criteria in that there was a general shortage of land in the “V” zone and the site fell entirely within the “VE”. Subsequently, the land available for Small House development in the “V” zone had increased resulting from a zoning amendment of a piece of land from “Open Space” to “V” in 2009 on the adjoining Tuen Mun OZP.
- 8.3 Application No. A/TM-SKW/95 was approved by the Committee with conditions on 30.9.2016 as sympathetic consideration was given in view that the site was located in close proximity to the existing village cluster with only less than 2m<sup>2</sup> of its footprint falling outside the “V” zone.

### Rejected Applications

- 8.4 Applications No. A/TM-SKW/87, 88, 91, 92, 96 and 97 were rejected by the Committee or the Board on review on 8.8.2014, 10.4.2015 and 14.7.2017 mainly on the grounds that the proposed developments were not in line with the planning intention of the “GB” zone, not in line with the TPB PG-No. 10, the applications did not meet the Interim Criteria as land was still available within the “V” zone of So Kwun Wat Village and would setting an undesirable precedent.

## 9. The Site and Its Surrounding Areas (Plans A-1 to A-3 and photos on Plans A-4a and A-4b)

- 9.1 The Site is:

- (a) currently used for farming with a temporary structure at the northern portion of the Site;
- (b) entirely located within the village environs (VE) of So Kwun Wat Village; and
- (c) accessible from the north via a village road off So Kwun Wat Tsuen Road.

9.2 The surrounding areas have the following characteristics:

- (a) to the immediate north and south are few residential structures; to the immediate west are abandoned container and open storage of materials;
- (b) to the further east and south are fallow agricultural land and unused land occupied by natural trees and shrubs; and
- (c) to the further north is mainly natural hillslope occupied by trees and shrubs with graves and burial urns.

## 10. 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.

## 11. Comments from Relevant Government Departments

11.1 The application has been assessed against the assessment criteria of the Interim Criteria set out in **Appendix II**. The assessment is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone ? - Footprint of the proposed NTEH/ Small House - Application site		100%  100%	The Site and the footprint of the proposed NTEH/Small House fall entirely within the “GB” zone.
2.	Within ‘VE’? - Footprint of the proposed NTEH/ Small House - Application site	100%  100%		The District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD) advises that the Site and the footprint of the proposed NTEH/Small House are entirely within ‘VE’ of So Kwun Wat Village.
3.	Sufficient land in “V” zone to meet outstanding Small House applications and 10-year Small House demand?	✓		<u>Land Required</u> - Land required to meet Small House demand in So Kwun Wat Village: about 7.325 ha (or equivalent to 293 Small House sites). The outstanding Small House applications are 136 while the 10-year Small House

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<p>demand forecast is 157.</p> <p><u>Land Available</u></p> <ul style="list-style-type: none"> <li>- Land available to meet Small House demand within the “V” zone of the village concerned: about 10.3 ha (or equivalent to 412 Small House sites) (<b>Plan A-2b</b>).</li> </ul>
4.	Compatible with the planning intention of “GB” zone?		✓	There is a general presumption against development within “GB” zone.
5.	Compatible with surrounding area/ development?	✓		<ul style="list-style-type: none"> <li>- The surrounding area is predominantly rural in character intermixed with residential structures, open storage of materials, fallow agricultural land and vacant/unused land.</li> <li>- The Director of Environmental Protection (DEP) notes that the Site partially falls within the consultation zone of the chlorination station. She has no objection from chlorine risk perspective.</li> </ul>
6.	Within Water Gathering Grounds?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	The Director of Fire Services (D of FS) has no specific comment on the application. The applicant is advised to observe “New Territories Exempted Houses – A Guide to Fire Safety Requirements”. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.
9.	Traffic impact?	✓		- C for T advises that the proposed

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
				<p>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.</p> <p>- Notwithstanding the above, the subject application only involves development of one Small House and he considers that this application can be tolerated on traffic grounds.</p>
10.	Drainage impact?		✓	The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint.
11.	Sewerage impact?		✓	DEP advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscape impact?		✓	<p>- CTP/UD&amp;L, PlanD has reservation on the application. He advises that the proposed use is not entirely incompatible with the surrounding landscape character predominated by woodland to the east and village homes to the west. Given that there is no similar application previously approved within the same “GB” zone in the vicinity, the approval of this application may attract similar applications in the “GB” zone and the cumulative effects of these developments would result in a general degradation of landscape quality of the area.</p>

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
				- Director of Agricultural, Fisheries and Conservation (DAFC) has no comment on the application from the nature conservation perspective as the Site is paved and located at the fringe of So Kwun Wat San Tsuen.
13.	Geotechnical impact?		✓	
14.	Local objection received from DO?		✓	

11.2 Comments from the following Government departments have been incorporated in the paragraph 11.1 above. Their other detailed comments, if any, are at **Appendix IV**.

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

11.3 Detailed comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD), Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD); and Antiquities and Monuments Office, Development Bureau (AMO, DEVB) are also at **Appendix IV**.

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

- (a) Director of Electrical and Mechanical Services;
- (b) Project Manager (West), Civil Engineering and Development Department;
- (c) Commissioner of Police; and
- (d) Chief Engineer/Construction, Water Supplies Department.

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

On 7.5.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received from Kadoorie Farm & Botanic Garden Corporation, World Wide Fund for Nature Hong Kong (WWF) and two individuals objecting to the application. They were concerned that the proposed use will cause traffic and environmental impacts,



the proposed use is not in line with the planning intention of “GB” zone, there is sufficient land in “V” zone for Small House development in So Kwun Wat Village, approval of this application will set an undesirable precedent for similar applications, and it is a ‘destroy first, develop later’ application (**Appendices V-1 to V-4**).

### **13. Planning Considerations and Assessments**

- 13.1 The application is for proposed Small House development at the site falling entirely within the “GB” zone on the approved So Kwun Wat OZP (**Plan A-1**). The planning intention of “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. Although DAFC has no comment on the application, the proposed Small House development is not in line with the planning intention of the “GB” zone and there is no strong justification in the submission for a departure from the planning intention.
- 13.2 The surrounding area comprises predominately residential structures, fallow agricultural land and unused land. The proposed use is not incompatible with the rural character of the area.
- 13.3 The proposed Small House development is not in line with the TPB Guidelines No. 10 for Application for Development within “GB” zone. There are no exceptional circumstances to justify the application. Also, CTP/UD&L, PlanD has reservation on the application from the landscape planning perspective as he considers that approval of the application may attract other similar applications within the “GB” zone and the cumulative effect of approving such applications would result in a general degradation of the landscape quality of the area.
- 13.4 Although the entire footprint and the Site of the proposed Small House fall within the “VE” of So Kwun Wat Tsuen (**Plan A-2a**), they fall entirely outside the “V” zone. The proposed development does not comply with the Interim Criteria (**Appendix II**) in that there is sufficient land within the “V” zone (about 10.3 ha or equivalent to 412 Small House sites) (**Plan A-2b**) to fully meet the Small House demand of 293 houses (i.e. 136 outstanding Small House applications plus the 10-year demand forecast of 157 Small Houses). As there is no general shortage of land in meeting the demand for Small House development in the concerned “V” zone, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 13.5 Other concerned departments, including DEP, CE/MN of DSD and D of FS, have no objection to or no adverse comment on the application. C for T considers the application only involves development of one Small House can be tolerated on traffic ground.
- 13.6 There are ten similar applications for the proposed Small House development within the concerned “V” zone of So Kwun Wat Village on the So Kwun Wat OZP. Three applications were approved mainly based on the consideration that there were insufficient land available in the “V” zone to meet the 10 years Small

Houses demand at that time, and one application (No. A/TM-SKW/95) was approved under sympathetic consideration in that the site was located in close proximity to the existing village cluster with only less than 2m<sup>2</sup> of its footprint falling outside “V” Zone. The remaining six applications were rejected mainly for the reasons that the proposed developments were not in line with the planning intention of the “GB” zone and the applications did not meet the Interim Criteria as land was still available within the “V” zone of So Kwun Wat Village. Rejection of the current application is in line with the previous decisions of the Committee/ Board on similar applications in the area.

- 13.7 There are four public comments objecting to the application on the grounds summarized in paragraph 12 above. The planning consideration and assessments in paragraphs 13.1 to 13.6 above are relevant.

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

- 14.1 Based on the assessments made in paragraph 13 and having taken into account the public comments mentioned in paragraph 12, 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 “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 no strong planning justification in the submission for a departure from the planning intention;
- (b) the proposed development is not in line with the TPB Guideline No. 10 for Application for Development within “Green Belt” zone in that there are no exceptional circumstances to justify the application; and
- (c) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories in that there is no general shortage of land in meeting the demand for Small House development in the “V” zone of So Kwun Wat Village.

- 14.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 10.9.2025, 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 condition of approval and advisory clauses are also suggested for Members’ reference:

##### Approval Condition

the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board.

##### Advisory Clauses

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

**15. Decision Sought**

- 15.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 15.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 15.3 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.

**16. Attachments**

<b>Appendix I</b>	Application form with attachments received on 29.4.2021
<b>Appendix Ia</b>	FI received on 21.7.2021
<b>Appendix Ib</b>	FI received on 29.7.2021
<b>Appendix Ic</b>	FI received on 25.8.2021
<b>Appendix II</b>	Extract of the Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories
<b>Appendix III</b>	Similar applications
<b>Appendix IV</b>	Detailed comments from relevant Government departments
<b>Appendices V-1 to V-4</b>	Public comments
<b>Appendix VI</b>	Recommended advisory clauses
<b>Drawing A-1</b>	Proposed 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 for Small House Development within “V” zone
<b>Plan A-3</b>	Aerial photo
<b>Plans A-4a and A-4b</b>	Site photos

**PLANNING DEPARTMENT  
SEPTEMBER 2021**