

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

APPLICATION NO. A/TP/696

Applicant : 盧力恒先生

Site : Lot 14 S.A ss.1 in D.D.26, Ha Tei Ha Village, Shuen Wan, Tai Po

Site Area : About 227m²

Land Status : Block Government Lease (demised for agricultural use)

Plan : Approved Tai Po Outline Zoning Plan (OZP) No. S/TP/30

Zoning : “Green Belt” (“GB”)

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

1. The Proposal

1.1 The applicant, who claims himself as an indigenous villager of Ha Tei Ha¹, 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	:	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) are shown in **Drawing A-1**.

1.4 The Site is the subject of a previous application (No. A/TP/686) submitted by the same applicant for the same use as the current one, which was rejected by

¹ As advised by District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD), since no Small House application on the Site was received from the applicant, his Office does not have any information on the status of the applicant.

the Rural and New Town Planning Committee (the Committee) of the Board on 31.3.2023. Compared with the previous application, the development parameters and layout of the proposed Small House remain the same, except a minor change in its disposition. Details of previous application are set out in paragraph 6 below.

- 1.5 In support of the application, the applicant has submitted an Application Form with attachments received on 15.7.2024 (**Appendix I**).
- 1.6 *In light of ‘gale/storm signal No. 8’ announced by the Government on 5.9.2024, the Committee agreed on 8.9.2024 to defer considering of the application to 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** and can be summarised as follows:

- (a) there is limited land available within the “Village Type Development” (“V”) zone for Small House development, and the Site is the only suitable piece of land for such development which is not owned by any developers; and
- (b) the proposed Small House development will not cause adverse environmental, traffic, drainage and visual impacts to the surrounding areas.

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

The applicant is not a “current land owner” but has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by obtaining consent of the current land owner. 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 Interim Criteria promulgated on 7.9.2007 is 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 this application. Relevant extracts of the Guidelines are at **Appendix III**.

6. **Previous Application**

The Site is the subject of a previous application No. A/TP/686 submitted by the same applicant for the same use, which was rejected by the Committee on 31.3.2023 mainly on considerations that the proposed development was considered not in line with the planning intention of the “GB” zone; not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint falls outside the “V” zone and the village ‘environs’ (‘VE’) of any recognized villages; and not comply with TPB PG-No.10 in that it would affect the natural landscape and adversely affect drainage or aggravate flooding on the surrounding environment. Details of the previous application are summarised at **Appendix IV** and its boundary is shown on **Plan A-1**.

7. **Similar Applications**

- 7.1 There are 11 similar applications for Small House development in the vicinity of the Site and within or partly within the “GB” zones on the Tai Po and Ting Kok OZPs since the first promulgation of the Interim Criteria, of which four were approved and seven were rejected.
- 7.2 For the four approved cases, 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 was 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 formal 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 on the surroundings; and other village houses were 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 subject of a previous approved application and there had been no major change in planning circumstances. Application No. A/TP/680 was approved by the Committee in 2022 mainly on sympathetic consideration as there would be a general shortage of land within the “V” zone of Ha Tai Ha in meeting the demand for Small House development.
- 7.4 For the seven rejected cases (Applications No. A/NE-TK/383 to 386, 446 and 607, and A/TP/626), they were rejected by the Committee/the Board on review between 2013 and 2017 mainly on one or more of the following reasons: not in line with the planning intention of the “GB” zone; not comply with the Interim Criteria and the TPB PG-No.10 in that the proposed development would cause adverse landscape, drainage and geotechnical impacts on the surrounding areas; affect the existing natural landscape; adversely affect drainage or aggravate flooding in the area; setting of undesirable precedent and land was still available within the “V” zone of Ha Tei Ha Village for Small House development.

7.5 Details of the above similar applications are summarised at **Appendix V** and their locations are shown on **Plan A-2a**.

8. **The Site and Its Surrounding Areas** (Plans A-1 to A-4)

8.1 The Site is:

- (a) vacant and paved without existing trees/ vegetation;
- (b) located entirely outside the ‘VE’ of Ha Tei Ha Village; and
- (c) accessible via a local track leading to Tung Tsz Road.

8.2 The surrounding areas are predominantly of rural coastal plains landscape character and surrounded by existing mature woodlands to the south and west, grassland/ shrub land and clusters of trees to the north. Some temporary structures, village houses, vacant land and a temple (Shuen Wan Temples) are located to the south of the Site. Areas to the east of the Site are zoned “GB” and “Conservation Area” on the approved Ting Kok OZP No. S/NE-TK/19.

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 at **Appendix II**. The assessment is summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - 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 outside the ‘VE’ of Ha Tei Ha. - DLO/TP of LandsD advises that as the Site does not fall within ‘VE’ of a recognized village nor “V” zone encircling a recognized village, the Small House application would generally not be considered.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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 1.48 ha (equivalent to 59 Small House sites). The outstanding Small House applications are 4 ² while the 10-year Small House demand forecast for the same village is 55. <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the village concerned: about 0.12 ha (equivalent to 4 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. - 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 of rural coastal plains landscape character and surrounded by mature woodlands to the south and west, grassland/ shrub land and clusters of trees to the north. Some temporary structures, village houses, vacant land and a temple are located to the south of the Site.
6.	Within Water Gathering Ground (WGG)?		✓	- Director of Environmental Protection (DEP) advises that in view of small scale of the proposed development, the application alone is unlikely to cause major pollution. - Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.
7.	Sewerage impact?		✓	
8.	Encroachment onto planned road networks and public works boundaries?		✓	

² The four outstanding Small House applications fall within or largely within the “V” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
9.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application.
10.	Traffic impact?	✓		<ul style="list-style-type: none"> - Commissioner for Transport (C for T) considers that Small House development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside “V” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impacts could be substantial. - Notwithstanding the above, the application only involves development of a Small House can be tolerated on traffic grounds.
11.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has reservation on the application unless the applicant can provide the formation level of the proposed Small House and demonstrate that there is no flooding risk to the proposed Small House and the neighbouring premises/property to his satisfaction.
12.	Landscape impact?	✓		- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from the landscape planning perspective as it appears that vegetation had been cleared within the Site (Plans A-3 and A-4). There is concern that the proposed development will further encroach onto the “GB” zone where existing woodland, grassland/ shrub land serve as a buffer, and alter the landscape character.
13.	Geotechnical impact?		✓	
14.	Local objections		✓	

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	conveyed by DO?			

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

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

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) District Officer/Tai Po, Home Affairs Department (DO(TP), HAD);
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
- (d) Project Manager/North (PM/N), CEDD.

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

During the statutory public inspection period, one public comment was received from an individual expressing view that the current application has no difference to its previous application (i.e. No. A/TP/686) rejected by the Committee in March 2023.

12. Planning Considerations and Assessments

12.1 The application is for a proposed Small House development at the Site zoned “GB” on the 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. There is no strong planning justification in the submission for a departure from the planning intention.

12.2 The Site, located to the north of Ha Tei Ha Village, is currently vacant and paved without existing trees/vegetation. The proposed development is not incompatible with the surrounding areas which are predominantly of rural coastal plains landscape character surrounded by existing mature woodlands to the south and west, grassland/ shrub land and clusters of trees to the north. Some temporary structures, village houses, vacant land and a temple are located to the south of the Site (**Plans A-2a** and **A-3**). While DAFC has no strong view on the application from nature conservation point of view, CTP/UD&L of PlanD has some reservations on the application from the landscape planning perspective

as it appears that vegetation had been cleared within the Site (**Plans A-3 and A-4**). There is concern that the proposed development will further encroach onto the “GB” zone where existing woodland, grassland/ shrub land serve as a buffer, and alter the landscape character. CE/MN, DSD has reservation on the application unless the applicant can provide the formation level of the proposed Small House and demonstrate that there is no flooding risk to the proposed Small House and the neighbouring premises/property to his satisfaction. In view of the above, the proposed development does not comply with TPB PG-No. 10 in that the proposed development would affect the existing natural landscape and drainage in the surrounding areas.

- 12.3 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/C of WSD, H(GEO) of CEDD and D of FS have no objection to or no adverse comment on the application.
- 12.4 Regarding the Interim Criteria (**Appendix II**), development of Small House with more than 50% of the footprint outside both the ‘VE’ and “V” zone would normally not be approved unless under very special circumstances. DLO/TP of LandsD advises that as the Site does not fall within ‘VE’ of a recognized village or “V” zone encircling a recognized village, the Small House application would generally not be considered. The proposed Small House footprint falls entirely outside the ‘VE’ and “V” zone of Ha Tei Ha. According to DLO/TP of LandsD, the number of outstanding Small House applications for Ha Tei Ha is 4 while the 10-year Small House demand forecast for the village is 55. Based on PlanD’s latest estimate, about 0.12 ha of land (equivalent to about 4 Small House sites) is available within the “V” zone concerned (**Plan A-2b**), which is sufficient to meet the outstanding Small House applications.
- 12.5 The Site is the subject of the previous application (No. A/TP/686) submitted by the same applicant for the same proposed use. It was rejected by the Committee in 2023 mainly on considerations as set out in paragraph 6 above. The planning circumstances for rejecting the previous application are applicable to the current application.
- 12.6 As shown on **Plan A-2a**, there are 11 similar applications in close proximity to the Site, of which four were approved and seven were rejected mainly on the considerations as set out in paragraphs 7.2 to 7.4 above. Given that the proposed Small House footprint falls entirely outside the ‘VE’ of Ha Tei Ha, the circumstances of the above applications are not applicable to the current one.
- 12.7 Regarding the public comment expressing views on the application 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 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 a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from this 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 more than 50% of the proposed Small House footprint falls outside the “V” zone and the ‘VE’ of any recognized villages; and
- (c) the proposed development does not comply with TPB PG-No. 10 for Application for Development within “GB” zone under section 16 of the Town Planning Ordinance in that the proposed development would affect the natural landscape and adversely affect drainage or aggravate flooding on the surrounding environment.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until ~~6.9.2028~~ 20.9.2028, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The recommended advisory clauses are attached at **Appendix VIII**.

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 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 advisory clause, 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 with Attachments received on 15.7.2024
Appendix II	Relevant Revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Relevant Extracts of TPB PG-No. 10
Appendix IV	Previous Application
Appendix V	Similar Applications
Appendix VI	Detailed Comments from Relevant Government Departments
Appendix VII	Public Comment
Appendix VIII	Recommended Advisory Clauses
Drawing A-1	Layout 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 the “V” Zone
Plan A-3	Aerial Photos
Plan A-4	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2024**