

TOWN PLANNING BOARD

TPB Paper No. 10958

**For Consideration by
the Town Planning Board on 23.2.2024**

**REVIEW OF APPLICATION NO. A/SK-PK/282
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House – Small House)
in “Recreation” Zone**

Lot 307 in D.D. 221, Sha Kok Mei, Sai Kung, New Territories

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**Proposed House (New Territories Exempted House (NTEH) - Small House) at
Lot 307 in D.D. 221, Sha Kok Mei, Sai Kung, New Territories**

1. Background

- 1.1 On 7.3.2023, the applicant, WONG Andy Sing Chun, sought planning permission for a proposed house (NTEH – Small House) at the application site (the Site) under s.16 of the pre-amended Town Planning Ordinance¹ (the pre-amended Ordinance). The Site falls within an area zoned “Recreation” (“REC”) on the approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11 (**Plan R-1**).
- 1.2 On 5.5.2023, 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 “REC” zone which was primarily for recreational developments for the use of the general public. There was no strong justification in the submission for a departure from the planning intention; and
 - (b) land was still available within the “Village Type Development” (“V”) zone of Sha Kok Mei 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 infrastructures and services.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/SK-PK/282 **(Annex A)**
 - (b) Extract of minutes of the RNTPC meeting held on 5.5.2023 **(Annex B)**
 - (c) Secretary of the Board’s letter dated 19.5.2023 **(Annex C)**

2. Application for Review

- 2.1 On 7.6.2023, the applicant applied, under section 17(1) of the pre-amended Ordinance for a review of the RNTPC’s decision to reject the application (**Annex D1**)².

¹ The “pre-amended Ordinance” refers to the Town Planning Ordinance as in force immediately before 1.9.2023.

² According to s.29(19) of the Town Planning Ordinance, s.17 of the pre-amended Ordinance applies to an application for a review of a decision of the Board made under s.16 in respect of an application made under s.16(1) before 1.9.2023.

- 2.2 In support of the review application, the applicant's representative submitted written representations which were received by the Board on 14.8.2023 (**Annex D2**) and 4.9.2023 (**Annex D3**).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in the written representations at **Annexes D2** and **D3** and summarised below:

- (a) the Site was acquired by the applicant's mother so that the applicant can apply for permission to erect a Small House in accordance to New Territories Small House Policy. The applicant has been living with his parents and receiving their care for a long time. The proposed Small House would allow the applicant to secure a place to live and to sustain his living, while being closer to his brother(s) for continued care and support in the future. The applicant's parents sincerely hope the Board would give sympathetic consideration to support this application taken into account the special circumstances of the applicant;
- (b) the Site falls within the village 'environs' ('VE') of Sha Kok Mei. The proposed Small House is compatible with the surrounding uses which are mainly village houses. The Site is vacant and covered with shrubs for a long period of time. The proposed development is small in scale and will not cause adverse visual, environmental and ecological impacts to the surrounding area. There was no objection from government departments received on the s.16 application;
- (c) while the Site is zoned "REC", there is no recreational use observed in the vicinity; and
- (d) the application received support from local villagers and village representative.

4. **The Section 16 Application**

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

- 4.1 The situation of the Site and the surrounding areas at the time of consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has not been any major change in the planning circumstances of the Site since then.
- 4.2 For the surrounding areas, there are a newly developed outdoor garden venue and a recreational development with four padel tennis courts to the immediate east of the Site within the same "REC" zone.
- 4.3 The Site is currently vacant, covered with shrubs, and partly occupied by a footpath. It is located entirely within the 'VE' of Sha Kok Mei but separated by a stream course from the main village cluster of Sha Kok Mei Village to the west. It is accessible via a footpath leading to Tai Mong Tsai Road.
- 4.4 The surrounding areas are rural in character comprising mainly village houses and shrubland. The Site is immediately surrounded by a number of two to

three-storey village houses to its north, west and south. A stream course is running to its further north, west and south along the periphery of the subject “REC” zone.

Planning Intention

- 4.5 There has been no change of planning intention of the “REC” zone as mentioned in paragraph 8 of **Annex A**, which is primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission.

Assessment Criteria

- 4.6 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**.

Previous and Similar Applications

- 4.7 The relevant previous and similar applications at the time of the consideration of the s.16 application are mentioned in paragraphs 5 and 6 and Appendix III of **Annex A**.
- 4.8 One additional similar application (No. A/SK-PK/293) will be considered by the RNTPC on 16.2.2024 after issuance of this paper. Details of all similar applications are summarised in **Annex E** and their locations are shown on **Plan R-2a**.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 and Appendix IV of **Annex A**. Their advisory comments, if any, are at Appendix VI of **Annex A** and recapped at **Annex G**.
- 5.2 For the review application, relevant government departments have been further consulted. All relevant government departments maintain their previous views of having no objection to/no adverse comment on the s.16 application and have no further comments on the review application. Comments from District Lands Officer/Sai Kung of Lands Department (DLO/SK, LandsD) are updated in view of the review application as follows:

Land Administration

5.2.1 Comments of DLO/SK, LandsD:

- Previous comments are still valid except that the total number of outstanding Small House applications in Sha Kok Mei falling within “V” zone and outside/straddling “V” zone are 41 and 8 respectively (45 and 9 at the time of consideration of s.16 application).

5.2.2 In view of the latest comments of DLO/SK, LandsD, the revised assessment

of the land required and land available for Small House development is as follows:

	<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)?	(no information on 10-year Small House demand)		<u>Land Required</u> Land required to meet Small House demand in Sha Kok Mei: about 1.23 ha (equivalent to 49 Small House sites). The number of outstanding Small House applications is 49 ³ while DLO/SK, LandsD has no information on the 10-year Small House demand forecast for Sha Kok Mei as the Indigenous Inhabitant Representative (IIR) has not provided the figure since 22.12.2008 ⁴ . <u>Land Available</u> Land available to meet Small House demand in Sha Kok Mei: about 4.89 ha (equivalent to 195 Small House sites) (Plan A-2b) .
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		

6. Public Comments Received During Statutory Publication Periods

- 6.1 On 16.6.2023 and 18.8.2023, the review application and written representation was published for public inspection. During the statutory public inspection periods, a total of 26 public comments were received (**Annex F**).
- 6.2 A total of 20 supporting public comments were received, including one made by Mr. Li Ka Leung, Philip, Sai Kung District Council member, four made by the IIRs of Sha Kok Mei, 14 made by villagers of Sha Kok Mei in two types of standard letters, and one from an individual. The main supporting grounds include the applicant is an indigenous villager of Sha Kok Mei and with disability, his situation warrants sympathetic consideration by the Board; the Site has been left vacant for a long time and not used by the villagers for recreational purpose, the proposed Small House is considered a better use of land resources; the Site is within ‘VE’ and already surrounded by village houses; and most of the land within the “V” zone of Sha Kok Mei is owned by Tso/Tong, it was difficult to acquire land thereat for Small House development.

³ Among the 49 outstanding Small House applications, 41 fall within the “V” zone and 8 (~~including~~ **excluding** the Site) falls outside/straddling the “V” zone. For those eight applications falling outside/ straddling the “V” zone, one have obtained valid planning approval from the Board.

⁴ According to LandsD’s record, the 10-year forecast (i.e. from 2009 to 2018) for Small House application provided by the IIR of Sha Kok Mei village as at 22.12.2008 was 260.

- 6.3 Five public comments made by individuals in standard form raised no objection to the proposal of house development but commented that the Site should not encroach on the existing access road used by the villagers. One public comment is not relevant to the application.
- 6.4 At the stage of s.16 application, one public comment on the application from an individual was received opposing to the application. Details are in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of the RNTPC's decision on 5.5.2023 to reject the subject application for proposed house (NTEH – Small House) at the Site zoned “REC” on the OZP. The application was rejected mainly on the grounds that proposed development was not in line with the planning intention of the “REC” zone, and land was still available within the “V” zone of Sha Kok Mei for Small House development. In support the review application, the applicant has submitted written justifications as summarised in paragraph 3 above. There has been no material change in the planning circumstances since the consideration of the s.16 application by RNTPC, except that there are a newly developed outdoor garden venue and a recreational development with four padel tennis courts to the immediate east of the Site within the same “REC” zone.

Planning Intention of the “REC” Zone

- 7.2 The application is for a proposed Small House development at the Site zoned “REC” on the OZP (**Plan R-1**). The proposed development is not in line with the planning intention of the “REC” zone which is primarily for recreational developments for the use of the general public. The “REC” zone encourages the development of active and/or passive recreation and tourism/ ecotourism. There has been recreational use emerging in the “REC” zone in recent years (**Plan R-4b**). The applicant has not provided strong justification for a departure from the planning intention of the “REC” zone.

Land Availability within the “V” Zone

- 7.3 Regarding the Interim Criteria, the footprint of the proposed Small House falls entirely within the ‘VE’ of Sha Kok Mei. According to DLO/SK, LandsD, the number of outstanding Small House applications for Sha Kok Mei is 49 (54 at the time of consideration of s.16 application). He has no information on the 10-year Small House demand forecast as the IIR of Sha Kok Mei has not provided the figure since 22.12.2008. Since August 2015, the Board has formally adopted a more cautious approach in considering applications for Small House developments. Amongst others, in considering whether there is a general shortage of land in meeting the Small House demand, the Board has put more weighting on the number of outstanding Small House applications provided by LandsD. Based on the latest estimate by PlanD, about 4.89 ha of land (equivalent to 195 Small House sites) is available within the “V” zone of Sha Kok Mei for Small House development. In this regard, land available within the “V” zone is sufficient to meet the outstanding Small House applications. As such, it is considered more appropriate to concentrate Small House developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and

services.

Responses to the Applicant's Justifications for the Review

- 7.4 Regarding the applicant's claim that there is no recreational use in the vicinity of the Site, there are a newly developed outdoor garden venue and a recreational development with four padel tennis courts to the immediate east of the Site within the same "REC" zone. Taking into account the Site together with the vacant land in its vicinity within the same "REC" zone have relatively flat topography and easy accessibility, they are considered suitable for recreational development.
- 7.5 According to the Interim Criteria, sympathetic consideration may be given if the application site *with planning permission lapsed and* is an infill site among existing NTEHs/Small Houses. However, the Site *without previous approval and* is not an infill site as there is no existing NTEH/Small House development to the north, south and east of the Site (**Plan R-2a**). The applicant's situation is noted. However, personal hardship is not a planning consideration when assessing applications for Small House development.
- 7.6 While relevant government departments had no adverse comment on the technical aspects of the application, this application is not supported based on the assessment above and land is still available within the "V" zone.
- 7.7 Regarding the public comments as detailed in paragraph 6 above, the supporting comments are noted and the above assessments are relevant. Regarding the comments concerning the blockage of footpath by the proposed house, the issue would be handled by LandsD during Small House application stage according to their prevailing procedures.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6, 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 "Recreation" zone which is primarily for recreational developments for the use of the general public. There is no strong 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 Sha Kok Mei 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 infrastructures and services.
- 8.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 23.2.2028, 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 G**.

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 for Small House development within "V" zone
Plan R-3	Aerial Photo
Plans R-4a and R-4b	Site Photos
Annex A	RNTPC Paper No. A/SK-PK/282
Annex B	Extract of minutes of the RNTPC meeting held on 5.5.2023
Annex C	Secretary of the Board's letter dated 19.5.2023
Annex D1	Applicant's letter received by the Board on 7.6.2023 applying for review
Annex D2	Written representation received by the Board on 14.8.2023
Annex D3	Written representation received by the Board on 4.9.2023
Annex E	Similar applications
Annex F	Public comments
Annex G	Recommended advisory clauses

**PLANNING DEPARTMENT
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