

TPB Paper No. 10767

**For Consideration by
the Town Planning Board on 3.9.2021**

REVIEW OF APPLICATION NO. A/NE-KLH/591
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Two Houses (New Territories Exempted Houses)
in “Green Belt” Zone**

**Lot 784 (Part) in in D.D. 9
Kau Lung Hang, Tai Po, New Territories**

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1. Background

- 1.1 On 21.9.2020, the applicant, Mr. CHAN Chit-shun (Manager of Chan Chung Tong Tso) sought planning permission to build two houses (New Territories Exempted Houses (NTEHs)) at 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 Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11 (**Plan R-1**).
- 1.2 On 30.4.2021, 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 contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone. There was no strong justification given in the submission for a departure from the planning intention of the “GB” zone; and
 - (b) the proposed development did not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the site located within water gathering grounds would not be able to be connected to the existing or planned public sewerage system in the area. The applicant failed to demonstrate that the proposed development would not cause adverse water quality impact on the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-KLH/591 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 30.4.2021 (Annex B)
 - (c) Secretary of Town Planning Board’s letter dated 14.5.2021 (Annex C)

2. Application for Review

On 3.6.2021, the applicant applied, under section 17(1) of the Ordinance, for review of the RNTPC’s decision to reject the application (**Annex D**). The applicant has not submitted any written representation in support of the review application.

3. **The Section 16 Application**

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

- 3.1 The situation of the Site and the surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraphs 8.1 and 8.2 of **Annex A**. There has been no material change of the situation since then.
- 3.2 The Site is:
- (a) currently vacant with no vegetation;
 - (b) accessible by vehicles via an informal village track;
 - (c) within upper indirect Water Gathering Grounds (WGG) and less than 30m from a streamcourse to the south; and
 - (d) located outside any ‘village environs’ (‘VE’).
- 3.3 The surrounding areas are predominantly rural in character occupied by active/fallow agricultural land, plant nursery, open storage of construction materials and unused vehicles, and temporary structures.

Planning Intention

- 3.4 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.

Assessment Criteria

- 3.5 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 23.8.2002, criterion (i) which requires that the application site, if located within WGG, should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at Appendix II of **Annex A**.

Town Planning Board Guidelines

- 3.6 The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “Green Belt” zone under section 16 of the Town Planning Ordinance’, 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

- 3.7 There is no previous application at the Site.

Similar Applications

- 3.8 When the s.16 application was considered by the RNTPC on 30.4.2021, there were 14 similar applications within the same “GB” zone and in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan R-1**). There has been no change in the number of similar applications since then. All of these similar applications were for Small House developments by indigenous villagers. Among them, seven (No. A/NE-KLH/246, 247, 254, 258, 261, 263 and 264) were approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Two other applications (No. A/NE-KLH/395 and 460) were approved in 2010 and 2014 respectively. The remaining five applications (No. A/NE-KLH/394, 524, 528, 550 and 575) were rejected between 2010 and 2019.
- 3.9 All approved applications were approved between 2000 and 2014 before the adoption of a more cautious approach by the Board in approving applications for Small House development in recent years, i.e. 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 Lands Department (LandsD). These applications were generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; the proposed development was able to be connected to the planned sewerage system; and/or having previous planning permission granted.
- 3.10 The remaining five applications (No. A/NE-KLH/394, 524, 528¹, 550 and 575) were rejected by the Committee/the Board between 2010 and 2019 mainly for a reason of being not in compliance with the Interim Criteria in that the proposed development was not able to be connected to the planned sewerage system in the area. The last four applications, rejected between 2017 and 2019, were also rejected for land being still available within the concerned “V” zone for Small House development at the time of consideration.
- 3.11 Details of the similar applications are summarised in **Annex E** and their locations are shown on **Plan R-1**.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 10 of **Annex A**.
- 4.2 For the review application, the relevant Government departments have been further consulted and their views are summarised as follows:

¹ Application No. A/NE-KLH/528 is the subject of an appeal lodged by the applicant in 2018, which was dismissed by the Town Planning Appeal Board on 20.5.2019.

Land Administration

4.2.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) has reservation on the application as no concrete documentary or survey records support there has been a conversion of the subject site from agricultural use to house use. The Government Rent Roll record showing a collection of rent for 0.02 acre of “House” and 2.3 acre of “Agriculture Land”, as claimed by the applicant in application and FI as an evidence of “House” use on the Site serves only as one of the factors to be considered. In processing each application, other information such as aerial photos, land registry and other historical records will be considered to ascertain whether there was any structure on the Site. On this basis, there is currently insufficient evidence to demonstrate a building/house entitlement of the Site at this stage;
- (b) the Site is not covered by Modification of Tenancy or Building License; and
- (c) an application for redevelopment of houses at the Site has been submitted by the applicant on 6.7.2020 to LandsD and is currently suspended in view of the rejection of the s.16 application. There is no guarantee at this stage that the application would be approved or any right of way would be given.

Environment

4.2.2 Comments of the Director of Environmental Protection (DEP):

- (a) does not support the application; and
- (b) the Site is within WGG. There is no existing or planned public sewer in the immediate vicinity of the Site and no justification has been provided by the applicant for the review application to demonstrate the proposed development would not cause adverse water quality impact to the area.

4.3 The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application in paragraph 10 of **Annex A**, which are recapitulated as follows:

Nature Conservation

4.3.1 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- the Site falls within a “GB” zone. Although the Site is currently not covered with major vegetation, it is located adjacent to an area largely covered with natural vegetation. He has reservation on the application from nature conservation point of view.

Urban Design and Landscape

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

- (a) has reservation on the application from the landscape planning perspective;
- (b) the Site is situated in an area of settled valleys landscape character comprising clusters of trees and vegetated areas. Although the Site and its surroundings are mostly hard paved, no similar development in close proximity to the Site has previously been approved by the Board within the same “GB” zone. Should the application be approved, it would encourage more similar developments within the area, and the cumulative impact of approving such applications would further degrade the landscape quality of the subject “GB” zone; and
- (c) since there is no major public frontage along the site boundary, and there is limited space within the site for meaningful landscaping, should the Board approve this application, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

Water Supply

4.3.3 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) objects to the application;
- (b) the Site is located within upper indirect WGG and is about 30m from the nearest stream; and
- (c) there is no existing or planned public sewer in the immediate vicinity of the Site. The applicant proposes the use of septic tank/soakaway system as sewage disposal method, which could not meet the Interim Criteria Item (i) in that the Site located within WGG would not be able to be connected to the existing or planned public sewerage system in the area and the applicant cannot demonstrate that the water quality within WGG will not be affected by the proposed development.

Traffic

4.3.4 Comments of the Commissioner for Transport (C for T):

- (a) in general, he has reservation on the application. Such type of development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the “V” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial; and

- (b) notwithstanding the above, the application only involves development of two NTEHs and he considers that this application can be tolerated on traffic grounds.

Drainage

4.3.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, an approval condition on submission and implementation of drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact to the adjacent area;
- (c) there is no existing DSD maintained public drain available for connection in the area. The applicant should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from the surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The applicant should neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (d) public sewers are not available near the Site; and
- (e) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant lot owners should be sought.

Fire Safety

4.3.6 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application; and
- (b) the applicant is reminded to observe “NTEHs - a Guide to Fire Safety Requirements” published by LandsD. Detailed fire safety requirement will be formulated upon receipt of formal application referred by LandsD.

- 4.4 The following Government departments maintain their previous views of having no comment/no objection to the review application:
- (a) Director of Electrical and Mechanical Services (DEMS);
 - (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
 - (c) Project Manager (North), Civil Engineering and Development Department (PM/N, CEDD);
 - (d) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
 - (e) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD); and
 - (f) District Officer/Tai Po, Home Affairs Department (DO/TP, HAD).

5. **Public Comments Received During Statutory Publication Period (Annex F)**

- 5.1 On 11.6.2021, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment was received from an individual raising objection to the application mainly on the grounds that various Government departments including DAFC, DEP and CE/C of WSD had reservation on or objection to the application, there is insufficient evidence to demonstrate a building/house entitlement of the Site, and the proposed development would cause adverse water quality impact to the area and does not comply with the Town Planning Board Guidelines No. 10.
- 5.2 Four public comments raising objection to the application were received at the s.16 application stage which are set out in paragraph 11 of **Annex A**.

6. **Planning Considerations and Assessments**

- 6.1 The subject s.16 application for two proposed NTEHs (not Small House) was rejected by the RNTPC on 30.4.2021 mainly on the grounds that the proposed development was not in line with the planning intention of the “GB” zone and did not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the Site located within WGG would not be able to be connected to the existing or planned public sewerage system in the area. The applicant has not submitted any written representation in support of the review application. Since the consideration of the s.16 application, there is no major change in the planning circumstances. The planning considerations and assessments as set out in paragraph 12 of **Annex A** remain valid.
- 6.2 The Site falls entirely within the “GB” zone. 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. DAFC has reservation on the application from nature conservation point of view as the Site is located adjacent to an area largely covered with natural vegetation. There is no strong justification in the applicant’s submission for a departure from the planning intention.

- 6.3 The Site is an old schedule agricultural lot under Block Government lease. DLO/TP, LandsD advises that there is currently no concrete documentary or survey records support there has been a conversion of the Site from agricultural use to house use. The Government Rent Roll record as claimed by the applicant in his submission as an evidence of “House” use serves only as one of the factors to be considered. Other information such as aerial photos, land registry and other historical records will be considered to ascertain whether there was any structure on the Site. As there is insufficient evidence to demonstrate a building/house entitlement of the Site, DLO/TP has reservation on the application.
- 6.4 The Site falls within the upper indirect WGG and is less than 30m away from the nearest streamcourse. There is no existing or planned public sewer in the immediate vicinity of the Site, and the effluent generated from the proposed development will have the potential to cause water pollution to the WGG. The applicant proposes to adopt septic tank and soakaway systems to treat waste water generated on-site. Both DEP and CE/C of WSD object to the application. The application does not comply with the Interim Criteria in that the Site located within WGG would not be able to be connected to the existing or planned public sewerage system in the area, and the applicant fails to demonstrate that the proposed development would not cause adverse water quality impact in the area. The application also does not comply with the TPB Guidelines No. 10 for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ in that the proposed development does not meet the development controls and restrictions of areas designated as WGG.
- 6.5 The Site is currently vacant and is accessible by an informal village track. The surrounding areas are predominantly rural in character with active/fallow agricultural land, plant nursery and temporary structures (**Plans R-3 and R-4**). CTP/UD&L of PlanD has reservation on the application from the landscape planning perspective. Should the application be approved, it would encourage more similar developments within the area, and the cumulative impact of such approval would further degrade the landscape quality of the subject “GB” zone.
- 6.6 C for T in general has reservation on the application but considers that the application involving development of only two NTEHs can be tolerated. CE/MN of DSD advises that should the application be approved, a condition requiring the submission and implementation of drainage proposal should be imposed. Other relevant Government departments consulted, including H(GEO) and PM/N of CEDD, D of FS, CHE/NTE of HyD, DO/TP of HAD and DEMS have no adverse comments on the application.
- 6.7 There are 14 similar applications for NTEH development within the same “GB” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan R-1**). Nonetheless, they were all for Small House development under different planning circumstances from the current application for NTEH (non-Small House) development.
- 6.8 Regarding the public comment objecting to the review application as mentioned in paragraph 5 above, Government departments’ comments and the planning assessments above are relevant.

7. **Planning Department's Views**

- 7.1 Based on the assessments made in paragraph 6, having taken into account the public comment mentioned in paragraph 5 and given that there is no change in the planning circumstances since the consideration of the subject application by the RNTPC, PlanD maintains its previous view of not supporting the review 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 justification given in the submission for a departure from the planning intention of the “GB” zone; and
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the Site located within WGG would not be able to be connected to the existing or planned public sewerage system in the area. The applicant fails to demonstrate that the proposed development would not cause adverse water quality impact in the area.
- 7.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until 3.9.2025, 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 submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or of the Town Planning Board.

Advisory Clauses

- 7.3 The recommended advisory clauses are attached at **Annex G**.

8. **Decision Sought**

- 8.1 The Board is invited to consider the application for review of the RNTPC's decision and decide whether to accede to the application.

- 8.2 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.
- 8.3 Alternatively, should the Board decide to approve the review 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.

9. **Attachments**

Plan R-1	Location plan
Plan R-2	Site plan
Plan R-3	Aerial photo
Plan R-4	Site photos
Annex A	RNTPC Paper No. A/NE-KLH/591
Annex B	Extract of minutes of the RNTPC meeting held on 30.4.2021
Annex C	Secretary of the Town Planning Board's letter dated 14.5.2021
Annex D	Letter received by the Town Planning Board on 3.6.2021 from the applicant applying for a review of the RNTPC's decision
Annex E	Similar applications
Annex F	Public comment
Annex G	Recommended advisory clauses

**PLANNING DEPARTMENT
SEPTEMBER 2021**