

TOWN PLANNING BOARD

TPB Paper No. 10975

**For Consideration by
the Town Planning Board on 12.7.2024**

**REVIEW OF APPLICATION NO. A/NE-TK/792
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

Government Land near Lot 840 in D.D. 28, Lung Mei, Tai Po

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1. Background

- 1.1 On 19.1.2024, the applicant, Mr. CHAN Wai Ho represented Mr. HUI Kwan Yee, sought planning permission to build a proposed NTEH (Small House) at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within “Green Belt” (“GB”) zone on the approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19 (**Plan R-1**).
- 1.2 On 15.3.2024, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
- (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 planning justification in the submission for a departure from this planning intention; and
 - (b) land was still available within the “Village Type Development” (“V”) zone of Lung Mei and Tai Mei Tuk 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.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-TK/792 (Annex A)
 - (b) Extract of minutes of the RNTPC Meeting held on 15.3.2024 (Annex B)
 - (c) Secretary of the Board’s letter dated 5.4.2024 (Annex C)

2. Application for Review

- 2.1 On 24.4.2024, the applicant’s representative applied under section 17(1) of the Ordinance for a review of RNTPC’s decision to reject the application (**Annex D**).

3. Justifications from the Applicant

3.1 The justifications put forth by the applicant in support of the review application are detailed at **Annex D** as summarized below:

- (a) the Site is the only piece of land owned by the applicant for Small House development;
- (b) other land available within the “V” zone of Lung Mei and Tai Mei Tuk are not owned by the applicant and are mostly occupied by trees and steep slopes which are not suitable for Small House development;
- (c) there are similar applications approved by the Board in the vicinity of the Site. Small Houses have been built on the adjacent lots. Approving the subject application will not set an undesirable precedent for similar applications in the area; and
- (d) majority of the relevant government departments have no objection to the subject application.

4. The Section 16 Application

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

4.1 The situation of the Site and the surrounding areas at the time of consideration of the s.16 application by the RNTPC are set out in paragraphs 9.1 and 9.2 of **Annex A**. There has been no material change in the situation of the Site and the surrounding areas since then.

4.2 The Site is:

- (a) currently vacant and paved (**Plan R-4**);
- (b) entirely within the village ‘environs’ (‘VE’) of Lung Mei and Tai Mei Tuk (**Plan R-1**); and
- (c) accessible via a local track and Tai Po Lung Mei Road connecting to Ting Kok Road (**Plan R-1**).

4.3 The surrounding areas are predominantly rural in character comprising village houses, burial grounds and vacant land (**Plans R-3 and R-4**). The village proper of Lung Mei and Tai Mei Tuk is about 10m to the west (**Plan R-2a**). To its north is dense woodland within the “GB” zone (**Plan R-3**).

Planning Intention

4.4 There has been no change in the planning intention of the subject “GB” zone as mentioned in paragraph 10 of **Annex A**, 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.

Assessment Criteria

- 4.5 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. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II** of **Annex A**.

Town Planning Board Guidelines

- 4.6 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 at **Appendix III** 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 the RNTPC on 15.3.2024, there were 29 similar applications involving 18 sites for Small House development in the vicinity of the Site, including 20 falling wholly within “GB” zone and nine straddling “GB” and “V” zones, since the first promulgation of the Interim Criteria in 2000. 20 of them were approved and the remaining nine were rejected. At the same meeting on 15.3.2024, another similar application (No. A/NE-TK/793) was considered by the RNTPC and was rejected. Since then, the number of similar applications has remained unchanged.
- 4.9 Among the 20 approved applications, 17 (No. A/NE-TK/211, 213, 226, 243, 275-278, 327-328, 344, 375, 392-393, 425, 473 and 476) were approved with conditions by the RNTPC between 2006 and 2013 before the Board’s formal adoption of a more cautious approach in considering applications for Small House development since August 2015. They were approved mainly on considerations of being in line with the Interim Criteria in that more than 50% of the proposed Small House footprint fell within the ‘VE’ and there was a general shortage of land to meet the demand for Small House development within the “V” zone at the time of consideration; complying with TPG PG-No. 10; no significant adverse impacts on the surrounding areas; and/or being the subject of previously approved application(s). Three applications (No. A/NE-TK/580, 618 and 664) were approved between 2016 and 2019 after the Board’s formal adoption of a more cautious approach. The site of Application No. A/NE-TK/580 was situated in between two village houses and about 83% of it falls within the “V” zone (**Plan R-2a**). This application was approved mainly on sympathetic consideration of being the subject of a previously approved application submitted by the same applicant; being an infill development; complying with TPB-PG No. 10; and that the processing of the concerned Small House grant was at an advance stage. The sites of Applications No. A/NE-TK/618 and 664 situated entirely outside the “V” zone (**Plan R-2a**) and were approved mainly on sympathetic consideration that they were the subject of previously approved applications submitted by the same applicant, and the

processing of the relevant Small House grants was considered to be at an advance stage.

- 4.10 For Applications No. A/NE-TK/258, 263, 273-274, 279, 559¹, 570-571², 660 and 793, they were rejected by the RNTPC or the Board on review between 2009 and 2024 mainly for reasons of not being in line with the planning intention of the “GB” zone and TPB PG-No. 10; and/or setting of undesirable precedent for similar applications within the “GB” zone. The latter five applications (No. A/NE-TK/559, 570-571, 660 and 793) were also rejected on the grounds that land was still available within the “V” zone at the time of consideration; and/or the proposed development would cause adverse landscape impacts on the surrounding areas (for Applications No. A/NE-TK/559 and 660).
- 4.11 Details of the similar applications are summarized at **Annex E** and their locations are shown on **Plan R-2a**.
- 4.12 There is another review application for a proposed house (NTEH – Small House) (No. A/NE-TK/793) within the same “GB” zone in the vicinity of the Site, which will be considered by the Board at this meeting.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant government departments are set out in paragraph 11 and **Appendix V** of **Annex A**. Their advisory comments are at **Appendix VII** of **Annex A** and recapped at **Annex F**.
- 5.2 For the review application, relevant government departments have been further consulted and they maintained their previous comments on the application. Updated comments from the District Lands Officer/Tai Po of Lands Department (DLO/TP, LandsD) on the review application are as follows:

Land Administration

5.2.1 Comments of DLO/TP, LandsD:

- (a) there is no valid Small House grant application covering the Site; and
- (b) previous comments are still valid except that the total number of outstanding Small House applications for Lung Mei and Tai Mei Tuk is 39 (37 at the time of consideration of the s.16 application), while the 10-year Small House demand forecast is 212 (the same at the time of consideration of the s.16 application).

- 5.2.2 In view of the latest comments of DLO/TP of LandsD, the revised assessment of the land required and land available for Small House development (stated in paragraph 11.1(3) of **Annex A**) is as follows:

¹ Application No. A/NE-TK/559 is the subject of Town Planning Appeal lodged by the applicant in 2016. The said appeal was dismissed by the Town Planning Appeal Board on 22.3.2017.

² Applications No. A/NE-TK/570 and 571 are the subject of Town Planning Appeal lodged by the applicants in 2016. The appeals were dismissed by the Town Planning Appeal Board on 17.10.2017.

	<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 forecast)?		✓	<u>Land Required</u> - Land required to meet Small House demand in Lung Mei and Tai Mei Tuk: about 6.28 ha (equivalent to 251 Small House sites). The outstanding Small House applications are 39 ³ while the 10-year Small House demand forecast is 212.
	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 Lung Mei and Tai Mei Tuk: about 1.64 ha (equivalent to about 65 Small House sites) (Plan R-2b).

6. **Public Comments Received During Statutory Publication Period**

- 6.1 On 3.5.2024, the review application was published for public inspection. During the statutory public inspection period, two public comments were received from individuals (**Annex G**) raising objection to the application mainly for reasons of being not in line with the planning intention of the “GB” zone; causing adverse traffic, environmental and drainage impact on the surrounding areas including Pat Sin Leng Country Park; entailing incursion of Small House development into Government land; and land available for Small House development within the “V” zone of Lung Mei and Tai Mei Tuk.
- 6.2 One public comment was received at the s.16 application stage and set out in paragraph 12 of **Annex A**.

7. **Planning Considerations and Assessments**

- 7.1 The subject s.16 application was rejected by the RNTPC on 15.3.2024 mainly on the grounds that the proposed development was not in line with the planning intention of the “GB” zone, and land was still available within the “V” zone of Lung Mei and Tai Mei Tuk for Small House Development. There has been no major change in the planning circumstances since the consideration of the subject application by the RNTPC in March 2024. The planning considerations and assessments as set out in paragraph 13 of **Annex A** remain valid.
- 7.2 In support of the review application, the applicant has submitted a written representation claiming that (i) the Site is the only piece of land owned by the applicant for Small House development; (ii) other land available within the “V” zone are not owned by the applicant and are mostly occupied by trees and steep

³ Among the 39 outstanding Small House applications in Lung Mei and Tai Mei Tuk, 30 fall within the “V” zone and nine straddle or fall outside the “V” zone. For cases straddling or falling outside the “V” zone, three of them has obtained valid planning approvals from the Board.

slopes which are not suitable for Small House development; (iii) approving the subject application will not set an undesirable precedent for similar applications as there were approved cases in the vicinity of the Site; and (iv) majority of the relevant government departments have no objection to the subject application. Having considered the written representation, the planning considerations and assessments on the review application are detailed below.

- 7.3 The Site is currently vacant and paved. While the proposed Small House is not incompatible with the surrounding areas which are predominantly rural in character with village houses and dense woodland to the north, there is a general presumption against development 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. The proposed development is considered not in line with TPG PG-No. 10 in that there are no exceptional circumstances and strong planning grounds to justify the proposed development. There is no strong planning justification in the submission for a departure from the planning intention of the “GB” zone.
- 7.4 Regarding Interim Criteria (a), the proposed Small House footprint falls entirely within the ‘VE’ of Lung Mei and Tai Mei Tuk. As far as the land availability within the “V” zone is concerned, the Board has formally adopted a more cautious approach in considering applications for Small House development since August 2015. Among others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications as provided by LandsD. Land available within the “V” zone of Lung Mei and Tai Mei Tuk (i.e. about 1.64ha of land or equivalent to about 65 Small House sites) (**Plan R-2b**) is capable of meeting the outstanding 39 Small House applications (37 at the time of consideration of the s.16 application). In view of the above, it is considered more appropriate to concentrate the proposed Small House developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. In this regard, sympathetic consideration could not be given as there is no general shortage of land for Small House developments within the “V” zone under the more cautious approach.
- 7.5 In response to the applicant’s claim that other land available within the “V” zone are not owned by him and are mostly occupied by trees and steep slopes which are not suitable for Small House development, it should be noted that land ownership is not a material planning consideration as it could be subject to change due to transactions in the private market. Moreover, according to the established practice, land occupied by steep slope and major tree clusters have already been deducted from the land available for Small House development estimated by the Planning Department (PlanD) (**Plan R-2b**). In spite of that, about 1.64ha of land or equivalent to about 65 Small House sites are found available.
- 7.6 When the s.16 application was considered by the RNTPC on 15.3.2024, there were 20 similar approved applications located in close proximity to the Site falling within/partly within the same “GB” zone (**Plan R-2a**). 17 applications were approved by the RNTPC before August 2015 mainly on considerations as

stated in paragraph 4.9 above. The other three applications (No. A/NE-TK/580, 618 and 664) with previous planning permission lapsed were approved by the RNTPC between 2016 and 2019 after the Board's formal adoption of a more cautious approach. The site of Application No. A/NE-TK/580 was situated in between two village houses and about 83% of it falls within the "V" zone. This application was approved mainly on sympathetic consideration of being the subject of a previously approved application submitted by the same applicant; being an infill development; complying with TPB-PG No. 10; and that the processing of the concerned Small House grant was at an advance stage. The sites of Applications No. A/NE-TK/618 and 664 situated entirely outside the "V" zone and were approved mainly on sympathetic consideration that they were the subject of previously approved applications submitted by the same applicant, and the processing of the relevant Small House grants was considered to be at an advance stage. The planning circumstances of the subject application are different from these approved applications as there is no previous application for the subject application. Sympathetic consideration given to the similar approved applications are not applicable to the subject application.

- 7.7 For the review application, relevant government departments have been further consulted and they maintained no objection to or no adverse comment on the application.
- 7.8 Regarding the public comments objecting to the review application as detailed in paragraph 6 above, the concerned government department's comments and the planning assessments above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessment made in paragraph 7, having taken into account the public comments in paragraph 6 and given that there has been no material 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 planning justification in the submission for a departure from this planning intention; and
 - (b) land is still available within the "V" zone of Lung Mei and Tai Mei Tuk 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.
- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 12.7.2028, 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 **Annex F**.

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 reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, 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.

10. Attachments

Plan R-1	Location plan
Plan R-2a	Site plan
Plan R-2b	Estimated amount of land available within the "V" zone of Lung Mei and Tai Mei Tuk for Small House development
Plan R-3	Aerial photo
Plan R-4	Site photos
Annex A	RNTPC Paper No. A/NE-TK/792
Annex B	Extract of minutes of the RNTPC meeting held on 15.3.2024
Annex C	Secretary of the Board's letter dated 5.4.2024
Annex D	Letter from the applicant's representative dated 24.4.2024
Annex E	Similar applications
Annex F	Recommended advisory clauses
Annex G	Public comments

**PLANNING DEPARTMENT
JULY 2024**