

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/656

- Applicant** : Mr. WONG, Jason Ka Ho represented by Mr. HUNG Shu-ping
- Site** : Lots 623 S.A and 623 S.B in D.D. 8, Ma Po Mei, Tai Po, New Territories
- Site Area** : About 246.4m²
- Lease** : Block Government Lease (demised for agricultural purpose)
- Plan** : Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claims himself as an indigenous villager of Ma Po Mei¹, 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, ‘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 Small House development are as follows:

Total floor area	:	195.09m ²
Number of storeys	:	3
Building height	:	8.23m
Roofed over area:	:	65.03m ²

1.3 Layout of the proposed Small House development and the proposed sewage connection is shown on **Drawing A-1** and **Drawing A-2**.

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

- (a) Application form and attachments received on **(Appendix I)**

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.

9.10.2018

- (b) Supplementary information received on 11.10.2018 appointing an authorized agent **(Appendix Ia)**
- (c) Supplementary information received on 15.10.2018 providing a sewerage connection proposal **(Appendix Ib)**

2. **Justifications from the Applicant**

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

- (a) the applicant is an indigenous villager of Ma Po Mei Village;
- (b) the applicant only owns the land under application and cannot acquire more suitable land for Small House application;
- (c) the Site falls within the village ‘environs’ (‘VE’) of Ma Po Mei Village (**Plan A-1**);
- (d) the Site is located on stepped ground and no trees would be affected;
- (e) there are three Small Houses already developed in the same “AGR” zone in the vicinity of the Site;
- (f) the applicant undertakes that he would submit a drainage proposal to the Drainage Services Department (DSD) for the connection to the public sewage system;
- (g) the applicant undertakes that he would appoint an Authorized Person to submit a Geotechnical Report for approval of site formation works; and
- (h) the applicant undertakes that he would not commence any works on site under application until receiving the relevant approval from District Lands Officer, Tai Po (DLO/TP).

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

The applicant is the sole “current land owner” of the concerned lots. The “owner’s consent/ notification” requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) is not applicable. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Assessment Criteria**

The 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 Applications

- 5.1 The Site is the subject of two previous applications (No. A/NE-LT/411 and 412) submitted by different applicants for Small House development. The applications were rejected by the Board on 18.2.2011 mainly for the reasons of not complying with the Interim Criteria in that the proposed Small Houses were within the upper indirect water gathering grounds (WGG) and not being able to be connected to existing or planned sewerage system in the area, and there was insufficient information in the submission to demonstrate that the proposed development located within the WGGs would not cause adverse impact on the water quality in the area.
- 5.2 Details of the previous applications are summarised at **Appendix III** and its location is shown on **Plans A-1 and A-2a**.

6. Similar Applications

- 6.1 There are 22 similar applications 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**). Fourteen of them were approved with conditions and eight were rejected.
- 6.2 Regarding the 14 approved applications, Application No. A/NE-LT/268 was approved before the incorporation of criterion (i) on sewerage connection requirement into the Interim Criteria in August 2002. Another nine applications (No. A/NE-LT/274, 312, 387, 406, 432 to 434, 465 and 497) were approved with conditions by the Committee between 2001 and 2014 for reasons that the proposed developments were in compliance with the Interim Criteria in that more than 50% of the footprint of the proposed Small Houses fell within the ‘VE’; there was a general shortage of land to meet the Small House demand in the “V” zone of the concerned villages at the time of consideration; and the proposed developments were able to be connected to the planned sewerage system.
- 6.3 After the Board’s adoption of a more cautious approach in August 2015, Applications No. A/NE-LT/582 to 584 were approved with conditions by the Committee in 2016 on sympathetic consideration as the sites were the subject of previously approved applications (No. A/NE-LT/432 to 434). Another application (No. A/NE-LT/542) for a NTEH (not Small House) was approved with conditions by the Committee in 2015 mainly on the ground that the subject lot has a building status under the lease.

- 6.4 The other eight applications (No. A/NE-LT/291, 294, 298, 360, 368, 422, 474 and 647) were rejected by the Committee/the Board upon review between 2003 and 2018 mainly for the reasons that the sites were not able to be connected to the existing or planned sewerage system in the area and the applicants failed to demonstrate that the proposed development within the WGG would not cause adverse impact on the water quality in the area. Application No. A/NE-LT/474 was also rejected on the ground of causing adverse impact on landscape resources in the surrounding areas. Application No. A/NE-LT/647 was also rejected on the ground that land was still available within the “V” zone of concerned village for Small House Development.
- 6.5 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-3b and A-4)

- 7.1 The Site is:
- (a) generally flat and vacant covered with grasses;
 - (b) entirely within the ‘VE’ of Ma Po Lei;
 - (c) located on a stepped ground with level difference of about 0.9m with the adjoining agricultural land located to the east; and
 - (d) not accessible via existing vehicular access and is about 150m from a footpath.
- 7.2 The surrounding areas are predominantly rural in character with fallow agricultural land, tree groups, plant nurseries and village houses. The village houses of Ma Po Mei are mainly located to the north of the site in the “V” zone covering both Ma Po Mei and Tai Mong Che Villages. Tree groups are found to the immediate west and northwest of the Site.

8. Planning Intention

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

9. Comments from Relevant Government Departments

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

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	<p>Within “V” zone ?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - Application site 	-	100%	- The Site and the footprint of the proposed Small House fall entirely within the “AGR” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - Application site 	100%	-	<ul style="list-style-type: none"> - The Site and the proposed Small House footprint fall entirely within the ‘VE’ of Ma Po Lei. - District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?</p>		✓	- Land required to meet Small House demand in Ma Po Mei and Tai Mong Che: about 7.73 ha (or equivalent to 309 Small House sites). The outstanding Small House applications are 39 ² while the 10-year Small House demand forecast for the same village is 270.
	<p>Sufficient land in “V” zone to meet outstanding Small House application?</p>	✓		- Land available to meet Small House demand within the “V” zone of the villages concerned: about 2.18 ha (or equivalent to 87 Small House sites).
4.	<p>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, and agricultural infrastructure such as footpath and water source is available, and the Site possesses potential for agricultural rehabilitation.

² Among the 39 outstanding Small House applications, 20 of them fall within the “V” zone and 19 straddle or outside the “V” zone. For those applications straddling or being outside the “V” zone, three of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
5.	Compatible with surrounding area/development?	✓		- The proposed Small House is not incompatible with the surrounding area which is predominantly rural in character with village houses, natural woodland, and agricultural land.
6.	Within WGG?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application as the proposed Small House is able to be connected to the existing public sewerage system. - Approval conditions on connection to public sewers and provision of protective measures 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)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?	✓		- Commissioner for Transport (C for T) has reservation in general on the application but considers the application only involving construction of one Small House can be tolerated.
10.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint. - Approval condition on submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	- The Director of Environmental

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				Protection (DEP) has no objection to the application as the applicant has proposed to connect the Small House to the public sewer and the public sewerage in the area has sufficient capacity to accommodate sewage from the proposed NTEH.
12.	Landscape impact?	✓		<ul style="list-style-type: none"> - Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from the landscape planning point of view. - The Site is vacant and covered with groundcovers and no existing tree. Adverse impact arising from the proposed development on significant landscape resources within the Site is not anticipated. - The site is not connected with any existing proper footpath nor vehicular access, and there is no information on the construction access and future access. The potential impact on surrounding landscape resources generated by the construction access and future access cannot be ascertained. - The Site is located on a stepped ground and filing of land not exceeding 0.9m is required. There is no detail information such as level plan or extent of filling and no assessment on the potential impact to the adjacent wooded knoll. The potential impact to the adjacent vegetation cannot be ascertained. - The approval of the application would further attract similar developments into the "AGR" zone, and the cumulative effect of approving similar applications would

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>result in degradation of landscape character and cause adverse landscape impact .</p> <p>- Given the Small House would not have adverse landscape impact within the site and the applicant proposed the open area of the Site as garden, the standard condition for submission and implementation of landscape proposal is not recommended.</p>
13.	Geotechnical impact?	✓		<p>- Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO) of CEDD) advises that the subject site is overlooked by steep natural hillside and meets the alert criteria for a Natural Terrain Hazard Study (NTHS).</p> <p>- He has in-principle objection to the application unless the applicant is prepared to undertake a NTHS and to provide necessary mitigation measures if found necessary as part of the proposed development.</p>
14.	Local objection received from DO?		✓	

9.2 Comments from the following Government departments have been incorporated in the above paragraph whereas applicable. Other detailed comments from them are at **Appendix V**.

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

- (h) Director of Agriculture, Fisheries and Conservation;
- (i) Director of Fire Services;
- (j) Director of Electrical and Mechanical Services; and
- (k) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.

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

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

10. Public Comments Received During Statutory Publication Period

On 19.10.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received from Designing Hong Kong Limited, The Hong Kong Bird Watching Society and an individual (**Appendix VI**) objecting to the application mainly for the reasons that the proposed development was not in line with the planning intention of “AGR” zone, and would have adverse sewerage, landscape and ecological impacts; approving the application would set an undesirable precedent and land was still available within the “V” zone of Ma Po Lei for Small House development.

11. Planning Considerations and Assessments

- 11.1 The Site falls entirely within the “AGR” zone (**Plan A-2a**). The proposed Small House is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural development point of view as there are active agricultural activities in the vicinity, agricultural infrastructure such as footpath and water source is available, and the Site possesses potential for agricultural rehabilitation.
- 11.2 According to DLO/TP’s record, the total number of outstanding Small House applications for Ma Po Mei and Tai Mong Che is 39 while the 10-year Small House demand forecast is 270. Based on the latest estimate by the Planning Department, about 2.18 ha (or equivalent to about 87 Small House sites) of land is available within the “V” zone concerned (**Plan A-2b**). As the footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Po Mei, DLO/TP has no objection to the application.
- 11.3 The Site, located to the south of Ma Po Mei (**Plan A-2a**), is vacant and covered with grass (**Plan A-4**). The proposed development is not incompatible with the surrounding area which is predominantly rural in character with village houses, natural woodland, and agricultural land (**Plan A-2a**). Adverse impact arising from the proposed development on significant

landscape resources within the Site is not anticipated. Nevertheless, approval of the application would further attract similar developments into the “AGR” zone, and the cumulative effect of approving similar applications would result in degradation of landscape character and cause adverse landscape impact. Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) therefore has some reservations on the application from the landscape planning point of view.

- 11.4 The Site falls within the upper indirect WGG. The applicant proposed to connect the proposed Small House development to the public sewer manhole to the immediately north of the Site (**Plan A-2a** and **Drawing A-2**). DEP advises that the Site is able to connect to the public sewerage system in the area. 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.
- 11.5 H(GEO) of CEDD advises that the Site is overlooked by steep natural hillside and meets the alert criteria requiring for a NTHS. The applicant has committed to submit a Geotechnical Report upon the approval for the planning application (Part 9 of the application form, **Appendix I**). However, H(GEO) advises that the Geotechnical Report is only for the proposed site formation works. As the applicant has not submitted a Geotechnical Planning Review Report (GPRR), H(GEO) objects in principle to the application unless an approval condition on the submission of a NTHS and the implementation of the mitigation measures identified therein is imposed. C for T in general has reservation on the application but considers that the application only involving the development of a Small House can be tolerated. Other relevant Government departments including CHE/NTE of HyD, DEMS and D of FS have no objection to or adverse comment on the application.
- 11.6 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the ‘VE’ of Ma Po Mei, and the proposed development within the WGG would be able to be connected to the public sewerage system (**Plan A-2a**). While land available within the “V” zone (about 2.18 ha or equivalent to about 87 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is capable to meet the 39 outstanding Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House development within the “ V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 11.7 The Site is the subject of two previous applications (No. A/NE-LT/411 and 412) submitted by different applicants for proposed NETH (Small House) development. The applications were rejected by the Board on 18.2.2011 mainly for the reasons of not complying with the Interim Criteria in that the proposed Small Houses are within the upper indirect WGG and not being able

to be connected to the planned public sewers in the area, and there was insufficient information in the submission to demonstrate that the proposed development located within the WGGs would not cause adverse impact on the water quality in the area. In this current application, the applicant undertakes to connect the proposed Small House with the existing public sewerage system. CE/C, WSD has no objection to the application.

- 11.8 There were five similar applications in close proximity to the Site (**Plan A-2a**). Two applications (No. A/NE-LT/268 and 465) were approved on 7.12.2001 and 21.12.2012 for being in compliance with the Interim Criteria in that more than 50% of the footprint of the proposed Small Houses fell within the 'VE' and there was a general shortage of land to meet the Small House demand in the "V" zone of the concerned villages at the time of consideration. The remaining three applications (No. A/NE-LT/291, 360 and 422) were rejected on 25.7.2003, 21.7.2006 and 3.6.2011 mainly for being not in line with the planning intention of the "AGR" zone and not in compliance with the Interim Criteria in that the proposed Small Houses were located within the WGGs and were not able to be connected to the existing or planned sewerage system in the area. All the similar applications were considered before the Board's adoption of a more cautious approach in approving applications for Small House development in recent years.
- 11.9 Regarding the public comments, which object to the application mainly for the reasons that the proposed development is not in line with the planning intention of "AGR" zone, will have adverse sewerage, landscape and ecological impacts, and will set of undesirable precedent, and land is available in the "V" zone for Small House Development. 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 does not support the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the "AGR" zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that there is no information in the submission to demonstrate that the proposed development would not have adverse geotechnical impact on the surrounding area; and
 - (c) land is still available within the "V" zone of Ma Po Mei and Tai Mong Che which is primarily intended for Small House development. It is

considered more appropriate to concentrate the proposed Small Houses within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 7.12.2022, 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;
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or the Town Planning Board; and
- (d) the submission of a Natural Terrain Hazard Study and implementation of the mitigation measures identified therein to the satisfaction of the Director of Civil Engineering and Development or of the Town Planning Board.

Advisory Clauses

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

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 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 applicants.

14. Attachments

Appendix I	Application form with attachments received on 9.10.2018
Appendix Ia	Supplementary Information received on 11.10.2018
Appendix Ib	Supplementary Information received on 15.10.2018
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	Site plan submitted by the applicant
Drawing A-2	Proposed sewerage connection
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within the “V” zone
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
DECEMBER 2018**