

# **TOWN PLANNING BOARD**

**TPB Paper No. 10971**

**For Consideration by  
the Town Planning Board on 31.5.2024**

**REVIEW OF APPLICATION NO. A/SK-TMT/78  
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

**Lots 19 S.A and 220 S.A in D.D. 252, Tso Wo Hang, Sai Kung, New Territories**

**REVIEW OF APPLICATION NO. A/SK-TMT/78**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House (NTEH) - Small House) at  
Lots 19 S.A and 220 S.A in D.D. 252, Tso Wo Hang, Sai Kung, New Territories**

**1. Background**

- 1.1 On 19.7.2023, the applicant, Mr. 李智里 represented by Mr. HUI Kwan Yee, 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 Ordinance<sup>1</sup> (the pre-amended Ordinance). The Site falls within an area zoned “Green Belt” (“GB”) on the approved Tai Mong Tsai and Tsam Chuk Wan Outline Zoning Plan (OZP) No. S/SK-TMT/4 (**Plan R-1**).
- 1.2 On 8.12.2023, 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 “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 such planning intention;
  - (b) the proposed development was not in line with the Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) in that there were no exceptional circumstances to justify the proposed development, which may affect the existing natural landscape of the surrounding area; and
  - (c) the proposed development did not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that there was no general shortage of land in meeting the demand for Small House development in the “Village Type Development” (“V”) zone of Tso Wo Hang. 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-TMT/78A

**(Annex A)**

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

- (b) Extract of minutes of the RNTPC meeting held on 8.12.2023 (Annex B)  
(c) Secretary of the Board's letter dated 22.12.2023 (Annex C)

## 2. Application for Review

- 2.1 On 3.1.2024, 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**)<sup>2</sup>.
- 2.2 In support of the review application, the applicant's representative submitted written representation which was received by the Board on 5.3.2024 (**Annex D2**).

## 3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in the written representation at **Annex D2**, which enclosing three supporting letters from a member of the Sai Kung District Council, the Indigenous Inhabitant Representative and Resident Representative of Tso Wo Hang. They are summarised as below:

- (a) the Site is the only land owned by the applicant suitable for Small House development. While there are land available within the "V" zone of Tso Wo Hang for Small House development, they are not owned by the applicant and many of which are covered by vegetation, slopes and occupied by existing village houses;
- (b) the Site falls entirely within the village 'environs' ('VE') of Tso Wo Hang. As there are existing village houses in the vicinity, there would be limited impact on the sprawling of urban development, and approving the application would not result in any undesirable precedent;
- (c) the Site is flat and can be accessed via a footpath. The applicant will submit drainage proposal to ensure no adverse environmental and hygiene impacts to the surrounding area. Relevant government departments including Lands Department, Home Affairs Department, Fire Services Department, Water Supplies Department, Environmental Protection Department, Drainage Services Department and Transport Department have no objection to the application;
- (d) the Site has been vacant for a long time. There are rarely any agricultural activities in the area. It is considered more appropriate to develop the Site into a Small House from environmental and hygiene perspectives; and
- (e) the applicant is an indigenous villager of Tso Wo Hang. He aims to exercise his rights in building a Small House in his village to live with his family and be close to his relatives. It is hoping that the Board would give sympathetic consideration to this application.

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<sup>2</sup> 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.

#### **4. Background of the Site**

- 4.1 The Site is currently not subject to any active planning enforcement action.
- 4.2 The Site together with the adjoining lots and government land was the subject of an enforcement case (No. E/SK-TMT/0025) against unauthorized excavation and filling of land in 2020 (**Plan R-2a**). Enforcement Notice (EN) and Reinstatement Notice (RN) were issued on 10.1.2020 and 21.1.2020 respectively. Compliance Notices to EN and RN were issued on 20.10.2020 and 21.10.2020 respectively.

#### **5. The Section 16 Application**

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

- 5.1 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 9.1 and 9.2 of **Annex A**. There has not been any major change in the planning circumstances of the Site since then.
- 5.2 The Site is located at higher platform behind the existing village clusters of Tso Wo Hang, and is currently vacant and largely formed without vegetation. It is located entirely within the 'VE' of Tso Wo Hang, and accessible via a soil track leading to the village proper of Tso Wo Hang.
- 5.3 The surrounding areas are predominantly dense woodland within the "GB" zone and the adjoining "Conservation Area" ("CA") zone. The "CA" zone is to preserve natural features and the mature woodland and provides a buffer for Sai Kung West Country Park in the north. The eastern boundary of the "V" zone of Tso Wo Hang is about 15m from the Site. New NTEHs under construction are observed to the west and northwest of the Site within the "V" zone (**Plan R-4b**).

##### Planning Intention

- 5.4 There has been no change of planning intention of the "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

- 5.5 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

- 5.6 TPB-PG No. 10 for 'Application for Development within Green Belt zone under Section 16 of the Town Planning Ordinance' is relevant to the consideration of the s.16 application and still effective. The relevant assessment criteria are summarised in Appendix III of **Annex A**.

### Previous Application

- 5.7 The Site is the subject of a previous application (No. A/SK-TMT/15) for a proposed NTEH submitted by the same applicant, which was rejected by the RNTPC on 14.9.2007 mainly on the grounds that the proposed development was not in line with the planning intention of the “GB” zone, not complying with the Interim Criteria in that sufficient land was available in the “V” zone in the area, the proposed development would have adverse impact on the existing landscape character of the area, and setting of undesirable precedent. As compared with the previous application, the Site, which was previously covered by trees and vegetation, is currently vacant and largely formed. Nevertheless, the development parameters of the proposed Small House under application remain unchanged. Details of the previous application are at **Annex E** and its location in **Plan R-2a**.

### Similar Applications

- 5.8 When the s.16 application was considered by the RNTPC on 8.12.2023, there was no similar application for Small House development within the same “GB” zone in the past 5 years. However, there were three similar applications (No. A/SK-TMT/58, 59 and 60) for Small House developments within the same “GB” zone of Tso Wo Hang rejected by the RNTPC in 2017, which were relevant to the consideration of the application. There has been no change in the number of similar applications since then.
- 5.9 The three similar applications were rejected by the RNTPC mainly on the grounds that the proposed developments were not in line with the planning intention of “GB” zone, not in line with the TPB-PG No. 10, land was still available within the “V” zone of Tso Wo Hang for Small House development, and approval of the applications would set undesirable precedent for other similar applications within the “GB” zone. Details of the similar applications are summarised in **Annex F** and their locations are shown on **Plan R-2a**.

## **6. Comments from Relevant Government Departments**

- 6.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 11 and Appendix VI of **Annex A**.
- 6.2 For the review application, relevant government departments have been further consulted. The Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD notes from the written representation (**Annex D2**) that there is no additional landscape related information provided and maintains her previous view of having reservation on the s.16 application as set out in paragraph 11 and Appendix VI of **Annex A** and recapitulated as follows:
- (a) as observed from the aerial photo in 2022, the Site is situated in an area of coastal uplands and hillsides landscape character predominated by woodland, small houses, and coastal area to the west. The Site is located close to the adjacent “CA” zone, which is densely vegetated and serves as a buffer for Sai Kung West Country Park in the north. The proposed development is considered incompatible with the surrounding landscape; and
  - (b) according to the submission, noting the Site is currently vacant, impact on

landscape resources has been taken place. Since the proposed use is considered incompatible with the landscape character of the surrounding natural landscape in “GB” zone, and there is no application for the same use approved in the vicinity of the same “GB” zone, she has reservation on the application from landscape planning perspective.

- 6.3 All other 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. Their advisory comments, if any, are at Appendix VIII of **Annex A** and recapped at **Annex H**. Comments from District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD) are updated in view of the review application as follows:

Land Administration

6.3.1 Comments of DLO/SK, LandsD:

- Previous comments are still valid except that the updated number of outstanding Small House applications in Tso Wo Hang falling within “V” zone and outside/straddling “V” zone are 10 and 0 respectively (10 and 1 at the time of consideration of s.16 application), while the 10-year Small House demand forecast is 55 (49 at the time of consideration of s.16 application).

- 6.3.2 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)?	✓		<u>Land Required</u> Land required to meet Small House demand in Tso Wo Hang: about 1.63 ha (equivalent to 65 Small House sites). The number of outstanding Small House applications is 10 <sup>3</sup> while the 10-year Small House demand forecast is 55.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<u>Land Available</u> Land available to meet Small House demand in Tso Wo Hang: about 1.8 ha (equivalent to 72 Small House sites) ( <b>Plan A-2b</b> ).

<sup>3</sup> All 10 outstanding Small House applications fall within the “V” zone.

## **7. Public Comments Received During Statutory Publication Periods**

- 7.1 On 12.1.2024 and 15.3.2024, the review application and written representative were published for public inspection. During the statutory public inspection periods, a total of three public comments were received including two made by Kadoorie Farm & Botanic Garden Corporation and one by an individual opposing the application mainly on the grounds that the Site is the subject of a ‘destroy first, build later’ case and excavation and filling of land had continued even after enforcement action, the proposed development is not in line with the planning intention of “GB” zone, there is still land available for Small House development within the “V” zone, and there would be cumulative impacts of approving the application (**Annex G**).
- 7.2 At the stage of s.16 application, two public comments were received opposing the application which were also from Kadoorie Farm & Botanic Garden Corporation and the same individual. Details are in paragraph 12 of **Annex A**.

## **8. Planning Considerations and Assessments**

- 8.1 The application is for a review of the RNTPC’s decision on 8.12.2023 to reject the subject application for proposed house (NTEH – Small House) at the Site zoned “GB” on the OZP. The application was rejected mainly on the grounds that the proposed development was not in line with the planning intention of “GB” zone; not in line with TPB PG-No. 10 in that there are no exceptional circumstances to justify the proposed development, which may affect the existing natural landscape of the surrounding area; and land was still available within the “V” zone of Tso Wo Hang for Small House development. In support the review application, the applicant has submitted written representation as summarised in paragraph 3 above. Since the consideration of the subject application by the RNTPC on 8.12.2023, there has been no major change in the planning circumstances of the Site and its surrounding areas.

### *Planning Intention of the “GB” Zone*

- 8.2 The proposed Small House 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. The Site is predominantly surrounded by dense woodland within the “GB” zone and the adjoining “CA” zone, which serve as a buffer for Sai Kung West Country Park in the north (**Plan R-3a**). The applicant claims that as there are existing village houses in the vicinity of the Site, the proposed development would have limited impact on the sprawling of urban development and approving the application would not result in any undesirable precedent. While there are existing village houses about 50m to the southwest of the Site and new NTEHs under construction to the west and northwest of the Site, they fall entirely within the boundary of the adjoining “V” zone and there are no existing village houses nor approved Small House applications within the same “GB” zone (**Plans R-2b and R-3b**). The applicant has not provided strong justification for a departure from the planning intention of the “GB” zone.

TPB PG-No. 10

- 8.3 The applicant claims that the Site has been vacant for a long time and considers more appropriate to develop the Site into a Small House from environmental and hygiene perspectives. In view that the Site is currently vacant and impact on landscape resources has been taken place, CTP/UD&L of PlanD considers that the proposed development is incompatible with the landscape character of the surrounding natural landscape in “GB” zone and maintains her view of having reservation on the application from landscape planning perspective. According to the TPB PG-No. 10 (Appendix III of **Annex A**), new development in the “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The proposed development is considered not in line with TPB PG-No. 10 in that there are no exceptional circumstances to justify the proposed development, which may affect the existing natural landscape of the surrounding area and there is no information in the submission to demonstrate that there is no adverse impact on the existing landscape.

Land Availability within the “V” Zone

- 8.4 Regarding the Interim Criteria (Appendix II of **Annex A**), the Site and the footprint of the proposed Small House fall entirely within the ‘VE’ of Tso Wo Hang. According to DLO/SK of LandsD, the number of outstanding Small House applications for Tso Wo Hang is 10 while the 10-year Small House demand forecast is 55. Based on the latest estimate by PlanD, about 1.8 ha of land (equivalent to 72 Small House sites) is available within the “V” zone of Tso Wo Hang for Small House development. In this regard, land available within the “V” zone is sufficient to meet the outstanding Small House applications as well as 10-year Small House demand forecast. As there is no general shortage of land in meeting the demand of Small House development in the concerned “V” zone, 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. The applicant claims that while there are land available within the “V” zone of Tso Wo Hang for Small House development, they are not owned by the applicant and many of which are covered by vegetation, slopes and occupied by existing village houses. Land ownership is not a material consideration for planning applications, and land occupied by existing village houses, road, footpath and track, steep slope, tree clusters etc. have not been accounted for available land of Small House development.

Previous and Similar Applications

- 8.5 The Site is the subject of a previous application (No. A/SK-TMT/15) for the same use submitted by the same applicant rejected by the RNTPC in 2007. There are also three similar applications (No. A/SK-TMT/58, 59 and 60) within the same “GB” zone rejected by the RNTPC in 2017. The circumstances of the current review application are similar to these rejected applications. Rejecting the current application is consistent with RNTPC’s previous decisions.

Government Departments’ Comments and Public Comments

- 8.6 All other 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. Regarding the opposing public comments as



detailed in paragraph 7 above, the government departments' comments and the planning assessments above are relevant.

## **9. Planning Department's Views**

9.1 Based on the assessments made in paragraph 8 and having taken into account the public comments mentioned in paragraph 7, 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 "Green Belt" ("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 such planning intention;
- (b) the proposed development is not in line with the Town Planning Board Guidelines for 'Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance' (TPB PG-No. 10) in that there are no exceptional circumstances to justify the proposed development, which may affect the existing natural landscape of the surrounding area; and
- (c) 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 there is no general shortage of land in meeting the demand for Small House development in the "Village Type Development" ("V") zone of Tso Wo Hang. 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.

9.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 31.5.2028, 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 H**.

## **10. Decision Sought**

- 10.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 10.2 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.
- 10.3 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.

## **11. Attachments**

<b>Plan R-1</b>	Location Plan
<b>Plan R-2a</b>	Site Plan
<b>Plan R-2b</b>	Estimated amount of land available for Small House development within “V” zone
<b>Plan R-3</b>	Aerial Photo
<b>Plans R-4a and R-4b</b>	Site Photos
<b>Annex A</b>	RNTPC Paper No. A/SK-TMT/78A
<b>Annex B</b>	Extract of minutes of the RNTPC meeting held on 8.12.2023
<b>Annex C</b>	Secretary of the Board’s letter dated 22.12.2023
<b>Annex D1</b>	Applicant’s letter received by the Board on 3.1.2024 applying for review
<b>Annex D2</b>	Written representation received by the Board on 5.3.2024
<b>Annex E</b>	Previous application
<b>Annex F</b>	Similar applications
<b>Annex G</b>	Public comments
<b>Annex H</b>	Recommended advisory clauses

**PLANNING DEPARTMENT  
MAY 2024**