RNTPC Paper No. A/NE-KLH/589 For Consideration by the Rural and New Town Planning Committee on 4.9.2020

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

## **APPLICATION NO. A/NE-KLH/589**

**Applicant:** Mr. CHAN Kelvin Siu Fai

Site: Lot 87 RP in D.D. 9, Kau Lung Hang Village, Tai Po, N.T.

Site Area: About 168.4 m<sup>2</sup>

**Lease:** Block Government Lease (demised for agricultural use)

**Plan:** Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11

**Zonings** "Agriculture" ("AGR") (about 59%)

"Village Type Development" ("V") (about 41%)

**Application:** Proposed House (New Territories Exempted House (NTEH) - Small House)

# 1. The Proposal

- 1.1 The applicant, an indigenous villager of Kau Lung Hang Village as confirmed by the respective Indigenous Inhabitant Representative (IIR) <sup>1</sup>, seeks planning permission to build a NTEH (Small House) on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, whilst 'House (NTEH only)' is always permitted in the "V" zone, 'House (NTEH only, 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<sup>2</sup>

Number of storeys : 3 Building height : 8.23m Roofed over area : 65.03m<sup>2</sup>

1.3 The uncovered area of the Site is proposed for garden use. Layout of the proposed Small House and the proposed sewerage connection are shown on **Drawing A-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.

- 1.4 The Site is the subject of three previous applications (No. A/NE-KLH/352, 433 and 503) for the same use submitted by the applicant's father, which were all approved by the Rural and New Town Planning Committee (the Committee) on 18.8.2006, 23.9.2011 and 22.4.2016 respectively. The planning permission for the last previous application (No. A/NE-KLH/503) lapsed on 23.4.2020. Compared with the last previous application, the development parameters and disposition of the proposed Small House remain the same.
- 1.5 In support of the application, the applicant has submitted the following documents:
  - (a) Application form with attachment on 8.7.2020 (Appendix I)
  - (b) Further information received on 13.8.2020 (**Appendix Ia**) providing additional justifications to support the application (accepted and exempted from publication requirement)

# 2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application as stated in Part 8 of the application form at **Appendix I** and further information at **Appendix Ia** are summarized as follows:

- the applicant is an indigenous villager of Kau Lung Hang Village, who wishes to build a Small House on his own private land to meet his housing need. The proposed Small House is entirely within the village 'environs' ('VE') of Kau Lung Hang Village and part of the Site falls within the "V" zone;
- (b) the Site was involved in three previous applications (No. A/NE-KLH/352, 433 and 503) submitted by the applicant's father. All of them were approved by the Committee on 18.8.2006, 23.9.2011 and 22.4.2016 respectively as they complied with the Interim Criteria with more than 50% of the Small House footprint located within the 'VE' and the proposed house was able to be connected to the planned sewerage system in the area;
- (c) the last previous application (No. A/NE-KLH/503) submitted by the applicant's father was approved in 2016. However, his father was hospitalized in the UK and, due to the worsening of health condition, his father could not travel back to Hong Kong to complete the declaration process for the approved Small House application with Lands Department (LandsD);
- (d) after his father's death in 2017, the applicant inherited ownership of the Site in 2018. The applicant wishes to continue the Small House application at the Site and submitted his application to LandsD in 2019. As the applicant cannot apply for the extension of the planning approval granted to his father under Application No. A/NE-KLH/503 and that planning application has lapsed in April 2020, the applicant has to submit a fresh planning application. The development parameters and disposition of the proposed Small House under the current

application are same as the last previous approval;

- (e) the proposed development is not intrusive and is compatible with the rural environment; and
- (f) three similar applications (No. A/NE-KLH/3, 141 and 142) for Small House developments within the same "AGR" zone were approved by the Committee in 1994 and 1997 respectively.

## 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. <u>Assessment Criteria</u>

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. 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 Applications

- 5.1 The Site is the subject of three previous applications (No. A/NE-KLH/352, 433 and 503) for proposed Small House submitted by the applicant's father. All the applications were approved with conditions by the Committee on 18.8.2006, 23.9.2011 and 22.4.2016 respectively as they generally complied with the Interim Criteria in that more than 50% of the proposed Small House footprint was located within the 'VE' of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai; there was a general shortage of land in meeting the demand for Small House development in the concerned "V" zone at the time of consideration; and the proposed Small House was able to be connected to the planned sewerage system in the area. The planning permission of the last previous application (No. A/NE-KLH/503) lapsed on 23.4.2020.
- 5.2 Compared with the last previous application, the development parameters and disposition of the proposed Small House in the current application remain the same.
- 5.3 Details of the above previous applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2a**.

## 6. <u>Similar Applications</u>

- 6.1 There are 104 similar applications for Small House development within the same "AGR" zone since the first promulgation of the Interim Criteria on 24.11.2000. Eight of them (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, 64 applications were approved, 31 applications were rejected and one application was partially approved and partially rejected.
- 6.2 Of the 64 approved applications, 46 of them (No. A/NE-KLH/304, 310, 311, 328, 339, 341, 343 347, 351, 368, 370, 372, 375, 378, 379, 397, 400, 403, 406, 407, 409, 410, 415 417, 426, 432, 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 August 2015. 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 previously approved case; and/or the proposed house was considered as an infill development.
- 6.3 After the Board's adoption of a more cautious approach, a total of 18 applications were approved with conditions by the Committee between 2016 and 2019. Of which 15 applications (No. A/NE-KLH/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.
- 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 For the 31 rejected cases, 24 of them (Applications No. A/NE-KLH/300, 303, 312, 314, 315, 333, 334, 361, 380, 430, 439 441, 443, 444, 455, 478, 479, 483<sup>2</sup>, 484, 526, 544, 546 and 577) 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 existing or planned sewerage system in the area. The remaining seven applications (No. A/NE-KLH/521, 537, 538, 549, 558, 559 and 573) were

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.

- rejected after the Board's adoption of a more cautious approach, mainly for the reason that land was still available within "V" zone for Small House development.
- 6.6 Details of the above similar applications are summarized at **Appendix IV** 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-4)

- 7.1 The Site is:
  - (a) currently vacant and partly hard paved and partly covered by weeds;
  - (b) located at the western edge of Kau Lung Hang Lo Wai;
  - (c) adjoining a completed Small House development which was approved under Application No. A/NE-KLH/504; and
  - (d) accessible by a footpath connecting to village road of Kau Lung Hang Lo Wai.
- 7.2 The surrounding areas are predominantly rural in character comprising village houses, scattered tree groups and active/abandoned farmland. Village houses are found to the immediate east of the Site. The Kau Lung Hang Ecological Important Stream (EIS) is less than 30m to the southeast of the Site. The areas to the north and south comprise fallow agricultural fields with temporary structures. The MTR East Rail Line is about 50m to the west of the Site.

## 8. Planning Intentions

- 8.1 The planning intention of the "V" zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 8.2 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>	Yes	<u>No</u>	<u>Remarks</u>
1.	Within "V" zone? - Footprint of the proposed Small House	31%	69%	- The remaining portions of the Site and the proposed Small House footprint fall within the "AGR" zone.
	- Application site	41%	59%	
2.	Within 'VE'? - Footprint of the proposed Small House	100%	-	- The Site and the proposed Small House footprint fall entirely within the 'VE' of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai.
	- Application site	100%	- District Lands Offi Department (DLO	- 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)?		<b>✓</b>	Land Required  - Land required to meet Small House demand: about 21.35 ha (or equivalent to 854 Small House sites).  The outstanding Small House applications are 129 <sup>3</sup> while the 10-year Small House demand forecast for the same villages is 725
	Sufficient land in "V" zone to meet outstanding Small House applications?	<b>√</b>		for the same villages is 725.  Land Available - Land available within the "V" zone to meet Small House demand: about 6.15 ha (equivalent to 245 Small House sites) ( <b>Plan A-2b</b> ).
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

-

<sup>&</sup>lt;sup>3</sup> Among the 129 outstanding Small House applications, 79 of them fall within the "V" zone and 50 straddle or fall outside the "V" zone. For those 50 applications straddling or being outside the "V" zone, 15 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				activities in the vicinity; agricultural infrastructure 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 village houses, scattered tree groups and active/abandoned farmland.
6.	Within WGG?	✓		- CE/MN, DSD advises that there is
7.	Sewerage impact?	✓		existing public sewer in the vicinity of the Site; and the applicant's sewerage connection proposal is technically feasible from drainage viewpoint.  - Director of Environmental Protection (DEP) and Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) have no objection to the application as the Site is able to be connected to public sewerage system.  - Approval conditions on connection to public sewers and provision of protective measures to WGG and submission of a water pollution risk and impact assessment report to prove and demonstrate that there is no material increase in pollution effect resulting from the proposed development are required.
8.	Encroachment onto planned road networks and public works boundaries?		<b>&gt;</b>	
9.	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.

	<u>Criteria</u>	Yes	<u>No</u>	<u>Remarks</u>
10.	Traffic impact?		✓	- Commissioner for Transport (C for T) has no in-principle objection to the application.
11.	Drainage impact?	✓		<ul> <li>Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application.</li> <li>Approval condition on submission and implementation of drainage proposal is required.</li> </ul>
12.	Landscape impact?		✓	- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning point of view as the Site is vacant with patches of vegetation, and adverse impact on existing landscape resources is not anticipated.
13.	Geotechnical impact?		<b>√</b>	
14.	Local objection received from DO?		<b>√</b>	

- 9.2 Comments from the following Government departments have been incorporated in the paragraph 9.1 above. Other 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) Chief Engineer/Mainland North, Drainage Services Department;
  - (f) Chief Engineer/Construction, Water Supplies Department;
  - (g) Director of Agriculture, Fisheries and Conservation;
  - (h) Director of Fire Services; and
  - (i) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.
- 9.3 The following Government departments have no comment on the application:
  - (a) Chief Highway Engineer/New Territories East, Highways Department;

- (b) Director of Electrical and Mechanical Services;
- (c) Project Manager/New Territories East, Civil Engineering and Development Department; and
- (d) District Officer/Tai Po, Home Affairs Department.

## 10. Public Comment Received During Statutory Publication Period (Appendix VI)

On 17.7.2020, the application was published for public inspection. During the statutory public inspection period, three public comments were received from Mass Transit Railway Corporation Limited (MTRCL), the Designing Hong Kong Limited and an individual. The Designing Hong Kong Limited and an individual object to the application mainly on the grounds of being not in line with the planning intention of "AGR"; land being still available within the "V" zone; and setting undesirable precedent. MTRCL raises concerns on the potential noise impact from East Rail Line to the proposed development.

## 11. Planning Considerations and Assessment

- 11.1 The application is for a proposed Small House development at the Site falling within an area partly zoned "V" (about 41%) and partly zoned "AGR" (about 59%) 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 agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as footpath and water source is available; and the Site possesses potential for agricultural rehabilitation.
- 11.2 According to DLO/TP of LandsD's records, the total number of outstanding Small House applications for Yuen Leng and Kau Lung Hang is 129 while the 10-year Small House demand forecast is 725. Based on the latest estimate by PlanD, about 6.15 ha of land (equivalent to about 245 Small House sites) are available within the "V" zones concerned. 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 western edge of Kau Lau Hang Lo Wai, is currently vacant and partly hard-paved and partly covered with weeds. The proposed development is not incompatible with the surrounding areas which are predominantly rural in character comprising village houses, scattered tree groups and active/abandoned farmland (Plans A-2a and A-3). CTP/UD&L of PlanD has no objection to the application from the landscape planning point of view as significant adverse impact on existing landscape resource arising from the proposed development is not anticipated.
- 11.4 The Site is within the lower indirect WGG. The applicant has proposed to connect the proposed Small House to the existing public sewerage system near the Site (**Plan A-2a**). CE/MN of DSD advises that the applicant's sewerage

connection proposal is technically feasible. DEP and CE/C of WSD have no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at his own costs and adequate space within the Site will be reserved for connection. CE/C of WSD also advises that there are risks of contamination to the lower indirect WGG due to the construction activities, traffic generation, sewage discharge and domestic activities, an approval condition on the submission of a water pollution risk and impact assessment report is required to prove and demonstrate that there is no material increase in pollution effect resulting from the proposed development. Other relevant government departments including C for T, CHE/NTE of HyD, D of FS, DO/TP of HAD, DEMS and H(GEO) and PM/N of CEDD have no objection to/adverse comment on the application.

- Regarding the Interim Criteria (Appendix II), more than 50% of the proposed 11.5 Small House footprint falls within the 'VE' of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai and the proposed development would be able to be connected to public sewerage system. While land available within the "V" zones (Plan A-2b) is insufficient to fully meet the future Small House demand of 854 Small Houses, such available land (about 6.15 ha or equivalent to 245 Small House sites) is capable to meet the 129 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 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.
- The Site is the subject of three previous applications (No. A/NE-KLH/352, 433 11.6 and 503) submitted by the applicant's father. All the applications were approved by the Committee in 2006, 2011 and 2016 respectively. According to the applicant, after the last previous application (No. A/NE-KLH/503) was approved in 2016, his father was hospitalized in the UK and, due to the worsening of health condition, his father could not travel back to Hong Kong to complete the declaration process for the approved Small House grant application with LandsD. After his father's death in 2017, the applicant inherited ownership of the Site in 2018. The applicant states that he wishes to continue the Small House application at the Site and submitted his application to LandsD in 2019. However, the planning approval granted to his father under Application No. A/NE-KLH/503 has lapsed in April 2020, hence the applicant needs to submit a fresh planning application. Compared with the last previous approved application (No. A/NE-KLH/503), the development parameters and disposition of the proposed Small House in the current application remain the same. It is noted that sympathetic consideration would generally be given if the application site is the subject of previous approval submitted by the same applicant. It is also noted that there is a similar case (Application No. A/NE-TKL/569) in Ta Kwu Ling for a Small House development which was approved by the Committee in 2017. That application was the subject of a previous approval (No. A/NE-TKL/365) granted to the applicant's father in 2011, and subsequently his father passed away in 2013 and the planning permission lapsed in 2015. Special consideration was given by the

Committee as the applicant granted with the previous approval was the father of the subject applicant, and the subject applicant was the current land owner of the application site. In view of the above, it is considered that the current application could warrant the same special consideration.

- 11.7 As shown on **Plan A-2a**, there are seven similar applications for Small House development in close proximity of the Site. Four applications (No. A/NE-KLH/347, 351, 400 and 432) were approved between 2006 and 2011 before the Board's adoption of a more cautious approach in approving applications for Small House development in 2015. After that, two applications (No. A/NE-KLH/504 and 542) were approved in 2016 and 2018 mainly on sympathetic consideration as the application sites were the subject of previous approved cases and/or the proposed development was in close proximity of approved Small House developments. For the remaining application (No. A/NE-KLH/577), it was rejected mainly on the grounds of not being able to be connected to the public sewerage system in the area.
- 11.8 Regarding the public comments on the application as detailed in paragraph 10, Government departments' comments and the 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 <u>has no objection</u> to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until <u>4.9.2024</u>, 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) submission and implementation of a 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 systems to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board;
- (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; and
- (d) the submission of a water pollution risk and impact assessment report to demonstrate no material increase in pollution effect to the lower indirect water gathering ground 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**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
  - (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. The "AGR" zone 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) 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.

### 13. <u>Decision Sought</u>

- 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, if any, 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 and attachments received on 8.7.2020
Appendix Ia	Further information received on 13.8.2020
Appendix II	Relevant revised Interim Criteria for Consideration of
	Application for NTEH/Small House in New Territories
	(promulgated on 7.9.2007)
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	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 SEPTEMBER 2020