

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TP/680

Applicant : Mr. LO Cheuk Ting

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

Site Area : 63.0m²

Land Status : Government Land

Plan : Draft Tai Po Outline Zoning Plan (OZP) No. S/TP/29

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 a 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).
- 1.2 Details of the proposed Small House development are as follows:
- | | | |
|------------------|---|---------------------|
| Total floor area | : | 189.0m ² |
| No. of storeys | : | 3 |
| Building height | : | 8.23m |
| Roofed over area | : | 63.0m ² |
- 1.3 Layout of the proposed Small House (including the septic tank) is shown on **Drawing A-1**.
- 1.4 A minor portion of the Site is the subject of a previous application (No. A/TP/626) submitted by the same applicant for the same use, which was rejected by the Rural and New Town Planning Committee (the Committee) on 28.4.2017. Compared with the previous application, the proposed Small House footprint has been reduced in area and disposition of the proposed Small House has been shifted southward.

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) application form with attachments received on 25.11.2021 **(Appendix I)**
 - (b) supplementary information received on 1.12.2021 **(Appendix Ia)**
 - (c) further information (FI) received on 10.3.2022 **(Appendix Ib)** providing revised layout plan to address departmental comments
(accepted and exempted from publication and recounting requirements)
- 1.6 On 14.1.2022, 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 10.3.2022 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, supplementary information and FI are summarized as follows:

- (a) most of the land in Ha Tei Ha Village is zoned "Conservation Area" ("CA") or "GB". There is limited land available within the "Village Type Development" ("V") zone for Small House development, and some of the land are occupied by the deceased (先人屋);
- (b) the Site is situated among a group of village houses and planning approvals were given to a Small House development adjacent to the Site in 2017 and 2021;
- (c) the Site is a piece of flat land. The proposed Small House will improve the existing environment and meet the housing need;
- (d) the applicant proposes to transport construction materials by hand carts and light machinery along the existing footpath leading from Shuen Wan Temples to the Site; and
- (e) the applicant has revised the Small House footprint and layout to avoid encroachment onto the nearby slope and preserve the existing tree *Garcinia oblongifolia* (嶺南山竹子) in-situ. Besides, two native trees at the northern boundary (i.e. *Celtis sinensis* (朴樹) and *Schefflera heptaphylla* (鵝掌柴)) are proposed to be transplanted.

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. The latest set of 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 “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 areas. 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 A minor portion of the Site is the subject of a previous application (No. A/TP/626) submitted by the same applicant for the same use, which was rejected by the Committee on 28.4.2017 mainly for the 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 impact on the surrounding areas; not complying with the TPB-PG No. 10 in that the proposed development and associated site formation works would involve tree felling, clearance of vegetation and affect the existing natural landscape in the surrounding areas (in particular a mature *Aquilaria sinensis* (土沉香) located close to the Site); and land being still available within the “V” zone of Ha Tei Ha Village for Small House development.
- 6.2 Compared with the previous application, the proposed Small House footprint has been reduced from 65.03m² to 63.0m² (-2.03m² or -3.12%) and the Small House has been shifted southward to avoid encroachment to the slope nearby and an existing tree, *Garcinia oblongifolia* (嶺南山竹子).
- 6.3 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 10 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 four were approved and six were rejected.
- 7.2 For the four 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. Application No. A/TP/487 was approved with conditions by the Committee in 2011 mainly on the grounds of being in line with the Interim Criteria in that more than 50% of the Small House footprint located within the ‘VE’; a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration; and unlikely to have significant adverse impacts.
- 7.3 Notwithstanding the Board’s adoption of a more cautious approach in approving applications for Small House development since August 2015, Application No. A/TP/618 was approved by the Committee in 2017 as it generally complied with the Interim Criteria in that the Small House footprint was within the ‘VE’; the application site was vacant and flat without significant vegetation; unlikely to cause significant adverse impacts to the surroundings; and other village houses are found along the existing footpath in close proximity. Subsequently, the planning permission of Application No. A/TP/618 lapsed and the same applicant submitted a fresh application (No. A/TP/673), which was approved by the Committee in 2021 mainly on sympathetic consideration as the application site was covered by a previously approved application and there had been no major change in planning circumstances.

- 7.4 For the six 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 No. A/NE-TK/386 was rejected by the Committee on 6.9.2013 for similar rejection reasons.
- 7.5 The remaining application (No. A/NE-TK/607) was 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 setting an undesirable precedent for vegetation clearance before approval of planning application within the marsh area.
- 7.6 Details of the above similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-2a**.

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, partly covered with grass and generally flat. It is situated next to a vegetated slope;
 - (b) entirely within the ‘VE’ of Ha Tei Ha Village;
 - (c) only accessible by a footpath; and
 - (d) located to the immediate north of an approved application (No. A/TP/673) for a Small House development 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 30m to the south of the Site and the village cluster of Ha Tei Ha is situated about 130m to the further south. Areas to the east of the Site are zoned “GB” and “CA” on the approved Ting Kok OZP No. S/NE-TK/19. A temple (Shuen Wan Temples) is situated about 30m 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 3.65 ha (equivalent to 146 Small House sites). The outstanding Small House applications are 10 ¹ while the 10-year Small House demand forecast for the same village is 136.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		
				<u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the village concerned: about 0.25 ha (equivalent to 10 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

¹ All the 10 outstanding Small House applications fall within the “V” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				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 Supplies Department (CE/C, WSD) have no objection to the application.
7.	Sewerage impact?		✓	
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 involving development of one Small House can be tolerated on traffic grounds.
11.	Drainage impact?	✓		<ul style="list-style-type: none"> - 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 the applicant has revised the Small House footprint to preserve an existing tree in-situ and committed to transplant two native trees at the northern boundary.
13.	Geotechnical impact?		✓	

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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;
- (i) H(GEO), CEDD; and
- (j) DO(TP), HAD.

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

The application was published for public inspection. During the statutory public inspection period, two public comments were received from individuals 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; cause adverse landscape, environmental and traffic impacts on the surrounding area; the village houses are too crowded with each other; and increasing risk of fire hazard.

12. **Planning Considerations and Assessments**

- 12.1 The application is for a proposed Small House development at the Site zoned “GB” on 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 The Site, located to the north of Ha Tei Ha Village, is currently vacant and partly covered with grass. It is generally flat and situated next to a vegetated slope. The proposed development is not incompatible with the surrounding areas which are predominantly rural in character with a temple, village houses and trees (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no objection to the application from landscape planning perspective as the applicant has revised the

Small House footprint to preserve an existing tree in situ and committed to transplant two native trees at the northern boundary. C for T considers that the application only involving development of a Small House can be tolerated on traffic grounds. Other relevant government departments including DEP, CE/MN of DSD, CE/C of WSD, H(GEO) of CEDD and D of FS have no objection to or no 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 TPB PG-No. 10.

- 12.3 Regarding the Interim Criteria (**Appendix II**), according to DLO/TP of LandsD, the number of outstanding Small House applications for Ha Tei Ha is 10 while the 10-year Small House demand forecast for the village is 136. Based on PlanD's latest estimate, about 0.25 ha of land (equivalent to about 10 Small House sites) is available within the "V" zone concerned (**Plan A-2b**), which is just sufficient to meet the 10 outstanding Small House applications. DLO/TP of LandsD also advises that Small House application is not received for the Site. In this regard, if the proposed Small House under the current application is also taken into account, there would be a general shortage of land within the "V" zone of Ha Tei Ha in meeting the demand for Small House development of the same village (i.e. there will be a total of 11 Small House applications requiring processing by LandsD). Hence, sympathetic consideration could be given to the application.
- 12.4 As shown on **Plan A-2a**, there are 10 similar applications in close proximity to the Site. Out of the four approved cases, two of them (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. After that, Application No. A/TP/618 was approved in 2017 mainly for the reasons of complying with the Interim Criteria in that the Small House footprint was within the 'VE'; the application site being vacant and flat without significant vegetation; no significant adverse impacts to the surrounding area; and other village houses being found along the existing footpath in close proximity. Subsequently, Application No. A/TP/673 submitted by the same applicant of A/TP/618 was approved in 2021 mainly on sympathetic consideration of being covered by previous approval. For the six rejected applications, five of them (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 remaining application (No. A/NE-TK/607) was rejected in 2017 mainly for reasons of being not complied with the Interim Criteria and the TPB-PG No. 10 in that the proposed development and associated site formation works would involve tree felling and vegetation clearance; land being still available within the "V" zone of Ha Tei Ha for Small House development; and setting an undesirable precedent of vegetation clearance within the marsh area before approval of planning application. The circumstances of the current application are not similar to the above approved or rejected applications.

- 12.5 Regarding the public comments 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 comments 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 6.5.2026, 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 condition of approval and advisory clauses are also suggested for Members' reference:

Approval Condition

- 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 reason for rejection is suggested for Members' reference:
- 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.

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 condition 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 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 with attachments received on 25.11.2021
Appendix Ia	Supplementary information received on 1.12.2021
Appendix Ib	FI received on 10.3.2022
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 comments
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
MAY 2022**