

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

**APPLICATION NO. A/NE-LT/630**

- Applicant** : Mr. YU Hung Kwong represented by T.H. & Associates Limited
- Site** : Lot 206 in D.D. 18, Lung A Pai, Lam Tsuen, Tai Po, New Territories
- Site Area** : About 107.8m<sup>2</sup>
- Lease** : Block Government Lease (0.02 acre<sup>1</sup> is recorded as house)
- Plan** : Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH))

**1. The Proposal**

- 1.1 The applicant seeks planning permission for development of an NTEH on the application site (the Site). The Site falls within an area zoned “AGR” on the approved Lam Tsuen OZP No. S/NE-LT/11 (**Plan A-1**). 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)’ within the “AGR” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed NTEH development are as follows:
- |                  |   |                      |
|------------------|---|----------------------|
| Total floor area | : | 195.09m <sup>2</sup> |
| No. of storeys   | : | 3                    |
| Building height  | : | 8.23m                |
| Roofed over area | : | 65.03m <sup>2</sup>  |
- 1.3 Layout of the proposed NTEH and the proposed sewerage connection are shown on **Drawings A-1** and **A-2** respectively.
- 1.4 On 9.2.2018, the Board agreed to the applicant’s request to defer making a decision on the application for two months to allow time for clarification of the lot boundary of the Site with Lands Department. The latest further information was submitted on 20.3.2018 and the application is scheduled for consideration by the Committee on 18.5.2018.

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<sup>1</sup> 0.02 acre is equivalent to about 80.94m<sup>2</sup>.

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

- (a) application form and attachments received on 28.12.2017 (**Appendix I**);
- (b) further information received on 24.1.2018 on minor clarification on sewerage connection proposal with written consent of the adjacent lot owners (**Appendix Ia**) (*accepted and exempted from recounting requirement*); and
- (c) further information received on 20.3.2018 on minor clarification on lot boundary of the Site (**Appendix Ib**) (*accepted and exempted from recounting requirement*).

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

The justifications put forth by the applicant in support of the application are detailed in supporting documents at **Appendices I and Ia**. They can be summarized as follows:

- (a) the Site is an Old Schedule lot with registered area of 0.03 acre, of which 0.02 acre is for house;
- (b) the proposed NTEH is compatible with the rural environment. No tree felling is required for the proposed development. There is no ditch or stream course within 30m of the Site and foul water will be discharged into the manhole of Lot 207, which is owned by the applicant. In addition, there is no vehicular access leading to the Site. Hence, the proposed development will not cause adverse visual, landscape, sewage and traffic impacts to the surrounding area; and
- (c) there is a planning application (No. A/NE-LT/611) for the same use situated at the adjoining lot (i.e. Lot 207) approved by the Board in 2017.

## **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 ground (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. No change has been made to the criterion (i) in the latest set of Interim Criteria promulgated on 7.9.2007 which is at **Appendix II**.

## **5. Previous Application**

There is no previous planning application at the Site.

## **6. Similar Applications**

- 6.1 There is a similar application (No. A/NE-LT/611) for NTEH development located to the immediate southeast of the Site (**Plan A-2**) submitted by the same applicant under the current application, which was approved by the Committee on 24.11.2017 under exceptional circumstances that the site had a building status under the lease and it had been the Board's established practice to respect the building right of the land owners in considering similar planning applications; and approval of the application would not set an undesirable precedent.
- 6.2 Besides, there is an application (No. A/NE-LT/610) for Small House development to the immediate southwest of the Site which was rejected by the Committee on 14.7.2017 mainly on the grounds of not complying with the planning intention of the "AGR" zone and the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding areas; land is still available within the "V" zone of Lung A Pai for Small House development; and setting of undesirable precedent.
- 6.3 Details of the similar applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2**.

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

- 7.1 The Site is:
  - (a) flat and vacant covered by groundcovers and wild grass;
  - (b) located about 120m to the northwest of village proper of Lung A Pai; and
  - (c) accessible via a footpath.
- 7.2 The surrounding area is predominantly rural in character with fallow agricultural land, tree groups and village houses. Dense woodland is located to the immediate southwest 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**

### **Land Administration**

- 9.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP of LandsD):
- (a) no in-principle objection to the proposed NTEH development with a footprint of 65.03m<sup>2</sup>, total gross floor area of 195.09m<sup>2</sup> and building height of 8.23m;
  - (b) the lot is an Old Schedule Lot held under Block Government Lease. According to its Schedule, the lot has an area of 0.03 acre (about 121.4m<sup>2</sup>), of which 0.02 acre (about 80.9m<sup>2</sup>) is described as “house” and is of building status;
  - (c) the number of storeys and height of the proposed development shall not be more than 3 storeys and 8.23m in height as permitted under the Buildings Ordinance (Application to the New Territories) Ordinance, Cap 121;
  - (d) it is stated in the application document that the applicant is an indigenous villager of Lung A Pai. LandsD has not verified whether he is an indigenous villager as it is not relevant to his application for redevelopment of an Old Schedule house lot;
  - (e) the subject lot is not covered by any Modification of Tenancy/building licence;
  - (f) the applicant should connect the sewerage system of the proposed development to the public sewer if available;
  - (g) the proposed sewerage connection will traverse private lots and Government land. The applicant should obtain concerned private lot owners’ registered consent to construct pipelines and manholes thereon, and LandsD’s written consent prior to commencement of works on Government land; and
  - (h) should the planning application be approved, LandsD would continue to process the redevelopment application in the capacity of a landlord and if the application is approved, it will be subject to such terms and conditions as considered appropriate.

### **Traffic**

- 9.2 Comments of the Commissioner for Transport (C for T):
- (a) in general, he has reservation on the application. Such type of 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 impact could be substantial; and
  - (b) notwithstanding, the application only involves development of an NTEH at the Site and he considers that the application can be tolerated unless it is rejected on other grounds.

## **Environment**

### 9.3 Comments of the Director of Environmental Protection (DEP):

- (a) the Site falls within the “AGR” zone and is within water gathering ground (WGG). The applicant proposed to connect the subject NTEH to the existing public sewerage at Lung A Pai. The Site is about 44m away from the public sewer manhole. Provided that the applicant can obtain consent from the adjacent lot owners for laying and maintaining sewer pipes, sewer connection is feasible and capacity is available. Therefore, he has no objection to the application on conditions that:
  - (i) the proposed NTEH shall be connected to the public sewer for sewage disposal;
  - (ii) written consents can be obtained from adjacent lot owner(s) for laying and maintaining sewage pipes, if applicable;
  - (iii) adequate land space within the Site will be reserved for connection of the proposed NTEH to the public sewer; and
  - (iv) the cost of sewer connection will be borne by the applicant.

## **Landscape**

### 9.4 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) objects to the application from landscape planning perspective;
- (b) the Site is situated in an area of rural landscape character comprising of village houses, active farmland, scattered tree groups and woodland patches. Dense woodland is found to the immediate southwest of the Site and Tai Om Fungshui Woodland recognized by Agriculture, Fisheries and Conservation Department (AFCD) to the far west of the Site. Although the proposed development is not in line with the planning intention of the “AGR” zone, it is not incompatible with the surrounding environment;
- (c) the Site is vacant and covered with grasses and groundcovers. No tree is found within the Site. Adverse impact on landscape resources from the proposed development is not anticipated. Comparing with the aerial photos in 2014 and 2015, it is apparent that vegetation has been cleared within and outside the Site prior to submission of application. Approval of the application would set an undesirable precedent to encourage vegetation clearance prior to the application. In addition, since the Site is situated at the edge of existing mature woodland, approval of the application would encourage similar developments of further encroachment to the woodland. The cumulative effect of approving such applications would result in degradation of landscape character and cause adverse landscape impact to the area; and
- (d) should the application be approved, approval condition on the submission and implementation of landscape proposal is recommended.

## **Drainage and Sewerage**

### 9.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN of DSD):

- (a) no in-principle objection to the application from public drainage point of view;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement the drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area;
- (c) there is no public drain maintained by DSD in the vicinity of the Site. The proposed NTEH should have its own stormwater collection and discharge systems to cater for the runoff generated within the Site and overland flow from other areas surrounding the Site. The proposed development is located on unpaved ground, and it will increase the impervious area, resulting in a change of the flow pattern and an increase of the surface runoff and thus the flooding risk in the area. The applicant should take this into account when preparing the drainage proposal;
- (d) the applicant should design the drainage proposal based on the actual sites conditions for DSD's comment/agreement. DSD would not assist the lot owner/developer on his drainage proposal. In the design, the applicant should consider the workability, the impact to the surrounding environment and seek comments from other concerned parties/departments if necessary. The applicant should make sure no adverse impact will be caused to the area due to the proposed works. The existing natural streams, village drains, ditches and the adjacent areas should not be adversely affected;
- (e) the Site is within an area where connections to existing public sewerage networks are available in the vicinity. Should the applicant choose to connect his proposed drainage/sewerage systems to DSD's networks, he shall submit connection proposals for DSD's agreement;
- (f) should the applicant choose to dispose of sewage of the proposed development through other means, views and comments from the Environmental Protection Department (EPD) should be sought; and
- (g) the applicant is required to maintain drainage/sewerage systems properly and rectify/modify such systems if they are found to be inadequate or ineffective during operation. The applicant/owner shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems.

### 9.6 Comments of the Chief Engineer/Project Management, Drainage Services Department (CE/PM, DSD):

- no comment on the application as there is no drainage or sewerage project under DSD's control in Lung A Pai.

### **Agriculture**

#### 9.7 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- the Site and its vicinity are overgrown with grass and shrubs. Nevertheless, agricultural infrastructure such as footpath is available. The Site possesses potential for rehabilitation of agricultural activities. As such, he does not support the application from the agricultural development point of view.

### **Fire Safety**

#### 9.8 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application; and
- (b) the applicant is reminded to observe 'New Territories Exempted Houses – a Guide to Fire Safety Requirements' published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

### **Water Supply**

#### 9.9 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C of WSD):

- (a) no objection to the application; and
- (b) the Site is located within the upper indirect WGG and is less than 30m away from the nearest stream course. The proposed NTEH footprint falls within the "AGR" zone and is entirely within the 'VE' of Lung A Pai. It is noted from DEP that the proposed NTEH is able to be connected to the public sewerage system in the area. Thus, compliance with the "Interim Criteria for Consideration of Applications for NTEH/Small House in New Territories" can be reasonably established;
- (c) it is noted that DEP requires the applicant to connect the proposed NTEH with the public sewerage system for sewage disposal. He supports DEP's view by imposing the following conditions:
  - (i) the foul water drainage system of the proposed NTEH can be connected to the public sewerage system in the area and the applicant shall connect the whole of the foul water drainage system to the public sewerage system;
  - (ii) adequate protective measures shall be taken to ensure that no pollution or siltation occurs to the WGG;
  - (iii) the applicant shall submit an executed Deed of Grant of Easement for each private lot through which the sewer connection pipes are proposed to pass to demonstrate that it is both technically and legally feasible to install sewerage pipes from the proposed NTEH to the public sewerage system via relevant private lot;
  - (iv) since the proposed NTEH itself is less than 30m from the nearest

watercourse, it should be located as far away from the watercourse as possible;

- (v) the whole of foul effluent shall be conveyed through cast iron pipes or other approved material with sealed joints and hatchboxes from the proposed NTEH to public sewers; and
- (d) for provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

### **Electricity Supply and Safety**

9.10 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) no comment on the application from electricity supply safety aspect; and
- (b) however, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organising and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier for the requisition of cable plans (and overhead line alignment drawings where applicable) to find out whether there is any underground cable and/or overhead line within or in the vicinity of the Site. The applicant should also be reminded to observe the "Code of Practice on Working near Electricity Supply Lines" established under the Electricity Supply Lines (Protection) Regulation when carrying out works in the vicinity of the electricity supply lines.

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

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

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

On 9.1.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment from an individual was received objecting to the application on the grounds of being not in line with the planning intention of the "AGR" zone and setting of undesirable precedent.

## **11. Planning Considerations and Assessments**

11.1 The application is for development of an NTEH with a footprint of 65.03m<sup>2</sup>, GFA of 195.09m<sup>2</sup> and 3 storeys (8.23m) at the Site which falls entirely within the "AGR"



zone (**Plan A-1**). The proposed NTEH development is not in line with the planning intention of “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 as the Site possesses potential for rehabilitation of agricultural activities.

- 11.2 The Site, situated to the northwest of the village proper of Lung A Pai, is currently vacant and covered by groundcovers and wildgrass (**Plan A-4**). The surrounding area is rural in character occupied mainly by fallow agricultural land with sporadic village houses. Dense woodland is found at the immediate southwest (**Plan A-3b**). Comparing with the past aerial photos (**Plan A-3a**), it is apparent that vegetation has been cleared within and outside the Site prior to submission of the application. CTP/UD&L of PlanD objects to the application as approval of the application will set an undesirable precedent encouraging vegetation clearance prior to application and similar developments further encroaches to the woodland, result in degradation of landscape character and cause adverse landscape impact to the area.
- 11.3 This is an exceptional circumstance which merits sympathetic consideration of the application in that the Site is an Old Schedule Lot held under Block Government Lease with a building status. As advised by the DLO/TP of LandsD, the Site with a registered area of 0.03 acre (about 121.4m<sup>2</sup>), of which 0.02 acre (about 80.9m<sup>2</sup>) is described as house under the Block Government Lease is entitled for the development of an NTEH with a footprint of 65.03m<sup>2</sup>, a total floor area of 195.09m<sup>2</sup> and not more than 3 storeys (8.23m) as permitted under the Buildings Ordinance (Application to the New Territories) Ordinance. It has been the existing practice of the Board to take into account the building entitlement under the lease in considering the planning application. As each application would be considered on its individual merits, approval of the subject application would unlikely set an undesirable precedent for similar applications within the “AGR” zone.
- 11.4 The Site falls within the upper indirect WGG. CE/MN, DSD advises that the Site is within an area where connections to existing sewerage networks are available in the vicinity (**Plan A-2**). The applicant has proposed to connect the proposed NTEH to the public sewerage system (**Appendix Ia** and **Plan A-2**). Both DEP and CE/C of WSD have no objection to the application provided that the applicant shall connect the proposed NTEH to the public sewer at his own cost. C for T has general reservation on the application as such development should be confined within “V” zone as far as possible but considers that the application involving development of an NTEH only can be tolerated. Other relevant Government departments including CE/PM of DSD, CHE/NTE of HyD, H(GEO) 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 footprint of the proposed NTEH falls within the ‘VE’ of Lung A Pai and the proposed NTEH would be able to be connected to the public sewerage system in the area. To address CTP/UD&L, PlanD’s concern on adverse landscape impact to the area, a planning condition on the submission and implementation of landscape proposal is recommended if the application is approved. It is also noted that apart from DAFC and CTP/UD&L, PlanD, other concerned Government departments have no objection to or adverse comment on the application. Besides, there is a similar application (No. A/NE-LT/611) for NTEH development situated to the immediate southeast of the Site (**Plan A-2**), which was approved by the Committee on 24.11.2017 based on exceptional circumstances in that the site had a building status

under the lease. The current application with similar circumstances of having a building status warrants sympathetic consideration on the same basis.

- 11.6 As regards the application No. A/NE-LT/610 for Small House development situated to the immediate southwest of the Site (**Plan A-2**), it was rejected by the Committee in 2017 for the reason of not complying with the planning intention of the “AGR” zone and the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding areas; land being still available within the “V” zone of Lung A Pai for Small House development; and setting of an undesirable precedent for other similar application in the area. The circumstances of that application are not similar or relevant to the subject application.
- 11.7 The public comment objecting to the application is mainly on the grounds of being not in line with planning intention of the “AGR” zone and setting of undesirable precedent. In this regard, the planning assessments and comments of Government departments above are relevant.

## **12. Planning Department’s Views**

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until **18.5.2022** and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval Conditions

- (a) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (d) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or the Town Planning Board.

### Advisory Clauses

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

- 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 and 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 current 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 the New Territories in that the proposed development would cause adverse landscape impact on the surrounding area.

**13. Decision Sought**

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

**14. Attachments**

Appendix I	Application form and attachments received on 28.12.2017
Appendix Ia	Further information received on 24.1.2018
Appendix Ib	Further information received on 20.3.2018
Appendix II	Relevant Revised Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories (promulgated on 7.9.2007)
Appendix III	Similar applications
Appendix IV	Public comment
Appendix V	Recommended advisory clauses
Drawing A-1	Site plan submitted by the applicant
Drawing A-2	Sewerage connection proposal submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plans A-3a and A-3b	Aerial photos
Plan A-4	Site photo