

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

APPLICATION NO. A/NE-LT/640

<u>Applicant</u>	Mr. CHUNG Chi Wo
<u>Site</u>	Lot 1534 S.F in D.D. 19, Ha Tin Liu Ha, Lam Tsuen, Tai Po, New Territories
<u>Site Area</u>	About 109.3 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
<u>Zonings</u>	“Agriculture” (“AGR”) (about 74%) and “Village Type Development” (“V”) (about 26%)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. **The Proposal**

1.1 The applicant, who claims himself an indigenous villager of Tin Liu Ha¹, 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, whilst ‘House (NTEH only)’ is always permitted within 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 requires 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
No. of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²

1.3 Layout of the proposed Small House and the proposed sewerage connection are shown on **Drawings A-1 & A-2**.

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

- 1.4 The Site is the subject of two previous applications (No. A/NE-LT/571 and 618) for the same use, submitted by the same applicant of the current application, which were rejected by the Committee/Board on review on 24.6.2016 and 2.2.2018 respectively. Compared with the previous applications (No. A/NE-LT/571 and 618), the footprint and development parameters of the proposed Small House under the current application remain the same.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) application form and attachments on 29.6.2018 **(Appendix I)**
 - (b) further information providing a new sewerage connection proposal with owner's consent, revised site plans and minor clarification on justifications on 5.7.2018 **(Appendix Ia)** *(accepted and exempted from publication and recounting requirements)*

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application stated in Part 9 of the application form at **Appendix I** are summarized as follows:

- (a) the proposed Small House will not cause adverse environmental and landscape impacts to the surroundings, for reasons that the Site has not been used for agricultural purpose in the past 40 years, there are existing village houses adjacent to the Site and public sewer at Ha Tin Liu Ha is available for connection;
- (b) there are similar Small House developments in the vicinity of the Site and some of them fall entirely outside "V" zone, but only part of the proposed development falls outside "V" zone. If the application is rejected, it would be unfair to the applicant;
- (c) as Ha Tin Liu Ha was constructed at a later stage, land within the "V" zone concerned has been largely owned by non-Ha Tin Liu Ha villagers, for example Lot 1529 RP in D.D. 19 is owned by She Shan Village "Tso Tong". Although land is still available within "V" zone in Ha Tin Liu Ha, it is irrelevant to its villagers;
- (d) the applicant has been applying for a Small House development with DLO/TP, LandsD since 2011. However, the applicant was working overseas and not able to follow up the application;
- (e) the applicant was raised in Ha Tin Liu Ha and has developed a strong bond with the village. The applicant has no property neither in the village nor in Hong Kong. He would like to settle in the village after retirement;
- (f) the applicant's parents are living adjacent to the Site. After the proposed Small House is constructed, the applicant can take good care of his parents;

- (g) the Site is the only piece of land allocated to the applicant by his predecessor. There would be no other piece of land for Small House development if the application is not approved; and
- (h) the proposed Small House is not used for profit-making purpose.

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

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

4. **Assessment Criteria**

The set of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. On 23.8.2002, criterion (i) which requires that the application site, if located within water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

5. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site forms part of an area which is the subject of a previous enforcement case (No. E/NE-LT/58) regarding filling of land with Enforcement Notice (EN) issued on 20.2.2017 and Reinstatement Notice (RN) issued on 20.7.2017. Following the discontinuation of the unauthorised development and completion of the reinstatement work (removal of leftovers and debris, removal of hard paving and grassing of the land), the Compliance Notices for EN and RN were issued.

6. **Previous Applications**

- 6.1 The Site is the subject of two previous applications (No. A/NE-LT/571 and 618) submitted by the same applicant for the same use, which were rejected by the Committee/the Board on review on 24.6.2016 and 2.2.2018 respectively, for reasons of being not in line with the planning intention of “AGR” zone; non-compliance with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom; and land being still available within the concerned “V” zone for Small House development. Compared with the previously rejected applications No. A/NE-LT/571 and 618, the footprint and development parameters of the proposed Small House under the current application remain unchanged.

- 6.2 Details of the previous applications are summarized at **Appendix III** and its location is shown on **Plans A-1 and A-2a**.

7. Similar Applications

- 7.1 There are nine similar applications involving seven sites for Small House development in the vicinity of the Site and within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plans A-1 and A-2a**).
- 7.2 Three applications (No. A/NE-LT/344, 345 and 346) were approved with conditions by the Committee between 2005 and 2006 mainly on the grounds that the application was in line with the Interim Criteria in that the Small House footprint fell entirely within the ‘VE’; there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Two other applications No. A/NE-LT/489 and 635 were also approved by the Committee in 2013 and 2018 respectively mainly for reason of being the subject of previously approved applications (No. A/NE-LT/344 and 345) and there had been no major change in planning circumstances.
- 7.3 For the four rejected cases (No. A/NE-LT/413, 570, 578 and 623), they were rejected by the Committee/the Board on review between 2011 and 2018 mainly for the reasons of being not in line with the planning intention of “AGR” zone; not complying with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in the “V” zone; and land being still available within the “V” zone of concerned villages for Small House development. Applications No. A/NE-LT/570 and 578 were also rejected for the reasons of not being able to be connected to the existing or planned sewerage system. In addition, application No. A/NE-LT/578 was also rejected on the ground that the proposed development would cause adverse landscape impact to the surroundings.
- 7.4 Details of the above similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1 and A-2a**.

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

- 8.1 The Site is:
- (a) flat, currently vacant and largely hard-paved; and
 - (b) located at the northern fringe of Ha Tin Liu Ha.
- 8.2 The surrounding areas are predominantly rural in character with a mix of village houses, active and fallow agricultural land and tree groups. Village

houses are found to the immediate south of the Site and the village cluster of Ha Tin Liu Ha is situated about 50m to the further southeast.

9. Planning Intentions

9.1 The planning intention of the “V” zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. 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.

9.2 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.

10. Comments from Relevant Government Departments

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

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - Footprint of the Small House - Application site	27% 26%	73% 74%	- The remaining portions of the Site and the footprint of the proposed Small House fall within the “AGR” zone.
2.	Within ‘VE’? - Footprint of the proposed Small House - Application site	100% 100%	- -	- The Site and the footprint of the proposed Small House fall entirely within ‘VE’. District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and		✓	- Land required to meet Small House demand in Tin Liu Ha and Ko Tin Hom is about 3.45 ha (or equivalent to 138 Small House

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	10-year Small House demand?			<p>sites). The outstanding Small House applications are 8² while the 10-year Small House demand forecast for the same village is 130.</p> <p>- Land available to meet Small House demand within the “V” zone of the villages concerned: about 3.4 ha (or equivalent to 136 Small House sites) (Plan A-2b).</p>
4.	Compatible with the planning intention of “AGR” zone?		✓	<p>- The Director of Agriculture, Fisheries and Conservation (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 road access and water source is available, and the Site possesses potential for agricultural rehabilitation.</p>
5.	Compatible with surrounding area/ development?	✓		<p>- The proposed Small House is not incompatible with the surrounding area which is rural in landscape character occupied by active and fallow agricultural land, tree groups and village houses. Village cluster is formed in close proximity of the Site.</p>
6.	Within Water Gathering Ground (WGG)?	✓		<p>- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application as the Site is able to be connected to the public sewerage system.</p> <p>- Approval conditions on connection to public sewers and provision of protective measures</p>

² Among the 8 outstanding Small House applications, 2 of them fall within the “V” zone and 6 straddle or outside the “V” zone. For those applications straddling or being outside the “V” zone, one of them has obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				to WGG are required.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?		✓	- The Commissioner for Transport (C for T) has no in-principle objection to the application.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application. - Approval condition on provision of drainage facilities is required.
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) has no objection to the application as sewer connection is feasible and capacity is available for the proposed Small House development.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning point of view. The Site is vacant and covered with gravels and groundcovers. No existing tree is recorded within the Site and adverse impact on landscape resources is not anticipated. - Should the Board approve the

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				application, the standard condition on landscape proposal is not recommended since the proposed house footprint covers most of the Site and there is inadequate space for landscaping within the Site.
13.	Geotechnical impact		✓	
14.	Local objections conveyed by DO?		✓	

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

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

10.3 The following Government departments have no 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) Director of Electrical and Mechanical Services;
- (d) District Officer/Tai Po, Home Affairs Department; and
- (e) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.

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

On 6.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received from an individual and Hong Kong Bird Watching Society, objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land being still available within “V” zone for Small House

development; being the subject of a “destroy first, apply later” application; and having adverse landscape and environmental impacts.

12. Planning Considerations and Assessments

- 12.1 The Site falls mainly within an area zoned “AGR” (about 74%) with the remaining portion in the “V” zone (about 26%) (**Plan A-2a**). 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. 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 road access and water source is available and the Site possesses potential for agricultural rehabilitation.
- 12.2 According to the DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Tin Liu Ha and Ko Tin Hom is 8 while the 10-year Small House demand forecast is 130. Based on the latest estimate by the Planning Department, about 3.4 ha (or equivalent to about 136 Small House sites) of land are available within the “V” zone of the concerned villages. As the footprint of the Small House falls entirely within the ‘VE’ of the concerned village, DLO/TP, LandsD has no objection to the application.
- 12.3 The Site located on the northern fringe of Ha Tin Liu Ha (**Plan A-2a**) is currently vacant and largely hard-paved. There are village houses to the immediate south of the Site. The village cluster of Ha Tin Liu Ha is located about 50m to the further southeast. The proposed development is not incompatible with the existing landscape setting which is rural in character occupied by active and fallow agricultural land, tree groups and village houses. CTP/UD&L of PlanD has no objection to the application from landscape planning point of view as adverse impact on landscape resources is not anticipated.
- 12.4 The Site falls within the upper indirect WGG. According to CE/MN of DSD and DEP, sewer connection and sewer capacity are available. In this regard, the applicant has submitted a sewerage connection proposal with written consent from an affected lot owner (**Appendix Ia**). Both 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 cost and adequate space within the Site will be reserved for connection. Besides, the Site forms part of an area which is the subject of a previous enforcement case regarding filling of land. Following the discontinuation of the unauthorised development and completion of the reinstatement work, the Compliance Notices for EN and RN were issued. Other relevant Government departments including C for T, CHE/NTE of HyD, H(GEO) of CEDD and D of FS have no objection to or adverse comment on the application.
- 12.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Ha Tin Liu Ha and the

proposed development within WGG would be able to be connected to the public sewerage system (**Plan A-2a**). Whilst land available within the “V” zone for Small House development (about 3.4 ha or equivalent to about 136 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is capable to meet the 8 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.

- 12.6 There are eight similar applications for Small House development in close vicinity of the Site (**Plan A-2a**). Three of them (applications No. A/NE-LT/344, 345, 346) were approved between 2005 and 2006 mainly on the grounds that the Small House footprint fell entirely within the ‘VE’; there was a general shortage of land to meet the demand for Small House development in the “V” zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. The other two applications No. A/NE-LT/489 and 635 were approved in 2013 and 2018 respectively mainly for the reason of being the subject of previously approved applications (No. A/NE-LT/344 and 345). Regarding the three rejected applications (No. A/NE-LT/413, 570 and 623), they were rejected by the Committee/the Board on review between 2011 and 2018 mainly on the grounds that there was no general shortage of land in meeting the demand for Small House development in the “V” zone; and land was still available within the “V” zone for Small House development. The two previous applications (No. A/NE-LT/571 and 618) on the Site were rejected for the same reasons of applications No. A/NE-LT/413, 570 and 623.
- 12.7 Regarding the public comments objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone, land being still available within “V” zone for Small House development, having adverse landscape and environmental impacts, and being the subject of “destroy first, apply later” application, Government departments’ comments and the planning assessments and considerations above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “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 current submission for a departure from the planning intention; and

- (b) land is still available within the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 17.8.2022, 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 drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or of the Town Planning Board.

Advisory Clauses

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

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to 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.
- 14.3 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.

15. Attachments

Appendix I	Application form and attachment received on 29.6.2018
Appendix Ia	Further information received on 5.7.2018
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	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	Site plan submitted by the applicant
Drawing A-2	Sewerage connection proposal submitted by the applicant
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within "V" zone
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
AUGUST 2018**