

**APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATIONS NO. A/YL-KTS/802 & 803

- Applicant** : Mr. YEUNG Tsz Kwok (Application No. A/YL-KTS/802)
Mr. YEUNG Chung Fai (Application No. A/YL-KTS/803)

Both represented by R-riches Property Consultants Limited
- Site** : Lot 1540 S.C (Application No. A/YL-KTS/802)
Lots 1540 S.E and 1871 S.E (Application No. A/YL-KTS/803)

Both in D.D. 106, Yuen Kong, Yuen Long
- Site Area** : About 194.6 m² (Application No. A/YL-KTS/802)
About 156.7 m² (Application No. A/YL-KTS/803)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15

[Draft Kam Tin South OZP No. S/YL-KTS/14 at the time of submission. The zoning of the application sites remain unchanged on the approved OZP.]
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicants, who claimed to be indigenous villagers of Yuen Kong Tsuen¹, seek planning permission for the development of one house (NTEH - Small House) at each of the two application sites (the Sites). According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ is a Column 2 use within the “AGR” zone, which requires planning permission from the Town Planning Board (the Board). The Sites were the subject of a previous application (No. A/YL-KTS/666) for 8 Small Houses submitted by a different applicant which was rejected by the Rural and New Town Planning Committee (the Committee) on 5.6.2015. The Sites are currently vacant (**Plan A-4**).

¹ District Lands Officer/Yuen Long of Lands Department (DLO/YL, LandsD) advised that the indigenous villager’s status and eligibility of the applicants are not yet verified.

1.2 The major planning parameters of each of the proposed NTEH are as follows:

Covered Area	:	65.03 m ²
Total Gross Floor Area	:	195.09 m ²
No. of Storeys	:	3
Building Height	:	8.23 m

The applicants have indicated that the septic tank for the proposed Small House developments would be located within the Sites adjoining the Small House. Noise barriers of 2m in height are proposed to be erected along the eastern boundary of the Sites to minimize the nuisance from the nearby industrial use. The location and layout plans for the proposed developments submitted by the applicants are at **Drawings A-1 to A-5**.

1.3 In support of the application, the applicants have submitted the following documents:

- (a) Application form and attachments received on 11.9.2018 (Application No. A/YL-KTS/802) (**Appendix I**)
- (b) Application form and attachments received on 11.9.2018 (Application No. A/YL-KTS/803) (**Appendix Ia**)
- (c) Further Information (FI) received on 8.10.2018 in response to departmental comments (**Appendix Ib**)
- (d) FI received on 19.10.2018 in response to departmental comments (**Appendix Ic**)
- (e) FI received on 3.1.2019 in response to departmental comments (**Appendix Id**)

1.4 The applications were originally scheduled for consideration by the Committee on 2.11.2018. As requested by the applicants, the Committee agreed to defer consideration of the applications on 2.11.2018 to allow more time for the applicants to prepare FI to address the departmental comments. After the deferral, the applicants submitted FI on 3.1.2019 providing response to departmental comments in support of the applications. The applications are scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the applications are detailed in the attachment of the application form and FIs at **Appendices I to Id**. They can be summarized as follows:

- (a) There is no suitable land in Yuen Kong Tsuen for Small House development. No land filling or excavation of land will be involved at the Sites. The Sites and surroundings are not used for agricultural activities and there are petrol filling station, Small Houses and workshop uses in the vicinity. Also, the "AGR" zone where the Sites are situated will be affected by the construction sites for government road project which will lower the agricultural rehabilitation potential. The proposed developments would allow a more efficient use of land resource.

- (b) The Sites are accessible via a local track from Kam Sheung Road, which allows emergency vehicular access and therefore the fire risk hazard is low. Not more than five residents will dwell in each Small House and it will not cause substantial increase in population nearby.
- (c) There was a similar application within the same “AGR” zone (No. A/YL-KTS/232) approved by the Committee, hence approval of applications would not set any undesirable precedent.
- (d) Yuen Kong Tsuen does not have a ‘village environ’ (‘VE’). The applicants have proposed a ‘VE’ for the village and the proposed Small Houses fall within the proposed ‘VE’. The applicant will follow all the guidelines for provision of septic tank and submissions will be made to relevant government departments for approval once the planning applications are approved.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is not the “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notification letter to the Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Assessment Criteria

The 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 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007 respectively. The latest set of Interim Criteria, promulgated on 7.9.2007, is at **Appendix II**.

5. Background

- 5.1 The Site under application No. A/YL-KTS/802 is subject to planning enforcement action against unauthorized development (UD) involving storage use. Enforcement Notice (EN) was issued on 12.6.2018. Reinstatement Notice was issued on 15.11.2018 requiring to reinstate the concerned land. If the notice is not complied with, prosecution action may be taken.
- 5.2 The Site under application No. A/YL-KTS/803 forms part of a larger site which was subject to enforcement action as the storage use (including deposit of containers) previously found on site constitutes an UD under the Town Planning Ordinance with Enforcement Notice and Reinstatement Notice issued on 23.6.2015 and 26.1.2016 respectively. Subsequent site inspection revealed that the UD has been discontinued and reinstated. The Compliance Notice was issued on 17.10.2016.

6. Previous Application

- 6.1 The Sites involved in one previous application No. A/YL-KTS/666 covering a larger site area for proposed 8 Houses (NTEH-Small Houses) submitted by a different applicant. Details of the application are summarized in **Appendix III** and its location is shown on **Plan A-1b**.
- 6.2 Application No. A/YL-KTS/666 was rejected by the Committee on 5.6.2015 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; land is still available within the “V” zone of Yuen Kong where land is primarily intended for Small House development; it was considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructure and services; and the applicant failed to demonstrate that the proposed development was environmentally acceptable and not subject to risk hazard.

7. Similar Applications

- 7.1 There are 25 similar applications within the same and adjoining “AGR” zone near Yuen Kong and Yuen Kong San Tsuen on the Kam Tin South OZP since the first promulgation of the Interim Criteria on 24.11.2000. 11 applications (Nos. A/YL-KTS/232, 285, 338, 346, 370, 388, 389, 395, 476, 477 and 668) were approved with conditions by the Committee or the Board on review and the other 14 applications (Nos. A/YL-KTS/319, 350, 471, 583, 654, 656, 658, 686, 691, 692, 703, 716, 727 and 744) were rejected by the Committee or the Board on review. Details of these applications are summarized in **Appendix IV** and their locations are shown on **Plan A-1a**.
- 7.2 Application Nos. A/YL-KTS/232² and 285 entirely on “ARG” zone and Nos. A/YL-KTS/338, 346, 370, 388, 389, 395, 476, 477 and 668 straddled “AGR” and “V” zones near Yuen Kong San Tsuen/Yuen Kong Tsuen each for one NTEH were approved by the Committee or the Board on review between 2001 and 2015 mainly for the reasons that the proposed developments were in line with the Interim Criteria as the majority of the footprint of the proposed Small House fell within the draft ‘VE’ and/or the “V” zone and there was a shortage of land within the “V” zone to meet the Small House demand; the proposed developments were compatible with the surrounding village settlements and relevant Government departments had no adverse comment.
- 7.3 The remaining 14 applications for proposed NTEH(s) were rejected by the Committee or the Board on review between 2004 and 2017 mainly on the grounds that the proposed developments did not comply with the Interim Criteria in that the proposed developments fell outside the “V” zones and/or outside/largely outside the draft ‘VE’ and land was still available within the “V” zones to meet Small House demand; the proposed developments were not in line with the planning intention of the “AGR” zone; the proposed developments were incompatible with the surrounding area and would cause adverse impacts; and approval of the applications would set undesirable precedent.

² Application No. A/YL-KTS/232 was for redevelopment of an existing two-storey house to a three-storey NTEH. Sympathetic consideration was given despite the site falls outside ‘VE’ of the concerned village and the respective “V” zone.

8. The Sites and their Surrounding Areas (Plans A-2a, A-3 to A-4)

8.1 The Sites are:

- (a) currently vacant; and
- (b) accessible to Kam Sheung Road via a local track.

8.2 The surrounding areas are predominantly rural in characters surrounded by residential dwellings/structures, plant nursery, open storage yards, warehouse, parking of vehicles and vacant/unused land. The open storage yards, warehouse and parking of vehicles are suspected UD subject to enforcement action by the Planning Authority:

- (a) to the east is an open storage of construction machinery and vacant land. To its southeast is a religious institution and a warehouse;
- (b) to the south is a plant nursery and to the further south is a residential dwelling/structure and parking of vehicles;
- (c) to the north is an amenity area, residential structures/dwellings and vacant/unused land. To the further north and northeast across Kam Sheung Road is an area zoned “V” mainly occupied by residential dwellings/structures, parking of vehicles and vacant land; and
- (d) to the west is vacant/unused land, cultivated agricultural land and some open storage yards. A petrol filling station is located at the further northwest across Pat Heung Road.

9. Planning Intention

The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

10. Comments from Relevant Government Departments

10.1 The applications have been assessed against the assessment criteria in **Appendix II**. The assessments are summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	<p>Within “V” zone?</p> <ul style="list-style-type: none"> - Application sites - Footprint of the NTEH/Small House 	--	100%	<ul style="list-style-type: none"> - The Sites fall entirely within the “AGR” zone. - The footprint of the proposed Small Houses fall entirely within the “AGR” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - Application sites - Footprint of the NTEHs/Small Houses 	--	100%	<ul style="list-style-type: none"> - According to the information provided by District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD), the Sites do not fall within any Village Environ Boundary (VEB) of recognized village. - DLO/YL, LandsD advised that there is no approved VEB for Yuen Kong Tsuen.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?</p>	--	✓	<ul style="list-style-type: none"> - Land required to meet Small House demand in Yuen Kong: about 9.35 ha (or equivalent to 374 Small House sites). The outstanding Small House applications for Yuen Kong Tsuen are 44 while the 10-year (2017-2026) Small House demand forecast is 330³.
	<p>Sufficient land in “V” zone to meet outstanding Small House applications (Plan A-2b)</p>	✓	--	<ul style="list-style-type: none"> - Land available to meet the Small House demand within the “V” zone of Yuen Kong Tsuen: about 2.9 ha (equivalent to about 116 Small House sites).
4.	<p>Compatible with the planning intention of “AGR” zone?</p>	--	✓	<p>The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from the agricultural point of view as the Site possesses a potential for agricultural rehabilitation.</p>

³ The figure was provided by the Indigenous Inhabitant Representatives of Yuen Kong Tsuen and DLO/YL is unable to verify such information.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
5.	Compatible with surrounding area/development?	✓	--	The Sites are not incompatible with the surrounding area which are predominantly rural in characters surrounded by residential dwellings/structures, plant nursery, storage/open storage yards, warehouse, parking of vehicles and vacant/unused land.
6.	Within Water Gathering Grounds?	--	✓	
7.	Encroachment onto planned road networks and public works boundaries?	--	✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?	--	✓	- Director of Fire Services (D of FS) has no specific comment on the applications. - The applicants are reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD.
9.	Local objection received from DO?	--	✓	The District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD) has not received comment from local in respect of the applications.
10.	Others	✓	--	Detailed comments of Government departments are at Appendix V .

10.2 Comments from the following Government departments have been incorporated in paragraphs 5 and 10.1 above. Detailed comments are at **Appendix V**.

- (a) DLO/YL, LandsD;
- (b) Commissioner for Transport (C for T);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (e) Director of Environmental Protection (DEP);
- (f) Chief Town Planner/Urban Design and Landscape, PlanD (CTP/UD&L, PlanD);
- (g) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (h) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (i) DO(YL), HAD;

- (j) DAFC; and
- (k) D of FS.

10.3 The following departments have no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Commissioner of Police (C of P); and
- (c) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD).

11. Public Comments Received During Statutory Publication Period

On 18.9.2018, the applications were published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 9.10.2018, 5 and 4 public comments were received for application No. A/YL-KTS/802 and 803 respectively from Kadoorie Farm & Botanic Garden Corporation, The Hong Kong Bird Watching Society, a Yuen Long District Council member, an individual and Designing Hong Kong (for No. A/YL-KTS/802 only) (**Appendices VI-1 to VI-5**). All of them object to the applications mainly on the grounds that the proposed developments are not in line with the planning intention of the “AGR” zone; no strong planning justification to support the applications; not in line with the Interim Criteria and there was no shortage of land within the nearby “V” zone; the Sites are subject to previous rejected Small House application; the Sites were involved with unauthorized development; approval of the applications may encourage the “destroy first, build later” practices; setting of undesirable precedent for similar application with the “AGR” zone; and the applicant (for No. A/YL-KTS/802) did not receive consent from the land owner(s), and approval of the application would trigger dispute on the right of house.

12. Planning Considerations and Assessments

- 12.1 The applications are for proposed Small Houses at the Sites, which fall entirely within “AGR” zone. The proposed Small House developments are not in line with the planning intention of “AGR” zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the applications from the agricultural point of view as agricultural activities in the vicinity of the Sites are active and the Sites possess potential for agricultural rehabilitation. There is no strong planning justification provided in the submissions for departure from the planning intention of the “AGR” zone.
- 12.2 Based on DLO/YL, LandsD’s latest records, the total number of outstanding Small House applications for Yuen Kong Tsuen is 44 (i.e. about 1.1 ha) while the 10-year Small House demand forecast (2017-2026) for Yuen Kong Tsuen is 330 (i.e. about 8.25 ha). According to the latest estimation by PlanD, about 2.9 ha (i.e. equivalent to about 116 Small Houses sites) of land is available within the “V” zone of Yuen Kong. Based on the available information, there is sufficient land available within the “V” zone to meet the outstanding Small House applications but it cannot fully meet the 10-year Small House demand.

- 12.3 The proposed Small House developments are not in line with Interim Criteria in that, as advised by DLO/YL, LandsD, the footprints of the proposed Small Houses do not fall within any 'VE' of recognized village. According to the Interim Criteria, development of NTEH/Small House with more than 50% of the footprint outside both the 'VE' and the "V" zone would normally not be approved except under very exceptional circumstances. It is considered more appropriate to concentrate the proposed Small House developments close to the existing village cluster within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. There is no exceptional circumstance to justify approval of the application.
- 12.4 The Sites are considered not incompatible with the surrounding areas which are predominantly rural in characters and surrounded by residential dwellings/structures, plant nursery, storage/open storage yards, warehouse, parking of vehicles and vacant/unused land. The storage/open storage yards, warehouse and parking of vehicles are suspected UD subject to enforcement action by the Planning Authority. Departments consulted, including C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS have no adverse comment on the applications. Regarding DEP's concern on potential environmental nuisance, the applicants proposed to install noise barriers at the Sites to minimize nuisance from the adjacent open storage uses. DEP's advice on provision of suitable mitigation measures and compliance with the relevant planning standards and statutory requirements are recommended in the advisory clauses in **Appendix VII**.
- 12.5 The Sites are the subject of a previous application No. A/YL-KTS/666 which covered a larger site area for 8 proposed Small Houses. The application was rejected by the Committee on 5.6.2015 on the grounds that the proposed development was not in line with the planning intention of the "AGR" zone and there was no strong planning justification given in the submission for a departure from the planning intention; land was still available within the "V" zone of Yuen Kong where land is primarily intended for Small House development; and the applicant failed to demonstrate that the propose development was environmentally acceptable. There is no significant change in planning circumstances in the area to warrant a departure from the Committee's previous decision.
- 12.6 There were a total of 25 similar applications, where 11 applications (**Plan A-1**) were approved with conditions by the Committee or the Board on review between 2001 and 2015 mainly for the reasons that the proposed developments were in line with the Interim Criteria as the majority of the proposed Small House footprint fell within the draft 'VE' and/or the "V" zone and there was a shortage of land within the "V" zone to meet the Small House demand. There were 14 similar applications rejected by the Committee or the Board on review from 2000 to 2017 (**Plan A-1**). These Sites did not comply with the Interim Criteria mainly in that the proposed developments fell outside the "V" zones and/or outside/largely outside the draft 'VE' and land was still available within "V" zones to meet Small House demand. Regarding applicants quoting the approval of A/YL-KTS/232 to the immediate north of the Sites, which also falls outside "V" zone and any 'VE', the application involved redevelopment of an existing two-storey house to a three-storey NTEH and was approved on sympathetic consideration.
- 12.7 5 and 4 public objecting comments were received for application No. A/YL-KTS/802 and 803 respectively during the statutory public inspection period

mainly on the grounds as stated at paragraph 11 above. In this regard, the planning considerations and assessments as stated above are relevant.

13. Planning Department's Views

13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments in paragraph 11 above, the Planning Department does not support the applications for the following reasons:

- (a) The proposed Small House developments are not in line with the planning intention of the “AGR” zone which is to retain and safeguard good quality agricultural land/farm/fish pond for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submissions for a departure from the planning intention; and
- (b) the applications do not comply with the Interim Criteria in that the proposed Small Houses fall entirely outside the ‘VE’ of any recognized village and the “V” zone. Land is still available within the “V” zone of Yuen Kong which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House developments close to the existing village cluster within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. There is no exceptional circumstance to justifying approval of the applications.

13.2 Alternatively, should the Committee decide to approve the applications, it is suggested that the permissions shall be valid until 1.2.2023, and after the said date, the permissions shall cease to have effect unless before the said date, the developments permitted are commenced or the permissions are renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (c) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VII**.

14. Decision Sought

14.1 The Committee is invited to consider the applications and decide whether to grant or

refuse to grant the permission.

- 14.2 Should the Committee decide to reject the applications, Members are invited to advise what reason(s) for the rejection should be given to the applicants.
- 14.3 Alternatively, should the Committee decide to approve the applications, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permissions, and the date when the validity of the permissions should expire.

15. Attachments

Appendix I	Application Form with attachments received on 11.9.2018 (A/YL-KTS/802)
Appendix Ia	Application Form with attachments received on 11.9.2018 (A/YL-KTS/803)
Appendix Ib	FI received on 8.10.2018 in response to departmental comments
Appendix Ic	FI received on 19.10.2018 in response to departmental comments
Appendix Id	FI received on 3.1.2019 in response to departmental comments
Appendix II	Relevant Interim Criteria for Assessing Planning Applications for NTEH/Small House Development in the New Territories
Appendix III	Previous application covering the application sites
Appendix IV	Similar applications for proposed house (NTEH - Small House) within the same and adjoining "AGR" zone on the Kam Tin South OZP
Appendix V	Detailed comments from relevant Government departments
Appendices VI-1 to VI-5	Public comments received during the statutory publication period
Appendix VII	Advisory Clauses
Drawing A-1	Vehicular Access Plan for No. A/YL-KTS/802
Drawing A-2	Layout Plan for No. A/YL-KTS/802
Drawing A-3	Vehicular Access Plan for No. A/YL-KTS/803
Drawing A-4	Layout Plan for No. A/YL-KTS/803
Drawing A-5	Location of proposed Noise Barriers

Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Location Plan with Previous Applications
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available for Small House Development within the “V” Zone
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
FEBRUARY 2019**