

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/720

- Applicant** : Mr. LI Koon Yan
- Site** : Lot 586 S.B RP in D.D. 85, Lau Shui Heung, Fanling, New Territories
- Site Area** : 192 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP)
No. S/NE-LYT/17
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claimed to be an indigenous villager of Lau Shui Heung Village of Fanling Heung¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Lau Shui Heung Village, Fanling (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, ‘House (NTEH only)’ is a Column 2 use in “AGR” zone requiring planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) are as follows:

Total Floor Area	: 195.09 m ²
Number of Storeys	: 3
Building Height	: 8.23 m
Roofed Over Area	: 65.03 m ²

1.3 Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**. The applicant indicates that the uncovered areas of the proposed Small House would be used for courtyard and circulation area.

¹ According to District Lands Officer/North, Lands Department, the applicant’s eligibility for Small House grant has yet to be ascertained.

- 1.4 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received on 10.12.2019.
- 1.5 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 7.2.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. The application is now scheduled for consideration by the Rural and New Town Planning Committee (the Committee) at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form in **Appendix I**. They can be summarized as follows:

- (a) the applicant is an indigenous villager of Lau Shui Heung Village and is entitled to build a Small House;
- (b) the applicant does not own any land within the “Village Type Development (“V”) zone. To have a better chance of obtaining the planning permission, he acquired the Site from his relative for Small House development instead of using his land in “Green Belt” (“GB”) zone;
- (c) there is limited area in the “AGR” zone falling within the ‘Village Environs’ (‘VE’) that can be developed for Small House development taking into account terrain hazard area and buffer area (i.e. 30m clearance from the existing stream to the west of the Site) (**Drawing A-2**). In view of the constraints in the “AGR” zone, only limited Small House developments can be undertaken. Approval of planning application would not frustrate the planning intention of “AGR” zone;
- (d) similar applications in the vicinity of the Site were rejected by the Board except for Applications No. A/NE-LYT/127 to 129 as they were approved before the cautious approach adopted in 2015. The applicant’s Small House application was submitted to Lands Department in 2013. It is therefore unfair to the applicant if the cautious approach applies to the application; and
- (e) there are no agricultural activities found at the Site and in the proximity of the Site for many years.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Assessment Criteria

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (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. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at

Appendix II.

5. Previous Application

There is no previous application for the Site.

6. Similar Applications

- 6.1 There are three similar applications (No. A/NE-LYT/569, 571 and 641) for Small House development within the “AGR” zone in the vicinity of the Site (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. All of them were rejected by the Rural and the Committee or the Board on review between June 2015 to April 2018.
- 6.2 Applications No. A/NE-LYT/569 and 571 were rejected mainly on the considerations that the proposed developments were not in line with the planning intention of the “AGR” zone; and land was still available in the “V” zone of Lau Shui Heung Village for Small House development.
- 6.3 Application No. A/NE-LYT/641 generally complied with interim criteria in that the footprint of the proposed Small House fell within the ‘VE’ and there was a general shortage of land in meeting the outstanding Small House applications in “V” zone of Lau Shui Heung Village at the time of consideration. The application was rejected by the Committee and by the Board on review in December 2017 and April 2018 respectively mainly on the ground of setting an undesirable precedent for similar applications in the area.
- 6.4 Details of the applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

7. The Site and Its Surrounding Area (Plans A-1, A-2a and A-2b, A-3 and A-4)

- 7.1 The Site is:
 - (a) located to the west of the “V” zone of Lau Shui Heung Village and entirely falls within the ‘VE’ of Lau Shui Heung Village;
 - (b) currently overgrown with grasses and some scattered trees and shrubs; and
 - (c) accessible on foot only.
- 7.2 The surrounding area has the following characteristics:
 - (a) a rural landscape character dominated by fallow farmland, village houses and vacant land;
 - (b) surrounded by fallow agricultural land, and to the further east are village houses within the “V” zone;

- (c) to the west is Kwan Tei River running from the south to north of which is about 33m away from the Site;
- (d) wooded knolls zoned “GB” could be founded to the south of the Site; and
- (e) to the west and southwest across Kwan Tei River are fallow agricultural land and some vacant land.

8. Planning Intention

The planning intention of the “AGR” zone is primarily 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.

9. Comments from Relevant Government Departments

9.1 The application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	- -	100% 100%	The Site and footprint of the proposed Small House fall entirely within “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%	- -	DLO/N advises that the Site falls entirely within the ‘VE’ of Lau Shui Heung Village.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet the Small House demand in Lau Shui Heung Village: about 5.08 ha (equivalent to 203 Small House sites). The outstanding Small House applications for Lau Shui Heung Village are 23 ² while the 10-year Small House demand forecast for the same village is 180.

² Among the 23 outstanding Small House applications, 9 of them fall within the “V” zone and 14 straddle or outside the “V” zone. For those 14 applications straddling or outside the “V” zone, there is no valid planning approval obtained from the Board.

	Criteria	Yes	No	Remarks
	Sufficient land in “V” zone to meet outstanding Small House application?		✓	<p>Land Available</p> <ul style="list-style-type: none"> - Land available to meet the Small House demand within the “V” zone in Lau Shui Heung Village: about 0.43 ha (equivalent to 17 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	<ul style="list-style-type: none"> - The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently an abandoned land. Agricultural activities such as road access and water resource are available. The Site can be used for agricultural activities such as open-field cultivation, greenhouse, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from the agricultural point of view. - There is a natural stream to the southwest of the Site. Should the application be approved, appropriate measures should be undertaken, especially during the construction stage, to prevent the development from polluting the nearby stream.
5.	Compatible with surrounding area/development?		✓	The proposed Small House is considered not entirely compatible with the landscape character of the area in the midst of the largely uninterrupted landscape (Plan A-2a).
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	The Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by LandsD.
9.	Traffic impact?	✓		<ul style="list-style-type: none"> - The Commissioner for Transport (C for T) has reservation on the application and advises that Small House

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>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.</p> <p>- Notwithstanding the above, the application only involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.</p>
10.	Drainage impact?	✓		The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advises that an approval condition on the submission and implementation of drainage proposal is required.
11.	Sewage impact?		✓	<p>- The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.</p> <p>- The applicant should also be reminded to take appropriate measures as listed in the EPD guideline “Recommended Pollution Control Clauses for Construction Contracts” to prevent contaminated surface runoff and other wastewater from being discharged into the river during construction stage.</p>
12.	Landscaping impact?	✓		<p>- The Chief Town Planner/Urban Design and Landscape, PlanD (CTP/UD&L, PlanD) has some reservation on the application from the landscape planning point of view.</p> <p>- Based on the aerial photo of 2019, the Site is located in an area of settled valleys landscape character comprises clusters of trees, abandoned farmland, village houses and densely vegetated woodland within an area zoned “GB” to</p>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>the further east and southwest of the Site. Shrubs and groundcovers are observed within and the surrounding the Site.</p> <p>- In view of the site context within and surrounding the Site, the applied use, in the midst of the largely uninterrupted landscape is considered not entirely compatible with the landscape character of the area. There is no existing access to the Site, the proposed development may involve future clearance of existing vegetation in the vicinity. However, there is insufficient information of such works, the potential landscape impact could not be ascertained. The proposed development, if approved, would set an undesirable precedent of landscape character alteration, and would encourage more similar development within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment.</p> <p>- It is noted that there is no major public frontage along the site boundary, should the Board approved the application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.</p>
13.	Local objection conveyed by DO?		✓	District Officer (North) (DO(N)) advises that he has consulted the locals. The Chairman of the Fanling District Rural Committee, the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Lau Shui Heung have no comment on the application.

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Details of comments from Government departments are at **Appendix IV**.

- (a) District Lands Officer/North, Lands Department;
- (b) Chief Engineer/Mainland North, Drainage Services Department;
- (c) Director of Environmental Protection;

- (d) Chief Engineer/Construction, Water Supplies Department;
- (e) Commissioner for Transport;
- (f) Director of Agriculture, Fisheries and Conservation;
- (g) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (h) Director of Fire Services; and
- (i) District Officer (North), Home Affairs Department.

9.3 The following Government departments have no comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department; and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD); and
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD).

10. Public Comments Received During Statutory Publication Period

On 17.12.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments on the application (**Appendix V**) were received. The Chairman of Fanling District Rural Committee indicates no comment on the application. The former District Council member supports the application as it brings convenience to residents. The remaining 4 comments from the Hong Kong Bird Watching Society, Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; adverse sewerage impact from the proposed development is anticipated; and the setting of an undesirable precedent for similar applications in the area.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House at the Site falling entirely within “AGR” zone on the OZP. The proposed development is not in line with the planning intention of the “AGR” zone which is intended 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 application from the agricultural development point of view as the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Lau Shui Heung Village is 23 while the 10-year Small House demand forecast for the same village is 180. According to the latest estimate by PlanD, about 0.43 ha (equivalent to 17 Small House sites) of land are available in the “V” zone of Lau Shui Heung Village for Small House development (**Plan A-2b**). The footprint of the proposed Small House falls entirely within the ‘VE’ of Lau Shui Heung Village.
- 11.3 The Site is situated to the west of the village proper of Lau Shui Heung Village, which is in a rural landscape character dominated by village houses, fallow farmland, vacant land and groundcovers (**Plan A-2a**). Further east and southwest of the Site is densely

vegetated woodland within an area zoned “GB”. In view of the site context within and surrounding the Site, the proposed Small House development, in the midst of the largely uninterrupted landscape is considered not entirely compatible with the landscape character of the area. There is no existing access to the Site, the proposed development may involve future clearance of existing vegetation in the vicinity. As such, the potential landscape impact could not be ascertained. The proposed development, if approved, would set an undesirable precedent of landscape character alteration, and would encourage more similar development within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment. In this regard, CTP/UD&L, PlanD, has some reservation on the application. C for T considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development involves one Small House only, it could be tolerated. Other Government departments consulted, including D of FS, DEP, H(GEO), CEDD and CE/MN of DSD, have no adverse comment on or no objection to the application.

- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Lau Shui Heung Village (**Plan A-2a**). Land available within the “V” zone (about 0.43 ha or equivalent to 17 Small House sites) is insufficient to meet the 23 outstanding Small House applications as well as 10-year Small House demand of 180 Small House sites.
- 11.5 There are three similar applications (No. A/NE-LYT/569, 571 and 641) for Small House development in the vicinity of the Site and all of them were rejected by the Committee or the Board on review between June 2015 and April 2018. Applications No. A/NE-LYT/569 and 571 were rejected mainly on the considerations that the proposed developments were not in line with the planning intention of the “AGR” zone; and land was still available in the “V” zone of Lau Shui Heung Village for Small House development. Application No. A/NE-LYT/641 generally complied with interim criteria in that the footprint of the proposed Small House fell within the ‘VE’ and there was a general shortage of land in meeting the outstanding Small House applications in “V” zone of Lau Shui Heung Village at the time of consideration. The application was rejected by the Committee and by the Board on review in December 2017 and April 2018 respectively mainly on the ground of setting an undesirable precedent for similar applications in the area. The planning circumstances of the current application are similar to the rejected application No. A/NE-LYT/641.
- 11.6 Regarding the adverse public comments mainly on the ground of not in line with the planning intention of “AGR” zone and the setting of an undesirable precedent, Government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:
 - (a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily 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. There is no strong planning justification in the submission for a departure from the planning intention; and

- (b) the approval of the application would set an undesirable precedent for similar applications in the area. The cumulative impacts of approving such applications would result in a general degradation of the environment and landscape quality of the area.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 20.3.2024, 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 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; and
- (b) the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide approve the 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.

14. Attachments

Appendix I	Application Form with Attachments received on 10.12.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Similar s.16 Applications for Proposed House (NTEH – Small House) within the “AGR” Zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area
Appendix IV	Detailed Comments from Relevant Government Departments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses

Drawing A-1	Layout Plan
Drawing A-2	Location Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the “V” zone of Lau Shui Heung Village for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2020**