

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/575

<u>Applicant</u>	Mr. LEE Cheung Ming represented by Dickman L.T. Chan & Co., Solicitors
<u>Site</u>	Lot 708 S.B in D.D. 9, Yuen Leng Village, Tai Po, New Territories
<u>Site Area</u>	About 137.8m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
<u>Zoning</u>	“Green Belt (“GB”)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, an indigenous villager of ex-Luk Heung Chung Pui Village¹ as confirmed by the Indigenous Inhabitant Representative (IIR), seeks planning permission to build an NTEH (Small House) on the application site (the Site)(Plan A-1). According to the Notes of the OZP, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ within the “GB” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed Small House development are as follows:
- | | | |
|-------------------|---|----------------------|
| Total floor area | : | 195.09m ² |
| Number of storeys | : | 3 |
| Building height | : | 8.23m |
| Roofed over area | : | 65.03m ² |
- 1.3 Layout plan with septic tank location of the proposed Small House is shown on **Drawing A-1**.
- 1.4 The Site is part of the subject of a previous application (No. A/NE-KLH/394) for five proposed Small Houses, submitted by different applicants as the current application. That application was rejected by the Board upon review on 30.4.2010.
- 1.5 In support of the application, the applicant has submitted application form and

¹ The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the applicant’s eligibility of Small House grant has yet to be ascertained.

attachments on 23.8.2019 (**Appendix I**).

2. Justifications from the Applicant

The justification put forth by the applicant in support of the application is detailed in Part 9 of the application form at **Appendix I**. The applicant claims that he applies the NTEH for self-occupation.

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 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. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant assessment criteria are summarized as follows:

- (a) there is a general presumption against development in the “GB” zone;
- (b) applications for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning ground. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas. With the exception of NTEH, a plot ratio up to 0.4 for residential development may be permitted;
- (c) applications for NTEH with satisfactory sewage disposal facilities and access arrangements may be approved if the application sites are in close proximity to existing villages and in keeping with the surrounding uses, and where the development is to meet the demand from indigenous villagers;
- (d) the design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;

- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area;
- (f) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area; and
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

6. Previous Application

- 6.1 The Site is part of the subject of a previous application (No. A/NE-KLH/394) for five proposed Small Houses, submitted by different applicants, and rejected by the Board upon review on 30.4.2010 on the grounds of being not comply with the Interim Criteria in that it was uncertain whether the proposed Small Houses could be connected to the planned sewerage system in the area, which would likely cause adverse water quality impacts on the surrounding areas, in particular the natural stream course to the west of the application site; and setting undesirable precedent and degrading the landscape quality of the area.
- 6.2 The current application is one of the five proposed Small Houses under the previous application. Compared with the previous application, except the disposition of the proposed Small House footprint is slightly different, other development parameters are the same.
- 6.3 Details of the previous application are summarized at **Appendix III** and the location is shown on **Plans A-1 and A-2a**.

7. Similar Applications

- 7.1 There are 12 similar applications within the same “GB” zone and in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Among them, seven applications (No. A/NE-KLH/246, 247, 254, 258, 261, 263 and 264) were approved with conditions by the Committee before criterion (i) of the Interim Criteria came into effect on 23.8.2002. They were approved mainly on considerations that the proposed Small Houses generally met the Interim Criteria in that the footprints of the proposed Small Houses had more than 50% falling within the ‘VE’; and there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone.
- 7.2 Two other applications (No. A/NE-KLH/395 and 460), covering the same site and submitted by the same applicant of the approved application No. A/NE-KLH/258, were approved in 2010 and 2014 respectively mainly on considerations of being able to be connected to the planned sewerage system in the area and having previous planning permission granted.

- 7.3 The remaining three applications (No. A/NE-KLH/524, 528² and 550) were rejected by the Committee/the Board on review in 2017 and 2018 respectively mainly for reasons of being not in compliance with the Interim Criteria in that the proposed development was not able to be connected to the planned sewerage system in the area; having adverse sewerage impact on the surrounding areas; and land still being available within the “V” zone of Yuen Leng and Kau Lung Hang for Small House development at the time of consideration.
- 7.4 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1** and **A-2a**.

8. **The Site and Its Surrounding Areas** (Plans A-1, A-2a and photos on Plans A-3 and A-4)

8.1 The Site is:

- (a) located at the eastern edge of Yuen Leng Village along the natural hillslopes;
- (b) overgrown with vegetation;
- (c) entirely within the “GB” zone and the village ‘environs’ of Yuen Leng Village; and
- (d) not easily accessible.

8.2 The surrounding areas are predominantly rural in character with a mix of village houses, active and fallow agricultural land, and tree groups. There is a stream running northwards to the west of the Site, and to the east is a natural hillslope (**Plan A-2a**). Village cluster of Yuen Leng is mainly located to the west of the Site across the stream.

9. **Planning Intention**

The planning intention of the “GB” zone 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.

10. **Comments from Relevant Government Departments**

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

² Application No. A/NE-KLH/528 is the subject of an appeal lodged by the applicant in 2018, which was dismissed by the Town Planning Appeal Board on 20.5.2019.

	<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%	- Both the Site and the proposed Small House footprint fall entirely within "GB" zone.
2.	Within 'VE'? - Footprint of the Small House - Application site	100% 100%		- Both the Site and the proposed Small House footprint fall entirely within 'VE'. - The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
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: about 12.38 ha (equivalent to 495 Small House sites). The outstanding Small House applications are 134 ³ while the 10-year Small House demand forecast is 361.
	Sufficient land in "V" zone to meet outstanding Small House applications?	✓		<u>Land Available</u> - Land available to meet Small House demand within the "V" zone of the villages concerned: about 6.28 ha (equivalent to about 250 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of "GB" zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application should there be no alternative site as the Site is overgrown with common herbs.
5.	Compatible with surrounding area/development?	✓		- The surrounding areas are predominantly rural in character with a mix of village houses, active and fallow agricultural land, and tree groups.

³ Among the 134 outstanding Small House application, 80 of them fall within the "V" zone and 54 straddle or outside the "V" zone. For those 54 applications straddling or being outside the "V" zone, 16 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
6.	Within WGG?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application. The Site is within WGG and less than 30m from the nearest stream. There is no fixed timetable for the construction of planned public sewers to serve Yuen Leng and the applicant proposes to use septic tank/ soakaway system as sewage disposal method. Thus, the application could not meet the assessment criteria item B(i) of the Interim Criteria.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services 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 but considers that the application only involving development of a Small House can be tolerated on traffic 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 the submission and implementation of drainage proposal is required.
11.	Sewerage impact?	✓		- The Director of Environmental Protection (DEP) does not support the application as the Site is within WGG, no existing or planned public sewer in the immediate vicinity of the Site, the proposed use of septic

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>tank and soakaway system to treat wastewater generated on-site should be avoided within WGG.</p> <p>- The Chief Engineer/Consultant Management, Drainage Services Department (CE/CM, DSD) advises that a sewerage scheme is currently under planning and design for Yuen Leng and the applicant shall complete the necessary sewerage works to connect the discharge from the proposed developments to the public sewerage at his own cost, if available, in future.</p>
12.	Landscape impact?	✓		<p>- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from the landscape planning perspective as approval of the proposed development would encourage similar piecemeal Small House applications within the "GB" zone. The cumulative effect of extending village development outside "V" zone would undermine the integrity of the "GB" zone and degrading the landscape character of the area.</p> <p>- Should the application be approved, no landscaping condition is required since there is inadequate space within the Site for meaningful landscape to benefit public realm.</p>
13.	Geotechnical impact?		✓	
14.	Local objections conveyed by DO?		✓	

10.2 Comments from the following government departments have been incorporated in paragraph 10.1 above. Other detailed comments are at **Appendix V**.

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

10.3 The following government departments have no objection to/no comment on the application:

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

11. **Public Comment Received During Statutory Publication Period (Appendix VI)**

On 30.8.2019, the application was published for public inspection. During the statutory public inspection period, three public comments were received from Designing Hong Kong Limited, WWF-Hong Kong and an individual objecting to the application mainly on the grounds of being not in line with the planning intention of “GB” zone, being not complied with TPB Guidelines No. 10, land still being available within “V” zone; adverse water quality impacts; and setting undesirable precedent.

12. **Planning Considerations and Assessments**

12.1 The application is for a proposed Small House development at the Site falling entirely within “GB” zone on the OZP. The proposed development is not in line with the planning intention of “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 the planning intention of the “GB” zone.

12.2 According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Yuen Leng and Kau Lung Hang Villages is 134 while the 10-year Small House demand forecast for the same villages is 361. Based on the latest estimate by PlanD, about 6.28 ha of land (or equivalent to about 250 Small House sites) is available within the “V” zones of the concerned villages (**Plan A-2b**). As the proposed Small House footprint falls entirely within the ‘VE’ of the concerned villages, DLO/TP, LandsD has no objection to the application.

- 12.3 The Site, located at the eastern fringe of Yuen Leng, is currently overgrown with vegetation and is not easily accessible (**Plans A-2a and A-4**). The proposed development is not incompatible with the surrounding areas which are predominantly rural in character with village houses, active and fallow agricultural land and tree groups (**Plans A-2a and A-3**). DAFC has no strong view on the application should there be no alternative site as the Site is covered with common herbs. CTP/UD&L of PlanD, however, has some reservations on the application from the landscape planning perspective as approval of the proposed development would encourage similar piecemeal Small House applications within the “GB” zone. The cumulative effect of extending village development outside “V” zone would undermine the integrity of the “GB” zone and degrade the landscape character of the area. The application does not comply with the TPB Guidelines No. 10 for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ in that the proposed development would affect the existing natural landscape.
- 12.4 The Site falls within the upper indirect WGG and is less than 30m from the nearest stream. There is no existing or planned public sewer in the immediate vicinity of the Site. The applicant proposes to use septic tank/ soakaway system as sewage disposal method. DEP does not support the application and advises that the applicant proposes the use of septic tank and soakaway system to treat wastewater generated onsite should be avoided within WGG. CE/C of WSD objects to the application and advises that the application could not meet the Interim Criteria as the proposed development is not able to be connected to existing and planned sewerage system. Other Government departments consulted including C for T, CE/MN and CE/CM of DSD, D of FS, CHE/NTE of HyD and H(GEO) of CEDD have no objection to/ no adverse comment on the application.
- 12.5 Regarding the Interim Criteria, more than 50% of the proposed Small House footprint falls within the ‘VE’ of Yuen Leng and Kau Lung Hang San Wai and Kau Lung Hang Lo Wai (**Plan A-1**). While land available within the “V” zones of the concerned villages (about 6.28 ha or equivalent to about 250 Small House sites) is insufficient to fully meet the future Small House demand of 495 Small House sites, it can still meet 134 outstanding 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 since 2015. 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 more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 12.6 The Site is part of the subject of a previous application (No. A/NE-KLH/394) for five proposed Small Houses, submitted by different applicants, and rejected by the Board upon review on 30.4.2010 on the grounds of being not comply with the Interim Criteria in that it was uncertain whether the proposed Small Houses could be connected to the planned sewerage system in the area, which would likely cause adverse water quality impacts on the surrounding areas, in particular the natural stream course to the west of the application site; and

setting undesirable precedent and degrading the landscape quality of the area. The current application is one of the five proposed Small Houses under the previous application. Compared with the previous application, except the disposition of the proposed Small House footprint is slightly different, other development parameters are the same. There is no significant change in planning circumstances since the rejection of the previous application.

- 12.7 There are 12 similar applications within the same “GB” zone and in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-2a**). Among them, seven applications (No. A/NE-KLH/246, 247, 254, 258, 261, 263 and 264) were approved with conditions by the Committee before criterion (i) of the Interim Criteria came into effect on 23.8.2002. They were approved mainly on considerations that the proposed Small Houses generally met the Interim Criteria in that the footprints of the proposed Small Houses had more than 50% falling within the ‘VE’; and there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone. Two other applications (No. A/NE-KLH/395 and 460), covering the same site and submitted by the same applicant of the approved application No. A/NE-KLH/258, were approved in 2010 and 2014 respectively mainly on considerations of being able to be connected to the planned sewerage system in the area and having previous planning permission granted. The remaining three applications (No. A/NE-KLH/524, 528 and 550) were rejected by the Committee/the Board on review in 2017 and 2018 respectively mainly for reasons of being not in compliance with the Interim Criteria in that the proposed development was not able to be connected to the planned sewerage system in the area; having adverse sewerage impact on the surrounding areas; and land still being available within the “V” zone of Yuen Leng and Kau Lung Hang for Small House development at the time of consideration. The planning circumstances of the current application are similar to those three rejected applications in 2017 and 2018.
- 12.8 Regarding the public comments raising concerns on the application on the grounds as detailed in paragraph 11 above, Government departments’ comments and the planning assessments in above paragraphs 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 mentioned in paragraph 11, 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 “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 given in the submission for a departure from the planning intention of the “GB” zone;
 - (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 “V” zone of Yuen Leng and Kau Lung Hang 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.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 18.10.2023, 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 drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) 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
- (c) 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**.

14. Decision Sought

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

15. Attachments

Appendix I	Application form and attachments received on 23.8.2019
Appendix II	Interim Criteria for Consideration of application for NTEH/Small House in New Territories
Appendix III	Previous application
Appendix IV	Similar applications
Appendix V	Government departments' detailed comments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses
Drawing A-1	Layout 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 "V" zone
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
OCTOBER 2019**