

TPB Paper No. 10893

**For Consideration by
the Town Planning Board on 28.4.2023**

**REVIEW OF APPLICATION NO. A/I-TCTC/61
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House (NTEH) – Small House)
in “Green Belt” Zone**

Lot 2567 in D.D.3 TC, Ha Ling Pei Village, Tung Chung, Lantau Island

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1. Background

- 1.1 On 22.12.2021, the applicant, Mr. Leung Koon Hei, sought planning permission to build a house (New Territories Exempted House (NTEH) – Small House) on the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Green Belt” (“GB”) on the approved Tung Chung Town Centre Area Outline Zoning Plan (OZP) No. S/I-TCTC/24 (**Plan R-1**).
- 1.2 On 18.2.2022, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed development was not in line with the planning intention of the “GB” zone which was primarily for defining the limits of urban and sub-urban development areas by natural features and to preserve the existing topography and natural vegetation at the fringe of the new town as well as to provide passive recreational outlets. There was a general presumption against development within this zone. There was no strong planning justification in the submission for a departure from the planning intention;
 - (b) land was still available within the “Village Type Development” (“V”) zone of Sheung Ling Pei, Ha Ling Pei, Wong Ka Wai and Lung Tseng Tau which was primarily intended for Small House development. It was 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; and
 - (c) the proposed development did not comply with the Town Planning Board Guidelines No. 10 for Application for Development within “GB” zone under section 16 of the Ordinance and the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the proposed development would cause adverse landscape impact on the surrounding area.

1.3 For Members' reference, the following documents are attached:

- (a) RNTPC Paper No. A/I-TCTC/61 (Annex A)
- (b) Extract of minutes of the RNTPC meeting held on 18.2.2022 (Annex B)
- (c) Secretary of the Board's letter dated 4.3.2022 (Annex C)

2. Application for Review

- 2.1 On 24.3.2022, the applicant wrote to the Board to apply under section 17(1) of the Ordinance for a review of the RNTPC's decision to reject the application (**Annex D1**).
- 2.2 In support of the review application, the applicant, now represented by Glister Engineering Consultants Company, submitted written representation and further information (FI) on 15.8.2022 and 23.8.2022 (**Annex D2**), 31.1.2023 (**Annex D3**), 6.3.2023 (**Annex D4**) and 31.3.2023 and 3.4.2023 (**Annex D5**). To address the landscape concern, the applicant submitted a tree survey and treatment plan, and a planting plan which are at **Drawings R-2 and R-3**.
- 2.3 Upon request of the applicant, the Board agreed to defer making a decision on the review application on 17.6.2022 and 18.11.2022. The review application is scheduled for consideration by the Board at this meeting.

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in the applicant's written representation and FIs at **Annexes D2 to D5** and summarised as follows:

- (a) The applicant first applied to the Lands Department (LandsD) in 1993 for developing a Small House in Ha Ling Pei and at that time, the village was not covered by any statutory plan. With substantial efforts made by the applicant such as resolving affairs among villagers and interface issue with adjoining declared monument, the applicant received LandsD's offer letter of Small House at the Site on 26.1.2016.
- (b) The Site was first included into the draft Tung Chung Town Centre Area OZP No. S/I-TCTC/21 on 8.1.2016, which was 18 days earlier than the issuance date of LandsD's offer letter of Small House. The applicant is not a professional who had no knowledge of the OZP's publication and thus did not raise objection to the "GB" zoning at that time.
- (c) The applicant is getting old and has no ability to find another piece of land in the village for building a Small House. As the Small House application has been dragging on for about 27 years, the applicant hoped that the Board can give sympathetic consideration to approve the application taking into account the uniqueness of the case as well as time, efforts and money spent by the applicant.

- (d) The Certificates of Exemption (CoEs) for site formation works, building works and drainage works of the proposed Small House development were issued by LandsD on 1.4.2020.
- (e) The Site is within village ‘environs’ (‘VE’) and hence Small House is compatible with the surrounding environment.
- (f) There is no *Aquilaria sienis* (土沉香), as well as Registered Old and Valuable Tree (OVT) including the potentially registrable OVT, stonewall tree, Trees of Particular Interest, Trees of Particular Value or endangered tree species identified at the Site according to the submitted tree survey. Four trees of common species in poor tree form and health condition are found at the Site (**Drawing R-2**) and felling of these trees will not induce adverse landscape impact. The applicant will plant four new trees and provide screen greening of climbers facing Tung Chung Fort to minimise the landscape and visual impacts on the surrounding environment (**Drawing R-3**). During the construction period, he promised that suitable mitigation measures will be imposed to avoid affecting the *Aquilaria sienis* nearby outside the Site (**Drawing R-1**).
- (g) The Site has a 15m-buffer distance from Tung Chung Fort. Construction of the Small House will have no piling or vibration work while no construction works including drilling or mechanical fixing will be carried out adjacent to Tung Chung Fort. Therefore, the proposed Small House will have no impact on Tung Chung Fort. The applicant will also adopt appropriate precautionary, protection, monitoring and mitigation measures.
- (h) There are precedent cases for Small House development in “GB” zone in Luk Keng, North District. With greening and natural conservation measures, the applications for Small House development within ‘VE’ were approved by the Board.

4. **The Section 16 Application**

The Site and Its Surrounding Areas (Plans R-1 to R-4b)

- 4.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraph 8 of **Annex A**. The latest situation is as follows.
- 4.2 The Site:
 - (a) is located at the northern edge of a large “GB” zone to the immediate south of a “V” zone covering a village cluster of four recognised villages of Tung Chung Heung namely Ha Ling Pei, Sheung Ling Pei, Wong Ka Wai and Lung Tseng Tau with many village houses built therein;
 - (b) is situated on a vegetated slope with four trees (**Plans R-4a and R-4b**);

- (c) falls entirely within the common ‘VE’ of Ha Ling Pei, Sheung Ling Pei, Wong Ka Wai and Lung Tseng Tau (**Plans R-2a and R-2b**);
- (d) has no vehicular access. There are footpaths leading to Tung Chung Road at the two existing village houses about 10m to the immediate north of the Site; and
- (e) was approved by way of private treaty grant (PTG) on 24.9.2015 for Small House development. The New Grant was executed by LandsD and registered in the Land Registry (LR) on 30.9.2016. CoEs were issued by LandsD on 1.4.2020 for site formation works, building works and drainage works provided that no works shall commence until planning permission is obtained.

4.3 The surrounding areas have the following characteristics:

- (a) to its north and northwest are village houses of Ha Ling Pei, and Tung Chung Road is at the further north of the village houses;
- (b) to its immediate east, south and west are slopes covered with young trees and dense vegetation; and
- (c) Tung Chung Fort which is a declared monument is located about 15m to the northeast.

Planning Intention

4.4 There has been no change of planning intention of the concerned “GB” zone as mentioned in paragraph 9 of **Annex A**, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to preserve the existing topography and natural vegetation at the fringe of the new town a to provide passive recreational outlets. There is a general presumption against development within this zone.

Assessment Criteria

4.5 The latest set of the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) promulgated on 7.9.2007 is at Appendix II of **Annex A**.

Town Planning Board Guidelines

4.6 Town Planning Board Guidelines No. 10 for Application for Development within “GB” zone under section 16 of the Ordinance (TPB PG-No. 10), which is relevant to the consideration of the s.16 application, is still effective. The relevant assessment criteria of the Guidelines are summarised in paragraph 5 of **Annex A**.

Previous Application

- 4.7 There is no previous application at the Site.

Similar Applications

- 4.8 When the s.16 application was considered by RNTPC on 18.2.2022, there were three similar applications for Small House development (Applications No. A/I-TCTC/55, A/I-TCTC/57 and A/I-TCTC/58) partly falling with the same “GB” zone (83%, 75% and 99% respectively) and partly falling with the nearby “V” zone (17%, 25% and 1% respectively). Appeal of the first application was dismissed by the Appeal Board Panel (Town Planning) (TPAB) on 26.2.2019 while the latter two applications were rejected by RNTPC on 25.8.2017 and 27.10.2017 respectively mainly on the grounds that the proposed Small House development was not in line with the planning intention of the “GB” zone; land was still available within the “V” zone for Small House development; and approval of the application would set an undesirable precedent for similar applications within the “GB” zone.
- 4.9 Details of the applications are summarised in Appendix IV of **Annex A** and the locations are shown on **Plan R-1**. No other similar application in the same “GB” zone was considered by the Board after rejection of the s.16 application.

5. Comments from Relevant Government Bureau/Departments

- 5.1 Comments on the s.16 application made by relevant government bureau/departments are stated in paragraph 10 and Appendix V of **Annex A**.
- 5.2 For the review application, the relevant government bureau/departments have been further consulted and their comments are summarised as follows:

Land Administration

- 5.2.1 Comments of the District Lands Office/Islands, LandsD (DLO/Is, LandsD):
- (a) he has no objection to the review application;
 - (b) his office received the first application from the applicant to build a Small House on government land in Ha Ling Pei on 20.9.1993 but was rejected on 17.11.1993 as the applicant failed to identify the site he would like to apply. On 2.9.1997, his office received the second application from the applicant to build a Small House on a private lot in another location of Ha Ling Pei which was also rejected on 19.3.1999 because the lot was not solely owned by the applicant;
 - (c) on 29.4.1999, the applicant changed his application site to the Site which was originally a piece of government land. The application was approved on 24.9.2015 and an offer letter was issued to the

applicant on 26.1.2016 by his office. As stated in the offer letter, not until the relevant legal documents to give effect to the approval are executed and registered in the LR, the offer letter is not binding upon Government in any way. The Site was then granted to the applicant by way of PTG and the Conditions of Grant (i.e. New Grant No. 22377) was executed on 21.9.2016 and registered in the LR on 30.9.2016;

- (d) his office issued CoEs for construction of a Small House at the Site on 1.4.2020. As per the conditions in the CoEs, no building works, site formation works and drainage works shall commence until planning permission for village type development at the Site has been obtained;
- (e) his office is of the view that the Board could consider the review application by taking into account the fact that (a) the Site has been granted to the applicant for Small House development under the Small House policy; (b) his office has already issued the CoEs to the applicant as the applicant has fulfilled all the requirements for issuance of CoEs; and (c) the applicant could proceed to build his Small House upon receipt of planning permission;
- (f) the total number of outstanding Small House applications and 10-year forecast of Small House demand in the common 'VE' boundary of Ha Ling Pei, Sheung Ling Pei, Wong Ka Wai and Lung Tseng Tau is 79 and 141 respectively. A breakdown of the updated figures is as follows:

	Outstanding Application	10-year Forecast	Total Small House Demand
Sheung Ling Pei	39	80	119
Ha Ling Pei	15	6	21
Wong Ka Wai	25	33	80
Lung Tseng Tau		22	
Total	79	141	220

- (g) other advisory comments are at **Annex F**; and
- (h) he maintains his other previous views on the s.16 application which are recapitulated below:
 - (i) the Indigenous Inhabitant Representative of Ha Ling Pei has certified that the applicant is an indigenous villager of Ha Ling Pei of Tung Chung Heung; and
 - (ii) the Site and the proposed Small House footprint fall entirely within the common 'VE' of Ha Ling Pei, Sheung Ling Pei, Wong Ka Wai and Lung Tseng Tau.

Landscape and Urban Design

5.2.2 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

Landscape

- (a) according to the aerial photos of 2022, the Site is located in an area of settled valleys landscape character predominately by Small Houses, woodland and grassland. As there are existing Small Houses and Tung Chung Fort in the vicinity, the proposed Small House is considered not entirely incompatible with the surrounding landscape character. According to the tree information submitted by the applicant, (i) the applicant confirmed and clarified that no *Aquilaria sinensis* (土沉香) within the Site is observed; (ii) four existing trees of common species within the Site are proposed to be felled; and (iii) four new trees are proposed to be planted and screen planting with climbers are proposed facing Tung Chung Fort to mitigate the landscape impact. Therefore, she has no further comment to the application from landscape planning perspective;
- (b) other advisory comments are at **Annex F**; and

Urban Design and Visual

- (c) she maintains his previous views on the s.16 application from urban design and visual aspects which are recapitulated below:

as the application only involves a single Small House and the Site is at the fringe of an existing village cluster, it would unlikely induce significant adverse effects on the overall visual character in the area.

Drainage

5.2.3 Comments of the Chief Engineer/Hong Kong and Islands, Drainage Services Department (CE/HK&I, DSD):

- (a) he has no in-principle objection to the application; and
- (b) since his comments from drainage and sewerage viewpoints have been conveyed by LandsD to the applicant in CoEs' application, control could be imposed before Certificate of Compliance is granted by LandsD. In this regard, he has no objection to not imposing an approval condition on submission of a drainage proposal and provision of storm water drainage connection and disposal facilities and not including those advisory comments provided at the s.16 planning application stage which are in essence the same as those conveyed to LandsD so as to avoid duplicated effort in handling the same case among government departments.

Heritage Conservation

5.2.4 Comments of the Chief Heritage Executive (Antiquities & Monuments), Antiquities and Monuments Office, Development Bureau (CHE(AM), AMO):

- (a) as the applicant will adopt appropriate precautionary, protection, monitoring and mitigation measures to protect the Declared Monument – Tung Chung Fort as stated in the FI (**Annex D5**), she has no comment on the review application from heritage conservation perspective; and
- (b) other advisory comments are at **Annex F**.

5.3 The following government departments maintain their previous comments on the s.16 application as stated in paragraph 10.1 of **Annex A**:

- (a) Commissioner for Transport (C for T);
- (b) Chief Building Surveyor/New Territories East (1) & Lantau, Buildings Department;
- (c) Director of Environmental Protection (DEP);
- (d) Chief Engineer/Construction, Water Supplies Department;
- (e) Director of Agriculture, Fisheries and Conservation (DAFC);
- (f) Director of Fire Services; and
- (g) Director of Electrical and Mechanical Services.

5.4 The following government departments maintain their previous views of having no objection to/no comment on the review application:

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) District Officer (Islands), Home Affairs Department;
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
- (d) Head of Sustainable Lantau Office, CEDD.

6. Public Comments on the Review Application Received During Statutory Publication Periods (Annex E)

6.1 On 8.4.2022, 2.9.2022 and 10.2.2023, the review application were published for public inspection. During the statutory public inspection periods, a total of six public comments were received including three comments from Kadoorie Farm and Botanic Garden Corporation and three comments from two individuals objecting to the review application mainly on the grounds of being not in line with the planning intention of the “GB” zone, slope safety concern due to the construction of the proposed Small House, negative impact on Tung Chung Fort and no justification for the proposed Small House.

6.2 Four public comments objecting to the application were received at the s.16 application stage, which are set out in paragraph 11 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The subject application was rejected by RNTPC on 18.2.2022 mainly on the grounds that the proposed Small House was not in line with the planning intention of the “GB” zone, land was still available within the “V” zone of the village and the proposed development did not comply with TPB PG-No. 10 and the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding area. To support the review application, the applicant submitted written representation and FIs (**Annexes D2 to D5**) including a tree treatment and planting proposal to address the concerns on landscape impact. The applicant also emphasised in his submission at the s.17 review stage that he has been applying for a Small House in Ha Lei Pei since 1993, and LandsD’s offer letter of the Small House at the Site was received on 26.1.2016 which was 18 days after the gazettal of the first OZP covering the Site on 8.1.2016.

Planning Intention of the “GB” Zone

- 7.2 The proposed Small House development is not in line with the planning intention of the “GB” zone. According to TPB PG-No. 10, new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. 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.

Land Availability within the “V” Zone

- 7.3 Regarding the Interim Criteria, the Site and the footprint of the proposed Small House fall entirely within the ‘VE’. According to LandsD’s updated information, the total number of outstanding Small House applications is 79 while the 10-year forecast Small House demand of Ha Ling Pei, Sheung Ling Pei, Wong Ka Wai and Lung Tseng Tau is 141. Based on PlanD’s estimate, about 3.4 ha of land (or equivalent to about 136 Small House sites) is available within the “V” zone. While the amount of available land within the “V” zone is insufficient to fully meet all future Small House demand, it is sufficient to meet the outstanding Small House applications. Given the formal adoption of a more cautious approach by the Board in considering applications for Small House development since August 2015, 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. As such, it is considered more appropriate to concentrate the Small House developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.

Landscape Aspect

- 7.4 The Site is located at the northern edge of a large “GB” zone to the immediate south of a “V” zone of four recognised villages with many village houses built therein. CTP/UD&L, PlanD has reservation at the s.16 application stage as the proposed Small House appeared in conflict with the existing trees including some whip to young trees *Aquilaria sinensis* (土沉香) within/adjoining the site

boundaries. Without information of site formation works, pedestrian access, existing trees and the proposed treatments of the proposed development, the potential adverse impact on the existing landscape resources could not be reasonably ascertained. To address such concern, the applicant has submitted a tree survey and treatment plan and a planting plan at the s.17 review stage, which reveals that no *Aquilaria sinensis*, Registered OVT, potentially registrable OVT, stonewall tree, Trees of Particular Interest, Trees of Particular Value or endangered tree species are within the Site (**Drawing R-2**). While four trees of common species are proposed to be felled, the applicant proposes to plant four new trees and provides screen planting of climbers facing Tung Chung Fort within the Site (**Drawing R-3**) to minimise the landscape and visual impact on the surrounding environment. Having considered the above supplementary information submitted by the applicant at the s.17 review stage, CTP/UD&L, PlanD advises that as there are existing Small Houses and Tung Chung Fort in the vicinity, the proposed Small House is considered not entirely incompatible with the surrounding landscape character. Therefore, she has no adverse comment on the current review application from landscape planning perspective.

Other Technical Aspects

- 7.5 Other relevant government departments have no objection to or no adverse comment on the review application. In particular, CTP/UD&L, PlanD, DAFC, H(GEO), CEDD, DEP, C for T, CE/HK&I, DSD and CHE(AM), AMO have no objection to or no adverse comment on the application from urban design, nature conservation, geotechnical, environmental impact, traffic impact, drainage and heritage conservation points of view.

Small House Grant

- 7.6 Based on the supplementary information regarding the Small House grant at the Site provided by the applicant at the s.17 review stage, DLO/Is, LandsD further advises that the Site, which was originally a piece of government land, was granted to the applicant by way of PTG for Small House development which the application was approved by LandsD on 24.9.2015 (i.e. before the gazettal of the first OZP covering the Site on 8.1.2016). LandsD's offer letter for Small House development at the Site was issued to the applicant on 26.1.2016, which was subsequently executed on 21.9.2016 and registered in the LR on 30.9.2016. The Site is now a New Grant lot demised for non-industrial use. DLO/Is, LandsD is of the view that the Board could consider the review application by taking into account the fact that the Site has been granted to the applicant for Small House development under Small House Policy; CoEs have already been issued as the applicant has fulfilled all the requirements for issuance of CoEs; and the applicant could proceed to build the Small House upon receipt of planning permission. As revealed from the above, implementation of the approved Small House development is already at an advance stage.
- 7.7 Noting the supplementary information submitted by the applicant at the s.17 review stage, the updated comments provided by relevant government bureau/departments and the special circumstances of the subject case, sympathetic consideration may be given to the current review application.

Similar Applications

- 7.8 There were three similar planning applications for Small House in the same “GB” zone which were either dismissed by TPAB on 26.2.2019 or rejected by RNTPC on 25.8.2017 and 27.10.2017. However, owing to the special circumstances of the current review application, approval of the application would not set an undesirable precedent for other similar applications. Each application would be considered by the Board based on its own circumstances.

Public Comments

- 7.9 Regarding the public comments objecting to the review application as detailed in paragraph 6.1 above, the government bureau/departments’ comments and planning assessments above are relevant.

8. Planning Department’s Views

- 8.1 Based on the assessments made in paragraph 7 above and having taken into account the public comments mentioned in paragraph 6 above, PlanD has no objection to the review application.
- 8.2 Should the Board decide to approve the application, it is suggested that the permission shall be valid until 28.4.2027, 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 suggested for Members’ reference are at **Annex F**.
- 8.3 Alternatively, should be the Board decide to reject the review 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 preserve the existing topography and natural vegetation at the fringe of the new town 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; and
 - (b) land is still available within the “Village Type Development” (“V”) zone of Sheung Ling Pei, Ha Ling Pei, Wong Ka Wai and Lung Tseng Tau 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.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to approve the review 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.
- 9.3 Alternatively, should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

10. Attachments

Annex A	RNTPC Paper No. A/I-TCTC/61
Annex B	Extract minutes of RNTPC meeting held on 18.2.2022
Annex C	Secretary of the Board's letter dated 4.3.2022
Annex D1	Letter received on 24.3.2022 applying for a review of the RNTPC's decision
Annex D2	FI received on 15.8.2022 and 23.8.2022
Annex D3	FI received on 31.1.2023
Annex D4	FI received on 6.3.2023
Annex D5	FI received on 31.3.2023 and 3.4.2023
Annex E	Public comments
Annex F	Recommended advisory clauses
Drawing R-1	Site location plan
Drawing R-2	Tree survey and treatment plan
Drawing R-3	Planting plan
Plan R-1	Location plan
Plan R-2a	Site plan
Plan R-2b	Estimated amount of land available for small house development within the "V" zone
Plan R-3	Aerial photo
Plans R-4a and R-4b	Site photos

**PLANNING DEPARTMENT
APRIL 2023**