

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/577

<u>Applicant</u>	Mr. CHAN Mon Yeu represented by Mr CHAN Ngau
<u>Site</u>	Lot 326 S.C in D.D.9, Kau Lung Hang Village, Tai Po, N.T.
<u>Site Area</u>	About 152.4m 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>	“Agriculture” (“AGR”)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, an indigenous villager of Kau Lung Hang Village of Tai Po as confirmed by the respective Indigenous Inhabitant Representative (IIR)¹, 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, such use (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes) in the “AGR” 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 The applicant proposes to use the uncovered area of the Site as circulation area. A septic tank will be provided on the adjacent private lot at Lot 326 S.G RP in D.D. 9. The applicant has submitted a letter of consent from the concerned land owner. Layout of the proposed Small House is shown on **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted an application form with attachment on 19.9.2019 (**Appendix I**).

¹ 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.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the applicant claims that he is over 22 years old and has housing needs;
- (b) he only owns this parcel of private land in his village; and
- (c) he would like to exercise his right of indigenous villager to apply for a Small House.

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

The applicant is the sole “current land owner” of the Site. 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 set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

6.1 There were 106 similar applications for Small House development within the same “AGR” zone 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 before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Since then, 67 applications were approved, 30 applications were rejected and one application was partially approved and partially rejected.

6.2 A total of 48 applications (No. A/NE-KLH/304, 310, 311, 328, 339, 341, 343 – 347, 351, 352, 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, 482, 487, 488, 491 and 494) were approved by the Committee or the Board

upon review between 2003 and 2015 before the adoption of a more cautious approach by the Board in recent years. These applications were approved 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" zones at the time of consideration; the proposed development was able to be connected to the planned sewerage system; the application site was the subject of a previously approved case; and/or the proposed house was considered as an infill developments.

- 6.3 After the Board's adoption of a more cautious approach, there were 19 applications approved with conditions by the Committee between 2016 and 2019. Among them, 16 applications (No. A/NE-KLH/503, 504, 523, 527, 529, 530, 531, 535, 541, 542, 553 – 555, 563, 564 and 572) were approved mainly because there was previous approval whereas three applications (No. A/NE-KLH/519, 533 and 540) were approved mainly because the proposed house was in close proximity of approved Small House development.
- 6.4 One 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 proposed 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; and the proposed Small Houses were able to be connected to the planned sewerage system. The other two proposed Small Houses were rejected mainly because they were not able to be connected to the existing or planned sewerage system in the area.
- 6.5 Amongst the rejected cases, 23 applications (No. A/NE-KLH/300, 303, 312, 314, 315, 333, 334, 361, 380, 430, 439 – 441, 443, 444, 455, 478, 479, 483², 484, 526, 544 and 546) were rejected by the Committee or the Board on review between 2002 and 2019 mainly on the grounds of not being able to be connected to the planned sewerage system in the area. Seven applications (No. A/NE-KLH/521, 537, 538, 549, 558, 559 and 573) were rejected after the Board's adoption of a more cautious approach, for a consideration 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.
- 6.6 Details of the similar applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2a**.

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

7.1 The Site is:

² Application No. A/NE-KLH/483 is the subject of Town Planning Appeal No. 8 of 2015, which was dismissed by the Town Planning Appeal Board on 1.9.2016 mainly on the same rejection reasons by the Board on the review application.

- (a) partly covered with trees, weeds and gravels; and
- (b) entirely within the 'VE' of Yuen Leng, Kau Lung Hang San Wai and Lo Wai.

7.2 The surrounding areas are predominantly rural in character comprising scattered tree groups, village houses and active/abandoned farmland. Village clusters are mainly found to the north of the Site. A streamcourse flowing from north to south is about 15m to the west of the Site.

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.	<p>Within "V" zone?</p> <ul style="list-style-type: none"> - Footprint of the Small House - Application site 	-	100%	- The Site and the proposed Small House footprint fall entirely within the "AGR" zone.
2.	<p>Within 'VE'?</p> <ul style="list-style-type: none"> - Footprint of the Small House - Application site 	100%	-	<ul style="list-style-type: none"> - The Site and the proposed Small House footprint fall entirely within the 'VE' of Yuen Leng, Kau Lung Hang San Wai and Lo Wai. - District Lands Officer/ Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet Small House demand: 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 within the “V” zone to meet Small House demand: about 6.28 ha (equivalent to about 250 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as water source and footpath is available; and the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character comprising scattered tree groups, village houses and active/abandoned farmland.
6.	Encroachment onto planned road networks and public works boundaries?		✓	
7.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application.

³ Among the 134 outstanding Small House applications, 80 of them fall within the “V” zone and 54 straddle or fall 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>
8.	Traffic impact?	✓		- The Commissioner for Transport (C for T), in general, has reservation on the application but considers that the application only involving the development of a Small House can be tolerated on traffic grounds.
9.	Drainage impact?	✓		- 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 drainage proposal is required.
10.	Within WGG?	✓		
11.	Sewerage impact?	✓		- The Chief Engineer/Consultant Management, Drainage Services Department advises that there is an existing public sewer in the vicinity of the Site. - The Director of Environmental Protection (DEP) does not support the application as the applicant proposes the use of septic tank and soakaway system to treat wastewater generated onsite, which should be avoided within WGG. - The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application as the wastewater generated from the proposed Small House will have the potential to cause water pollution to the WGG.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning perspective

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				as the existing trees found within the Site are common species and significant adverse impact on landscape resources arising from the proposed development is not 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 IV**.

- (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) Chief Engineer/Mainland North, Drainage Services Department;
- (f) Chief Engineer/Consultant Management, Drainage Services Department;
- (g) Director of Agriculture, Fisheries and Conservation;
- (h) Director of Fire Services; and
- (i) Chief Engineer/Construction, Water Supplies Department.

9.3 The following Government departments have no 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;
- (d) Director of Electrical and Mechanical Services; and
- (e) District Officer (Tai Po), Home Affairs Department.

10. **Public Comments Received During Statutory Publication Period (Appendix V)**

On 27.9.2019, the application was published for public inspection. During the statutory public inspection period, four public comments were received from MTR Corporation Limited, Designing Hong Kong Limited, The Hong Kong Bird Watching Society and an individual objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land being available within the “V” zone for Small House development; setting undesirable precedent; and causing adverse environmental and ecological impacts.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House development at the Site zoned “AGR” on the OZP. 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 also 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 there are active agricultural activities in the vicinity; agricultural infrastructure such as water source and road access are available; and the Site possesses potential for agricultural rehabilitation.
- 11.2 According to DLO/TP, LandsD’s record, the total number of outstanding Small House applications for Yuen Leng and Kau Lung Hang is 134 while the 10-year Small House demand forecast for the same villages is 361. Based on the latest estimate by the PlanD, about 6.28 ha of land (equivalent to about 250 Small House sites) are available within the “V” zones of Yuen Leng and Kau Lung Hang (**Plan A-2b**). 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 is partly covered with trees, weeds and gravels. The proposed development is not incompatible with the surrounding area which is predominantly rural in character comprising scattered tree groups, village houses and active/abandoned farmland (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no objection to the application from landscape planning perspective as the existing trees found within the Site are common species and significant adverse impact on landscape resources arising from the proposed development is not anticipated.
- 11.4 The Site falls within the upper indirect WGG. CE/CM of DSD advises that there is existing public sewer in the vicinity of the Site. However, the applicant proposes to use septic tank and soakaway system for foul water disposal (**Drawing A-1**). There is no information in the submission to explain why the proposed development could not be connected to the public sewer and demonstrate that it would have no adverse impacts on the water quality of the surrounding areas. DEP and CE/C of WSD does not support/objects to the application as the adoption of septic tank for foul disposal and the wastewater generated from the proposed Small House will have potential to cause water pollution to the WGG. Besides, C for T has general reservation on the application but considers that the application only involving the development of a Small House can be tolerated on traffic grounds. Other relevant Government departments including CE/CM and CE/MN of DSD, CHE/NTE of HyD, H(GEO) and PM/N of CEDD and D of FS have no objection to or no adverse comment on the application.
- 11.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the ‘VE’ of Yuen Leng, Kau Lung Hang San

Wai and Lo Wai. While land available within the “V” zones (about 6.28 ha or equivalent to about 250 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand of 495 Small Houses, such available land is capable to meet the 134 outstanding Small House applications. 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 more orderly development pattern, efficient use of land and provision of infrastructures and services.

- 11.6 According to **Plan A-2a**, there are 23 similar applications for Small House development in close proximity to the Site. One application (No. A/NE-KLH/259) was approved before criterion (i) of the Interim Criteria which requires the connection of application site, if located within WGG, to the existing/planned sewerage system came into effect on 3.8.2002; and thirteen applications (No. A/NE-KLH/347, 351, 352, 372, 397, 400, 407, 432, 433, 442, 471, 472 and 473) were approved between 2003 and 2014 before the Board’s adoption of the cautious approach in August 2015. After that, nine applications (No. A/NE-KLH/503, 504, 519, 523, 535, 542, 553, 554 and 555) were approved in 2016 and 2018 mainly on sympathetic consideration as the application sites were the subject of previously approved cases or the proposed development was in close proximity of approved Small House developments. The planning circumstances of the current application are different from the above similar applications.
- 11.7 Regarding the public comments raising objection to the application on the grounds as detailed in paragraph 10 above, Government departments’ comments and the planning assessments in above paragraphs 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. 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 submission for a departure from the planning intention; and
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the applicant fails to demonstrate that the proposed development located within the WGG 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” zones 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.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 15.11.2023, 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 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 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 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.

14. Attachments

Appendix I	Application form and attachments received on 19.9.2019
Appendix II	Interim Criteria for Consideration of Application for

Appendix III	NTEH/Small House in New Territories
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public comments
	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" zones
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
NOVEMBER 2019**