

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TP/673

Applicant : Mr. LO Kin Man

Site : Government Land in D.D. 26, Ha Tei Ha Village, Shuen Wan, Tai Po, New Territories

Site Area : 65.03m²

Land Status : Government Land

Plan : Approved Tai Po Outline Zoning Plan (OZP) No. S/TP/28

Zoning : “Green Belt” (“GB”)

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

1. The Proposal

1.1 The applicant, an indigenous villager of Ha Tei Ha Village of Tai Po Heung as confirmed by the respective Indigenous Inhabitant Representative, seeks planning permission to build an NTEH (Small House) on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH only)’ in the “GB” zone requires planning permission from the Town Planning Board (the Board). The Site is currently vacant.

1.2 Details of the proposed Small House development are as follows:

Total floor area	:	195.09m ²
No. of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²

1.3 Layout of the proposed Small House (including the septic tank) is shown on **Drawing A-1**.

1.4 The Site is the subject of a previous application (No. A/TP/618) submitted by the same applicant for the same use, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 17.2.2017. The planning permission lapsed on 18.2.2021. Compared with the previous application, development parameters of the proposed Small House are

generally the same under the current application except that the proposed Small House footprint is slightly shifted to the west as requested by the Lands Department (LandsD).

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) application form with attachments received on 17.3.2021 **(Appendix I)**
 - (b) further information (FI) received on 12.4.2021 to address departmental comments* **(Appendix Ia)**
 - (c) FI received on 6.8.2021 to address departmental comments* **(Appendix Ib)**
 - (d) FI received on 17.8.2021 to address departmental comments* **(Appendix Ic)**

** accepted and exempted from publication and recounting requirements*

- 1.6 On 14.5.2021, the Committee agreed to the applicant's request to defer making a decision on the application for two months to allow more time for the applicant to prepare FI in support of the application. The latest FI was received on 17.8.2021 and 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 stated in Part 8 of the application form and FI at **Appendices I, Ia to Ic** are summarized as follows:

- (a) the applicant obtained planning permission for a proposed Small House development at the Site on 17.2.2017 under Application No. A/TP/618, with validity up to 17.2.2021. However, the processing of Small House grant applications involving government land was subsequently suspended by LandsD due to High Court's judgement on the judicial review of Small House Policy. Processing of applications was re-activated early this year but the applicant was informed that his planning permission under Application No. A/TP/618 already lapsed in February 2021. Therefore, the applicant is required to submit a fresh planning application and he requests the Board to give sympathetic consideration to his application;
- (b) as the Site is only accessible via narrow footpaths, construction materials and machineries would be transported to the Site by using hand carts;
- (c) there is no direct vehicular access to the Site and no parking space will be provided within the Site;

- (d) there are public transport facilities nearby, including bus and mini-bus, which are within 5 to 12 minutes' walking distance; and
- (e) there are vacant land for car-parking at nearby village, which would not cause blockage of road access or adverse traffic impact to the surrounding area.

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

As the Site involves government land 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 Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) are not applicable to the 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 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 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 summarised below:

- (a) there is a general presumption against development in the “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 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 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 overstrain the overall provision of Government, institution and community facilities in the general area; and
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

6. Previous Application

- 6.1 The Site is the subject of a previous application (No. A/TP/618) submitted by the same applicant for the same use, which was approved with conditions by the Committee on 17.2.2017 mainly on the considerations of being in compliance with the Interim Criteria in that more than 50% of the proposed Small House footprint was within the village 'environs' ('VE'); the application site was vacant and flat without significant vegetation; the proposed development was unlikely to cause significant adverse impacts to the surroundings; and other village houses are found along the existing footpath in close proximity. Nonetheless, the planning permission lapsed on 18.2.2021. Compared with the previous application (No. A/TP/618), the development parameters are generally the same under the current application except that the proposed Small House footprint is slightly shifted to the west as requested by LandsD.
- 6.2 Details of the previous application are summarized at **Appendix III** and its location is shown on **Plans A-1 and A-2a**.

7. Similar Applications

- 7.1 There are nine similar applications for Small House development in the vicinity of the Site and within "GB" zones on Tai Po and Ting Kok OZPs since the first promulgation of the Interim Criteria on 24.11.2000, of which two were approved and seven were rejected.
- 7.2 For the two approved cases, Application No. A/TP/269 was approved with conditions by the Committee in 2001 mainly on consideration that the proposed two Small Houses were situated on an Old Schedule House Lot with development right under lease. The other application (No. A/TP/487) was approved with conditions by the Committee in 2011 mainly on consideration that the proposed development was in line with the Interim Criteria in that more than 50% of the Small House footprint located within the 'VE'; there was a general shortage of land to meet the demand for Small House development in the concerned "Village Type Development" ("V") zone at the time of consideration; and it was compatible with the surrounding rural environment and unlikely to have significant adverse impacts.
- 7.3 For the seven rejected cases, four of them (Applications No. A/NE-TK/383 to 386) were rejected by the Board on review on 4.1.2013 mainly for reasons of being not in line with the planning intention of the "GB" zone; not complying with the Interim Criteria in that the proposed development would cause adverse landscape, drainage and geotechnical impacts on the surrounding areas; not complying with the TPB PG-No.10 in that the proposed development

would affect the existing natural landscape and adversely affect drainage or aggravate flooding in the area; and setting of undesirable precedent. Subsequently, Application No. A/NE-TK/446 covering the same site of A/NE-TK/386 was rejected by the Committee on 6.9.2013 for similar rejection reasons. The remaining two applications (No. A/NE-TK/607 and A/TP/626) were rejected by the Committee in 2017 mainly for reasons of being not in line with the planning intention of “GB” zone; not complying with the Interim Criteria and the TPB-PG No. 10 in that the proposed development and the associated site formation works would involve tree felling and vegetation clearance causing adverse landscape impact on the surrounding areas; land being still available within the “V” zone of Ha Tei Ha Village for Small House development; and/or setting an undesirable precedent for vegetation clearance before approval of planning application within the marsh area.

- 7.4 Details of the above similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

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) vacant, generally flat and partly covered with grass;
- (b) entirely within the ‘VE’ of Ha Tei Ha Village;
- (c) only accessible by footpath; and
- (d) located to the immediate north of a Small House (approved under Application No. A/TP/487) and to the immediate west of a local footpath leading to Tung Tsz Road.

- 8.2 The surrounding areas are predominantly rural in character comprising village houses and tree groups. Dense woodland is found on the hillside to the immediate west. Some Small Houses are found about 25m to the south of the Site and the village cluster of Ha Tei Ha is situated about 120m to the further south. Areas to the east of the Site are zoned “GB” and “Conversation Area” (“CA”) under the approved Ting Kok OZP No. S/NE-TK/19. A temple (Shuen Wan Temples) is situated about 40m to the north.

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 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 Small House - Application site	- -	100% 100%	- The Site and the proposed Small House footprint fall entirely within the “GB” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	100% 100%	- -	- The Site and the proposed Small House footprint fall entirely within the ‘VE’ of Ha Tei Ha. - The District Lands Officer/Tai Po, Lands Department (DLO/TP, 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 Tei Ha: about 3.63 ha (or equivalent to 145 Small House sites). The outstanding Small House applications are 9 ¹ while the 10-year Small House demand forecast for the same village is 136. <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the village concerned: about 0.38 ha (or equivalent to 15 Small House sites) (Plan A-2b).
	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. - The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application from nature conservation point of view.
5.	Compatible with surrounding area/development?	✓		- The surrounding areas are predominantly rural in character mainly occupied with village houses and tree groups.
6.	Within Water Gathering Ground (WGG)?		✓	- The Director of Environmental Protection (DEP) and the Chief Engineer/Construction, Water

¹ All the nine outstanding Small House applications fall within the “V” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
7.	Sewerage impact?		✓	Supplies Department (CE/C, WSD) have no objection to the application.
8.	Encroachment onto planned road networks and public works boundaries?		✓	
9.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
10.	Traffic impact?	✓		- The Commissioner for Transport (C for T) considers the application only involves development of one Small House can be tolerated on traffic grounds.
11.	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. - Approval condition on the submission and implementation of drainage proposal is required.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning perspective as significant adverse impact on existing landscape resources arising from the proposed development is not anticipated.
13.	Geotechnical impact?		✓	
14.	Local objections conveyed by DO?		✓	- District Officer (Tai Po), Home Affairs Department (DO (TP), HAD) advises that the existing footpath in front of the Site may be affected by the construction works. The applicant should reinstate any excavation works after completion of the proposed development.

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

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

10.3 The following Government departments have no comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department; and
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.

11. Public Comment Received During Statutory Publication Period (Appendix VI)

The application was published for public inspection. During the statutory publication period, one public comment was received from an individual objecting to the application mainly on the grounds of land being still available within the “V” zone at Ha Tei Ha for Small House development; the use of septic tank; and being located outside the village cluster.

12. Planning Considerations and Assessments

12.1 The application is for a proposed Small House development at the Site zoned “GB” on the approved Tai Po OZP. The proposed development is not in line with the planning intention of “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. Nonetheless, DAFC has no strong view on the application from nature conservation point of view.

12.2 According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Ha Tei Ha Village is 9 while the 10-year Small House demand forecast for the same village is 136. Based on the latest estimate by the Planning Department, about 0.38 ha of land (equivalent to about 15 Small House sites) are available within the “V” zone concerned. As the proposed Small House footprint falls entirely within the ‘VE’ of the concerned village, DLO/TP, LandsD has no objection to the application.

- 12.3 The Site, located to the north of Ha Tei Ha Village, is currently vacant, generally flat and partly covered with grass. The proposed development is not incompatible with the surrounding areas which are predominantly rural in character with a mix of village houses and tree groups (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no objection to the application from landscape planning point of view as significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. C for T considers that the application only involves development of one Small House can be tolerated on traffic grounds. Other relevant Government departments including DEP, CE/MN of DSD, CE/C of WSD, CHE/NTE of HyD, H(GEO) of CEDD and D of FS have no objection to or adverse comment on the application. As the proposed development is not expected to have significant adverse environmental, traffic, geotechnical, landscape, drainage and sewerage impacts, the application is generally in line with the TPB-PG No. 10.
- 12.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the ‘VE’ of Ha Tei Ha. While land available within the “V” zone (**Plan A-2b**) is insufficient to fully meet the future Small House demand of 145 Small Houses, such available land (about 0.38 ha or equivalent to 15 Small House sites) is capable to meet the 9 outstanding Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development since August 2015. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. Nevertheless, the Site is the subject of a previous application (No. A/TP/618) for Small House development submitted by the same applicant, which was approved in February 2017. As the planning permission of the previously approved application (No. A/TP/618) already lapsed in February 2021, the applicant is required to submit a new planning application for the Board’s consideration. As advised by DLO/TP of LandsD, the Small House grant application for the Site has been approved awaiting issuance of offer letter. Should the current application be approved by the Committee, LandsD will re-activate the processing of the Small House grant application. In view of the above, sympathetic consideration might be given to the current application.
- 12.5 As shown on **Plans A-1 and A-2a**, there are nine similar applications for Small House development in the vicinity of the Site and within “GB” zones on Tai Po and Ting Kok OZPs. Two of them (Applications No. A/TP/269 and 487) were approved before the Board’s adoption of a more cautious approach in approving applications for Small House development in August 2015. For the seven rejected applications, five of them (Applications No. A/NE-TK/383 to 386 and 446) were rejected in 2013 mainly on the grounds of not complying with the Interim Criteria and TPB PG-No. 10 in that the proposed development would cause adverse landscape, drainage and geotechnical impacts on the surrounding areas, aggravate flooding in the area; and setting of undesirable precedent. The other two applications (No. A/NE-TK/607 and A/TP/626) were rejected in 2017 mainly for reasons of being not in compliance with the

Interim Criteria and the TPB-PG No. 10 in that the proposed development and the associated site formation works would involve tree felling and vegetation clearance affecting the existing natural landscape in the surrounding areas; land being still available within the “V” zone of Ha Tei Ha Village for Small House development; and/or setting an undesirable precedent for vegetation clearance before approval of planning application within the marsh area. The circumstances of the current application are not similar to the above approved or rejected applications.

- 12.6 Regarding the public comment objecting to the application on the grounds as detailed in paragraph 11 above, Government departments’ comments and the planning assessments and considerations above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11, 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 **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 conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) 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; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

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 this planning intention; and

- (b) land is still available within the “Village Type Development” (“V”) zone of Ha Tei Ha which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses, 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 and attachments received on 17.3.2021
Appendix Ia	FI received on 12.4.2021
Appendix Ib	FI received on 6.8.2021
Appendix Ic	FI received on 17.8.2021
Appendix II	Relevant revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
Appendix III	Previous application
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public comment
Appendix VII	Recommended advisory clauses
Drawing A-1	Location plan submitted by the applicant
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within “V” zone
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
SEPTEMBER 2021**