

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

**APPLICATION NO. A/NE-KLH/546**

<b><u>Applicant</u></b>	Mr. TSANG Lap Yuen represented by TriWeb Surveying Company
<b><u>Site</u></b>	Lots 545 S.B and 546 S.B in D.D.9, Yuen Leng Village, Tai Po, N.T.
<b><u>Site Area</u></b>	About 163 m <sup>2</sup>
<b><u>Lease</u></b>	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
<b><u>Zoning</u></b>	“Agriculture” (“AGR”)
<b><u>Application</u></b>	Proposed House (New Territories Exempted House (NTEH) – Small House)

**1. The Proposal**

1.1 The applicant, an indigenous villager of Shek Kwu Lung of Tai Po as confirmed by the Indigenous Inhabitant Representative (IIR) of the concerned village<sup>1</sup>, seeks planning permission to build an NTEH (Small House) on the application site (the Site). The Site falls within an area zoned “AGR” on the approved Kau Lung Hang OZP No. S/NE-KLH/11 (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only)’ within the “AGR” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed Small House development is as follows:

Total floor area	: 195.09m <sup>2</sup>
No. of storeys	: 3
Building height	: 8.23m
Roofed over area	: 65.03m <sup>2</sup>

Layout of the proposed Small House with septic tank is shown on **Drawing A-1**.

1.3 In support of the application, the applicant has submitted the application form with attachments (**Appendix I**).

1.4 The Site is the subject of two previous applications (No. A/NE-KLH/54 and 163) submitted by different applicants for a proposed NETH/Small House development.

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<sup>1</sup> As advised by DLO/TP, LandsD, the applicant’s eligibility of Small House grant has yet to be ascertained.

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application as mentioned in Part 9 of the application form at **Appendix I** are summarized as follows:

- (a) the applicant is a New Territories indigenous villager;
- (b) the Site falls within the village ‘environs’ (‘VE’) of Yuen Leng Village;
- (c) there is insufficient land within the “Village Type Development” (“V”) zone for Small House development;
- (d) s.16 approval is the prerequisite for processing of Small House application by Tai Po District Lands Office; and
- (e) there are some NTEHs applications in Yuen Leng which are farther than the Site from the “V” zone boundary being approved and completed.

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

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

## **4. Assessment Criteria**

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 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. On 23.8.2002, criterion (i) which requires that the application site, if located within water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

## **5. Previous Applications**

- 5.1 The Site is the subject of two previous applications (No. A/NE-KLH/54 and 163) submitted by different applicants for a NTEH/Small House development, which were approved with conditions by the Rural and New Town Planning Committee (the Committee) on 6.10.1995 and 3.7.1998 respectively before the first promulgation of the Interim Criteria on 24.11.2000. The applications were approved mainly on the considerations that the Site was close to village proper and within ‘VE’ of Yuen Leng Village; there was a general shortage of land in meeting the future demand for Small House development within “V” zone at the time of consideration; and/or would not have adverse environmental, drainage and traffic impacts on surrounding areas. The planning approvals for these two previous applications had lapsed on 6.10.1997 and 3.7.2007 respectively.
- 5.2 The major development parameters of the proposed Small House under the current application are the same as the previously approved applications except that the site areas of the previous applications are smaller.

5.3 Details of the previous applications are summarized at **Appendix III**.

## **6. Similar Applications**

- 6.1 There are 94 similar applications for Small House development within the same “AGR” zone and in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-1**). Among them, eight applications (No. A/NE-KLH/245, 259, 273, 277, 279, 281, 283 and 284) were approved with conditions by the Committee before criterion (i) of the Interim Criteria came into effect on 23.8.2002.
- 6.2 After that, 60 similar applications (No. A/NE-KLH/304, 310, 311, 328, 339, 341, 343 – 347, 351, 352, 358, 368, 370, 372, 375, 378, 379, 397, 400, 403, 406, 407, 409, 410, 415 – 417, 426, 432, 433, 438, 442, 450, 459, 467, 469 – 473, 481, 487, 488, 491, 494, 503, 504, 519, 523, 527, 529 – 531, 533, 535, 540, 542) were approved with conditions by the Committee or the Board on review between 2003 and 2018 mainly on the considerations of being generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; the proposed developments were able to be connected to the planned sewerage system; not incompatible with the surrounding environment; and/or the application site was the subject of a previously approved application.
- 6.3 The other 26 applications (No. A/NE-KLH/300, 303, 312, 314, 315, 333, 334, 358, 361, 380, 430, 439 – 441, 443, 444, 455, 478, 479, 483, 484, 521, 526, 537, 538 and 544) were rejected by the Committee or the Board on review between 2002 and 2018 mainly on the grounds of not being able to be connected to the planned sewerage system in the area as there was no fixed programme for implementation of such system at that juncture. Applications No. A/NE-KLH/440 and 441 were also rejected on the grounds that the applicant failed to demonstrate that the proposed development would have no adverse drainage and sewerage impacts on the surrounding areas. For applications No. A/NE-KLH/521, 526, 537, 538 and 544 rejected by the Committee in 2017, one of the rejection reasons was that land was still available within “V” zone for Small House development and it was considered more appropriate to concentrate the proposed Small House within “V” zone.
- 6.4 Application No. A/NE-KLH/358 for four Small Houses was partially approved with conditions by the Committee on 23.3.2007. Two proposed Small Houses were approved for being in compliance with the Interim Criteria in that more than 50% of the footprint of proposed Small Houses locating within the ‘VE’; there was a general shortage of land in meeting the demand for Small House development in the “V” zone; and being able to be connected to the planned sewerage system; while the other two were rejected mainly because they were not able to be connected to the existing or planned sewerage system in the area.
- 6.5 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

## 7. The Site and its Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3 and A-4)

7.1 The Site is:

- (a) located at the north-western fringe of Yuen Leng Village;
- (b) falls entirely within the village ‘environs’ (‘VE’) of Yuen Leng and Kau Lung Hang;
- (c) hard paved and currently used for parking of vehicles; and
- (d) connected to Tai Wo Service Road East via driveway at the south.

7.2 The surrounding areas are predominantly rural in character comprising of village houses, scattered tree groups and vacant land. Village houses are in its immediate north, east, south and west. The MTR East Rail Line (EAL) and Fanling Highway are located about 100m and 180m respectively on the west (**Plans A-1 and A-2a**).

## 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?  - Footprint of the Small House - Application site		100% 100%	- The Site and the footprint of the proposed Small House fall entirely within the “AGR” zone.
2.	Within village ‘environs’ (‘VE’)?  - Footprint of the Small House - Application site	100% 100%		- The Site and the footprint of the proposed Small House fall entirely within ‘VE’ of Yuen Leng and Kau Lung Hang.  - District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	- Land required to meet Small House demand: about 12.13 ha (equivalent to 485 Small House sites). The outstanding Small House

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>applications are 128<sup>2</sup> while the 10-year Small House demand forecast for the same villages is 357.</p> <p>- Land available to meet Small House demand within the “V” zone of the villages concerned: about 6.75 ha (equivalent to 270 Small House sites) (<b>Plan A-2b</b>).</p>
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application as the Site is paved and has low potential for agricultural rehabilitation.
5.	Compatible with surrounding area/development?	✓		- The surrounding areas are predominantly rural in character comprising village houses, scattered tree groups and vacant land.
6.	Within Water Gathering Ground (WGG)?	✓		<p>- The Director of Environmental Protection (DEP) does not support the application as the Site falls completely outside the “V” zone and within the WGG, and no public sewerage will be available to serve the proposed Small House in the short term. The proposed use of septic tank and soakaway system to handle wastewater is not acceptable inside WGG.</p> <p>- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application as the Site is located within the upper indirect WGG and there is no programme for the construction of planned public sewers to serve Yuen Leng Village. Sewer connectivity is thus in question and it is considered that compliance with criterion (i) of the Interim Criteria cannot be established.</p>

<sup>2</sup> Among the 128 outstanding Small House applications, there are 29 Small House applications straddling or outside the “ V” zone that have already obtained planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T), in general, has reservation on the application and advises that such type of development should be confined within the “V” zone as far as possible, but considers the application involving development of a Small House can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint.  - Approval condition on submission and implementation of drainage proposal is recommended.
11.	Sewerage impact?	✓		- The Chief Engineer/Consultants Management, Drainage Services Department (CE/CM, DSD) advises that according to the proposed sewerage scheme under North District Sewerage, Stage 2 Phase 1 for Yuen Leng Village, public sewerage connection point will be provided in the vicinity of the Site. However, since this sewerage scheme was degazetted on 29.10.2010, there is no fixed programme at this juncture for the implementation of the concerned sewerage works.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning point of view as no adverse impact on landscape resources from the proposed development is anticipated.
13.	Geotechnical impact?		✓	
14.	Local objections conveyed by DO?		✓	

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

- (a) District Lands Officer/Tai Po, Lands Department;
- (b) Commissioner for Transport;
- (c) Director of Environmental Protection;
- (d) Chief Town Planner/Urban Design & Landscape, Planning Department;
- (e) Director of Agriculture, Fisheries and Conservation;
- (f) Chief Engineer/Mainland North, Drainage Services Department;
- (g) Chief Engineer/Consultants Management, Drainage Services Department;
- (h) Chief Engineer/Construction, Water Supplies Department;
- (i) Director of Fire Services; and
- (j) Director of Electrical and Mechanical Services.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager/North, Civil Engineering and Development Department;
- (c) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (d) District Officer (Tai Po), Home Affairs Department.

## **10. Public Comments Received During Statutory Publication Period**

On 20.3.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received (**Appendix VI**). While MTR Corporation Limited raises concerns on operational railway noise, other individuals object to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; no shortage of land in “V” zone; setting of undesirable precedent; and bringing additional traffic burden to the only pedestrian and access road which is in poor condition.

## 11. Planning Considerations and Assessments

- 11.1 The Site falls entirely within the “AGR” zone. The proposed NTEH (Small House) is not in line with the planning intention of the “AGR” zone which is primarily intended to retain and safeguard good quality agricultural land for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. As the Site is paved and has low potential for agricultural rehabilitation, DAFC has no strong view on the application.
- 11.2 The applicant is an indigenous villager of Shek Kwu Lung. The proposed development is a cross-village application. According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai villages is 128 while the 10-year Small House demand forecast is 357. Based on the latest estimate by the Planning Department, about 6.75 ha (equivalent to about 270 Small House sites) of land are available within the “V” zones of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai. As the proposed Small House footprint falls entirely within the ‘VE’ of the concerned villages, DLO/TP of LandsD has no objection to the application.
- 11.3 The Site, located at the north-western fringe of Yuen Leng Village, is hard paved and currently used for parking of vehicles (**Plans A-1 and A-4**). The proposed development is not incompatible with the surrounding areas which are predominantly rural in character comprising village houses, scatted tree groups and vacant land (**Plans A-2a and A-4**). CTP/UD&L, PlanD has no objection to the application from the landscape planning point of view as no adverse impact on landscape resources from the proposed development is anticipated.
- 11.4 The Site is within the upper indirect WGG. The planned sewerage scheme for Yuen Leng Village was degazetted on 29.10.2010 and there is still no fixed implementation programme at this juncture for the concerned public sewerage works (**Plan A-2a**). DEP does not support the application as the Site falls completely outside the “V” zone and within the WGG, and no public sewerage will be available to serve the proposed Small House in the short term. DEP advises that the proposed use of septic tank and soakaway system to handle wastewater inside WGG is not acceptable. CE/C, WSD also objects to the application as there is no programme for the construction of planned public sewers to serve Yuen Leng Village; sewer connectivity is thus in question and compliance with criterion (i) of the Interim Criteria is considered not established.
- 11.5 C for T, in general, has reservation on the application as such development should be confined within “V” zone as far as possible but considers that the proposed development involving one Small House only can be tolerated. DEP advises that adverse railway and traffic noise impacts are not anticipated as the Site is substantially shielded from the railway/highway by the existing houses nearby; and trackside barrier has also been implemented along the rail line and roadside barriers are being constructed along the highway under its widening project. Other Government departments consulted including CE/CM and CE/MN of DSD, CHE/NTE of HyD and D of FS have no objection to/adverse comment on the application.
- 11.6 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Yuen Leng, Kau Lung Hang San Wai



and Kau Lung Hang Lo Wai Villages (**Plan A-1**). While land available (about 6.75 ha or equivalent to about 270 Small House sites) within the “V” zones is insufficient to fully meet the future Small House demand, it is capable to meet the outstanding 128 Small House applications (**Plan A-2b**). It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. Amongst 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 provided by LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services.

- 11.7 The Site is the subject of two previous applications (No. A/NE-KLH/54 and 163) submitted by different applicants for a NTEH/Small House development, which were approved with conditions by the Committee on 6.10.1995 and 3.7.1998 respectively mainly on the considerations that the Site was close to village proper and within ‘VE’ of Yuen Leng Village; there was a general shortage of land in meeting the future demand for Small House development within “V” zone at the time of consideration; and/or would not have adverse environmental, drainage and traffic impacts on surrounding areas. Their planning circumstances are different from the current application as they were approved before the first promulgation of the Interim Criteria on 24.11.2000. While these two previous applications were located within the WGG, they were allowed to use septic tank and soakaway system for foul effluent disposal.
- 11.8 There are 94 similar applications for Small House development within the same “AGR” zone. Among them, eight applications were approved with conditions by the Committee before criterion (i) of the Interim Criteria came into effect on 23.8.2002. After that, 60 similar applications were approved with conditions by the Committee or the Board on review between 2003 and 2018 mainly on the considerations of being generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; the proposed developments were able to be connected to the planned sewerage system; not incompatible with the surrounding environment; and/or the application site was the subject of a previously approved application. For the 26 applications rejected by the Committee or the Board on review between 2002 and 2018, the major reasons are being not able to be connected to the planned sewerage system in the area as there was no fixed programme for implementation of such system at that juncture. For applications No. A/NE-KLH/521, 526, 537, 538 and 544 rejected by the Committee in 2017, they were also rejected on the ground that land was still available within “V” zone for Small House development and it was considered more appropriate to concentrate the proposed Small House within “V” zone. Their circumstances are similar to the current application.
- 11.9 Regarding the public comments raising concerns on the operational railway noise and objection to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone, no shortage of land in “V” zone; setting of undesirable precedent; and additional traffic burden to the pedestrian and access road, the planning assessments and comments of concerned Government departments in above paragraphs are relevant.

## 12. Planning Department's Views

12.1 Based on the assessment 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. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the current submission for a departure from the planning intention;
- (b) 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 the applicant fails to demonstrate that the proposed development located within the water gathering ground would be able to be connected to the existing or planned sewerage system and would not cause adverse impact on the water quality in the area; and
- (c) land is still available within the “Village Type Development” (“V”) zone of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai 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.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **4.5.2022**, 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 submission and implementation of tree preservation and landscape proposal to the satisfaction of the Director of Planning 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;
- (c) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (d) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or of the Town Planning Board.

### Advisory Clauses

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

### **13. Decision Sought**

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

### **14. Attachments**

Appendix I	Application form received on 12.3.2018
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Previous applications
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public comments
Appendix VII	Recommended Advisory clauses
Drawing A-1	Site plan submitted by the applicant
Plan A-1	Location plan
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