

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/134

- Applicant** : Mr. CHEUNG Kwok Kin represented by Mr. HUI Kwan Yee
- Site** : Lot 1367 (Part) in D.D. 39, Ma Tseuk Leng San Uk Ha, Sha Tau Kok, New Territories
- Site Area** : 184.5 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

1.1 The applicant, who claims himself an indigenous villager of Ma Tseuk Leng in Sha Tau Kok Heung¹, seeks planning permission to build an NTEH (Small House) on the application site (the Site) in Ma Tseuk Leng San Uk Ha, Sha Tau Kok (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ is a Column 2 use in the “AGR” zone requiring planning permission from the Town Planning Board (the Board).

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

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

1.3 Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**.

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be an indigenous villager of Ma Tseuk Leng in Sha Tau Kok Heung. His eligibility for Small House grant has yet to be ascertained.

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application Form with attachments received on 28.10.2020 (Appendix Ia)
- (b) Supplementary Information received on 4.11.2020 (Appendix Ib)

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 Ia**. They can be summarised as follows:

- (a) the proposed Small House will be built on vacant agricultural land;
- (b) there is no other land available for the proposed Small House development; and
- (c) there are other similar Small Houses built in the vicinity of the Site.

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

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

4. **Assessment Criteria**

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

5. **Previous Application**

There is no previous application for the Site.

6. **Similar Applications**

- 6.1 There are 46 similar applications involving 40 sites for Small House development within / partly within the “AGR” zone in the vicinity of the Site in the Luk Keng and Wo Hang area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among these similar cases, 32 applications were approved with conditions by the Committee between December 2000 and January 2015 (i.e. before the cautious approach being adopted by the Board), one of which (Application No. A/NE-LK/79 for four proposed Small Houses) is located to the immediate south and north across two existing village houses (**Plan A-2a**). These applications were approved mainly on the considerations that the applications generally complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the village ‘environs’ (‘VE’) and there was a general shortage of land within the “V” zone at the time of consideration; the proposed Small House developments were not incompatible

with the surrounding rural and village area; and the proposed developments were not expected to have significant adverse impacts on the surrounding areas. Five other applications No. A/NE-LK/106, 107, 109, 111 and 112 were approved by the Committee between December 2016 and April 2018 (i.e. after the cautious approach being adopted by the Board) mainly for the reason of being the subject of previously approved applications (A/NE-LK/30, 73, 77 and 80).

- 6.3 Three applications No. A/NE-LK/78, 92 and 93 were rejected by the Committee between March 2013 and October 2014 (i.e. before the cautious approach being adopted by the Board) on the grounds that the proposed Small House was not in line with the planning intentions of “AGR” and “Green Belt” (“GB”) zones; the proposed development might have adverse impact on a natural stream in the vicinity; the application did not comply with the Interim Criteria and TPB PG-No. 10 on application for development within “GB” zone in that the proposed development would involve vegetation clearance and hence affect the existing natural landscape; land was still available within the “V” zone of Ma Tseuk Leng for Small House development; and the approval of the application would set an undesirable precedent for similar applications in the area. The remaining six applications No. A/NE-LK/114 to 117, 121 and 122 were rejected by the Board on review or by the Committee between November 2018 and November 2019 mainly on similar grounds that the proposed Small House was not in line with the planning intention of “AGR” and “GB” zones; the application did not comply with the Interim Criteria TPB PG-No. 10 on application for development within “GB” zone in that the proposed development would cause drainage impact on the surrounding areas and the proposed development would involve vegetation clearance and hence affect the existing natural landscape; land was still available within the “V” zone of Ma Tseuk Leng for Small House development; and the approval of the application would set an undesirable precedent for similar applications in the area. An appeal regarding the rejected application No. A/NE-LK/114 located to the northeast of the Site (**Plan A-2a**) was heard by the Town Planning Appeal Board on 30 September 2020, the decision is yet to be released.
- 6.4 Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plan A-1 and A-2a**.

7. The Site and its Surrounding Areas (Plans A-1, A-2a and A-2b, aerial photo on Plan A-3 and site photos on Plan A-4)

7.1 The Site is:

- (a) fenced off, densely vegetated and grown with shrubs;
- (b) located in close proximity to the village cluster of Ma Tseuk Leng San Uk Ha; and
- (c) accessible from Sha Tau Kok Road – Wo Hang via a local road (**Plan A-2a**).

7.2 The surrounding areas have the following characteristics:

- (a) to the immediate north are two village houses, while to the further north are one of the sites of an approved Small House application no. A/NE-LK/79, vacant land and some storage uses;
- (b) to the east are active/fallow agricultural land, and to the further northeast is the village cluster of Ma Tseuk Leng San Uk Ha within the “V” zone;

- (c) to the immediate south is one of the sites of an approved Small House application no. A/NE-LK/79, over which are fallow agricultural land, vacant land and Sha Tau Kok Road – Wo Hang; and
- (d) to the west across the local road are two village houses, fallow agricultural land and vacant land.

8. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. Comments from Relevant Government Departments

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

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	- -	100% 100%	- The Site and footprint of the proposed Small House fall entirely within the “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%	- -	- DLO/N, LandsD advises that the footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet the Small House demand in Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster ² : about 14.35 ha (equivalent to 574 Small House sites). The outstanding Small House applications for the village cluster are 56 ³ while the 10-year Small House demand forecast for the same villages is 518.

² Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster comprises Sheung Ma Tseuk Leng Village, Ha Ma Tseuk Leng Village and Shek Kiu Tau Village.

³ Among the 56 outstanding Small House applications, 18 of them fall within the “V” zone and 38 straddle or outside the “V” zone. For those 38 applications straddling or outside the “V” zone, 6 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		<u>Land Available</u> - Land available to meet the Small House demand within the “V” zone of the village cluster: about 2.27 ha (equivalent to 90 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 point of view as the Site possesses potential for agricultural rehabilitation. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc.
5.	Compatible with surrounding area/ development?	✓		- The proposed development is not incompatible with the surrounding areas predominated by fallow/active agricultural land, tree groups and village houses (Plan A-2a).
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by LandsD.
9.	Traffic impact?	✓		- Commissioner for Transport (C for T) has reservation on the application and advises that Small House development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the “V” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>impact could be substantial.</p> <ul style="list-style-type: none"> - Notwithstanding the above, the application involves construction of one Small House. She considers that the application can be tolerated unless being rejected on other grounds.
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required for the application.
11.	Sewage impact?		✓	<ul style="list-style-type: none"> - Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping impact?		✓	<ul style="list-style-type: none"> - Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning perspective. - The Site is a scrubland and no significant vegetation was observed within the Site. The Site is located in an area of rural landscape character predominated by abandoned farmlands, tree groups, and village houses. The applied use is considered not incompatible with the landscape character of the surrounding area. The layout of proposed house is not in conflict with any existing trees.
13.	Local objection conveyed by DO?	✓		<ul style="list-style-type: none"> - District Officer (North) (DO(N)) advises that the Resident Representative (RR) of Ma Tseuk Leng Ha objected to the application on the grounds of adverse drainage impact on the nearby houses. The Indigenous Inhabitant Representative (IIR) of Ma Tseuk Leng Ha supported the application provided that the applicant is an indigenous villager of the concerned village and no selling of Small House rights is involved. The Chairman of Sha Tau Kok District Rural Committee and the incumbent North District Council member of the subject constituency had

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				no comment on the application.

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/North, Lands Department;
- (b) Commissioner for Transport;
- (c) Director of Environmental Protection;
- (d) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (e) Chief Engineer/Mainland North, Drainage Services Department;
- (f) Director of Fire Services;
- (g) Director of Agriculture, Fisheries and Conservation; and
- (h) District Officer (North), Home Affairs Department.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department; and
- (c) Project Manager (North), Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 6.11.2020, the application was published for public inspection. During the statutory public inspection period, five public comments were received (**Appendix V**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Hong Kong Bird Watching Society, Kadoorie Farm and Botanic Garden and two individuals object to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land is available within the “V” zone for Small House development; setting of undesirable precedent for other similar applications within the “AGR” zone; and uncertain indigenous identity of the applicant.

11. Planning Considerations and Assessments

- 11.1 The Site falls entirely within the “AGR” zone on the OZP. The proposed Small House development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural point of view as the Site possesses potential for agricultural rehabilitation.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is 56 while the 10-year Small House demand forecast for the same village cluster is 518. According to the latest estimate by PlanD, about 2.27 ha (equivalent to 90 Small House sites) of land are available in the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the Site falls entirely within the ‘VE’ of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.

- 11.3 The Site is situated in an area of rural landscape character predominated by fallow/active agricultural land, tree groups and village houses. The proposed Small House development is not entirely incompatible with the surrounding environment (**Plan A-3**). CTP/UD&L, PlanD has no objection to the application as significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. C for T considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development involves construction of one Small House only, the application could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment on / no objection to the application.
- 11.4 Regarding the Interim Criteria (**Appendix II**), while land available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is insufficient to fully meet the future Small House demand of 574 Small Houses, such available land (about 2.27 ha or equivalent to 90 Small House sites) is capable to meet the 56 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. As such, it is considered more appropriate to concentrate the proposed Small House developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 11.5 There are 25 similar applications for Small House development in the vicinity of the Site (**Plan A-2a**). Of them, 17 applications within “AGR” zone were approved by the Committee between 2000 and 2015 (i.e. before the adoption of a more cautious approach by the Board) mainly on the grounds of generally complying with the Interim Criteria. After the adoption of more cautious approach, only one application (No. A/NE-LK/109) to the southwest of the Site was approved by the Committee in 2017 for the reason of being the subject of a previously approved application (No. A/NE-LK/30). For the three applications (No. A/NE-LK/92, 93 and 122) straddling “AGR” and “GB” zones, they were rejected by the Committee between 2014 and November 2019 mainly on the grounds that the application did not comply with the Interim Criteria / and TPB PG-No. 10 on application for development within “GB” zone; and the approval of the application would set an undesirable precedent for similar applications in the area. The remaining four applications (No. A/NE-LK/114 to 117) located to the north and east of the Site within “AGR” zone were rejected by the Committee or the Board on review between November 2018 and February 2019 mainly on the considerations that the proposed Small House was not in line with the planning intention; and land was still available within the “V” zone of the concerned village cluster. It is considered that the planning circumstances of the current application are similar to those four rejected applications (No. A/NE-LK/114 to 117).
- 11.6 Regarding the local objections conveyed by DO(N) of HAD and public comments mentioned in paragraphs 9.1 and 10 above, Government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local objections conveyed by DO(N) of HAD and public comments mentioned in paragraphs 9.1 and 10 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention; and
- (b) land is still available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster where land 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 infrastructures and services.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 18.12.2024, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

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

13. Decision Sought

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

14. Attachments

Appendix Ia	Application Form with attachments received on 28.10.2020
Appendix Ib	Supplementary Information received on 4.11.2020
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/ Small House in New Territories
Appendix III	Similar s.16 Applications for Proposed House (NTEH – Small House) within/partly within the “AGR” zone in the vicinity of the Site in the

Appendix IV	Luk Keng and Wo Hang Area
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Drawing A-1	Recommended Advisory Clauses
Plan A-1	Layout Plan
Plan A-2a	Location Plan
Plan A-2b	Site Plan
	Estimated Amount of Land Available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2020**