

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/665

<u>Applicant</u>	Mr. CHAN Benjamin Hon Wai represented by Mr. HUI Kwan Yee
<u>Site</u>	Lot 1148 S.A in D.D. 19, Lam Tsuen San Tsuen, Tai Po, New Territories
<u>Site Area</u>	About 129.3m ²
<u>Lease</u>	Block Government Lease (demised for agricultural purpose)
<u>Plan</u>	Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, who claims to be an indigenous villager (IV) of Lam Tsuen San Tsuen¹, 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, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ use in the “AGR” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed Small House development are as follows:
- | | | |
|-------------------|---|----------------------|
| Total floor area | : | 195.09m ² |
| Number 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** and **A-2** respectively.
- 1.4 The Site is the subject of a previous application (No. A/NE-LT/639) submitted by the same applicant for the same use, which was rejected by the Rural and New Town Planning Committee (the Committee) of the Board on

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

3.8.2018. Compared with the previous application, the footprint and development parameters of the proposed Small House remain the same under the current application.

- 1.5 In support of the application, the applicant has submitted the application form and attachment on 3.4.2019 (**Appendix I**).

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 be built on a piece of vacant agricultural land and there is no alternative site for the proposed development; and
- (b) there are similar Small House developments adjacent to the Site.

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. Previous Application

- 5.1 The Site is the subject of a previous application (No. A/NE-LT/639) submitted by the same applicant for the same Small House development, which was rejected by the Committee on 3.8.2018, mainly for the reasons of being not in line with the planning intention of the “AGR” zone; and land being still available within the concerned villages for Small House development.
- 5.2 Details of the above previous application are summarized at **Appendix III** and its location is shown on **Plans A-1** and **A-2a**.

6. Similar Applications

- 6.1 There are 53 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**), of which 14 were approved with conditions, 38 were rejected and one was partially approved and partially rejected.
- 6.2 Regarding the approved applications, six of them (No. A/NE-LT/273, 328, 329, 334, 355 and 364) were approved with conditions by the Committee between 2002 and 2006 mainly for reasons of being generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was a general shortage of land 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 (except Application No. A/NE-LT/273²). Subsequently, four applications (No. A/NE-LT/408, 464, 467 and 624) were approved between 2010 and 2017 mainly on sympathetic consideration as they were the subject of previously approved cases. Another three applications (No. A/NE-LT/452, 456 and 593) were approved between 2012 and 2016 mainly because the proposed Small House was considered as an infill development.
- 6.3 For Application No. A/NE-LT/459 which involved two proposed Small Houses (**Plan A-2a**), House No. 1 was approved in 2012 on sympathetic consideration in that the majority of the proposed Small House footprint fell within the “V” zone (about 83%) whereas House No. 2 with less than 50% of its footprint falling within the “V” zone was rejected as it did not warrant the same sympathetic consideration. Subsequently, Application No. A/NE-LT/475 covering the rejected House No.2 site with more than 50% of the proposed Small House footprint within the “V” zone was approved in 2013 on sympathetic consideration.
- 6.4 For the 38 rejected applications, 21 of them (Applications No. A/NE-LT/281 to 285, 302 to 306, 319 to 327, 337 and 435) were rejected by the Committee/the Board on review between 2003 and 2011 mainly for the reason of not being able to be connected to existing or planned sewerage system in the area. Application No. A/NE-LT/435 was also rejected as there was no general shortage of land in meeting the demand for Small House development in the concerned “V” zone(s) at the time of consideration. Another ten applications (No. A/NE-LT/488, 491, 496, 500, 509, 552, 563, 566, 567 and 602) were rejected on the grounds of being not in line with the planning intention of the “AGR” zone; there was no general shortage of land in meeting the demand for Small House development in the concerned “V” zone(s) at the time of consideration; and land was still available within the concerned “V” zone(s) for Small House development. Applications No. A/NE-LT/563, 566, 567 and 602 were also rejected as the applicant failed to demonstrate that the proposed development located within WGG would not cause adverse impact on the water quality in the area. The other seven applications (No. A/NE-LT/589,

² Application No. A/NE-LT/273 was approved before the incorporation of criterion (i) on sewerage connection requirement in the Interim Criteria in August 2002.

590, 591, 612, 613, 638 and 663) were rejected between 2016 and 2019 mainly for the reasons of being not in line with the planning intention of “AGR” zone; and that land was still available within the concerned “V” zone(s) for Small House development. Besides, Application No. A/NE-LT/589 was also rejected on the ground of failing to demonstrate that the proposed development located within WGG would not cause adverse impact on the water quality in the area whereas Applications No. A/NE-LT/612 and 613 having adverse landscape impact on the surrounding areas. Furthermore, Application No. A/NE-LT/638 was also rejected on the ground of not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint falls outside the concerned “V” zone/‘VE’.

6.5 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1** and **A-2a**.

7. The Site and Its Surrounding Areas (Plans A-1, A-2a and Photos on Plans A-3 and A-4)

7.1 The Site is:

- (a) currently vacant and paved with gravels;
- (b) situated at the eastern fringe of Lam Tsuen San Tsuen and located to the immediate east of an approved application No. A/NE-LT/408 for a Small House development and immediate south of some temporary structures; and
- (c) connected by a local track leading to Lam Kam Road.

7.2 The surrounding areas are predominantly rural in character with a mix of village houses, farmland and scattered tree groups. The village cluster of Lam Tsuen San Tsuen is situated about 10m to the west 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 summarized 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 Small House footprint 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 	54%	46%	- More than 50% of the Site and the Small House footprint fall within the ‘VE’ of San Tsuen Lo Wai and Lam Tsuen San Tsuen.
		58%	42%	- The 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 10-year Small House demand?		✓	- Land required to meet Small House demand in Lam Tsuen San Tsuen and San Tsuen Lo Wai: about 3.58 ha (equivalent to 142 Small House sites). The outstanding Small House applications are 42 ³ while the 10-year Small House demand forecast for the same village is 100.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		- Land available to meet Small House demand within the “V” zone of the village concerned: about 2.5 ha (equivalent to 100 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application as there are active agricultural activities in the vicinity and the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character with village houses, temporary

³ Among the 42 outstanding Small House applications, 28 of them fall within the “V” zone and 14 straddle or outside the “V” zone. For those 14 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>
				structures, agricultural land and tree groups.
6.	Within WGG?	✓		<ul style="list-style-type: none"> - 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 in the area. - 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)?		✓	<ul style="list-style-type: none"> - The Director of Fire Services (D of FS) has no comment on the application.
9.	Traffic impact?	✓		<ul style="list-style-type: none"> - The Commissioner for Transport (C for T) has general reservation on the application but considers the application only involving development of a Small House can be tolerated on traffic grounds.
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - The 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?	✓		<ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) has no objection

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				to the application as the applicant has proposed to connect the Small House to the public sewer (Plan A-2a) and sewer connection is feasible and capacity is available for the proposed Small House development.
12.	Landscape impact?	✓		<ul style="list-style-type: none"> - The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from landscape planning perspective as vegetation within the Site has been cleared since 2015 prior to submission of the application. Approval of the application would set an undesirable precedent to encourage such removal of vegetation and the cumulative effect of approving similar applications would result in degradation of landscape character and cause adverse landscape impact to the area. - Should the application be approved, it is considered unnecessary to impose any condition for submission and implementation of landscaping proposal as the footprint of the proposed Small House covers most of the Site and there is inadequate space for meaningful landscape to benefit public realm.
13.	Geotechnical impact?		✓	
14.	Local objection received from DO?		✓	

9.2 Comments from the following Government departments have been incorporated in the above paragraph. Other detailed comments from Government departments 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/Construction, Water Supplies Department;
- (e) Chief Town Planner/Urban Design & Landscape, Planning Department;
- (f) Commissioner for Transport;
- (g) Director of Agriculture, Fisheries and Conservation;
- (h) Director of Fire Services; and
- (i) Director of Electrical and Mechanical Services.

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

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

10. Public Comments Received During Statutory Publication Period

On 12.4.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received from World Wide Fund For Nature Hong Kong, The Hong Kong Bird Watching Society and an individual (**Appendix VI**) 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 to meet the outstanding Small House applications; being the subject of a suspected unauthorized development; having adverse landscape impact; and setting of undesirable precedent.

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 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 is available and the Site possesses potential for agricultural rehabilitation.

11.2 According to DLO/TP, LandsD’s record, the total number of outstanding Small House applications for Lam Tsuen San Tsuen and San Tsuen Lo Wai is 42 while the 10-year Small House demand forecast is 100. Based on the latest estimate by the Planning Department, about 2.5 ha of land (equivalent to about 100 Small House sites) is available within the “V” zone concerned (**Plan A-**

2b). As more than 50% of the proposed Small House footprint falls within the 'VE' of San Tsuen Lo Wai and Lam Tsuen San Tsuen, DLO/TP of LandsD has no objection to the application.

- 11.3 The Site, located at the eastern fringe of Lam Tsuen San Tsuen (**Plan A-2a**) is currently vacant and paved with gravels (**Plan A-4**). The village cluster of Lam Tsuen San Tsuen is situated about 10m to the west of the Site. The proposed development is not incompatible with the surrounding area which is predominantly rural in character with a mix of scattered tree groups, farmland and village houses (**Plan A-3**). CTP/UD&L of PlanD has some reservations on the application from landscape planning point of view as there has been clearance of vegetation within the Site and approval of the application will set an undesirable precedent to encourage removal of vegetation and the cumulative effect would lead to degradation of landscape character and cause adverse landscape impact to the area.
- 11.4 The Site falls within the upper indirect WGG. The applicant has proposed to connect the proposed Small House to the existing public sewerage system at Lam Tsuen San Tsuen (**Plan A-2a**). 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, C for T has general reservation on the application but considers the application only involving the development of a Small House can be tolerated on traffic grounds. Other relevant Government departments including CE/MN 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 proposed Small House footprint falls within the 'VE' of San Tsuen Lo Wai and Lam Tsuen San Tsuen and the proposed development located within WGG would be able to be connected to the public sewerage system (**Plan A-2a**). While land available within the "V" zone (about 2.5 ha or equivalent to about 100 Small House sites) is insufficient to fully meet the future Small House demand, it is capable to meet the 42 outstanding Small House applications (**Plan A-2b**). It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development since August 2015. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House development within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 11.6 As shown on **Plan A-2a**, there are 14 similar applications in close proximity to the Site. Four of them (Applications No. A/NE-LT/334, 355, 408 and 456) were approved between 2005 and 2012 before the Board's adoption of a more cautious approach in approving applications for Small House development in August 2015. For Application No. A/NE-LT/593, it was approved in 2016 mainly on special consideration of being bounded by existing village houses.

Regarding the nine rejected cases, six of them (Applications No. A/NE-LT/496, 509, 552, 563, 566 and 567) were rejected between 2014 and 2016 mainly on the ground of 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 at the time of consideration. For the remaining three applications (No. A/NE-LT/612, 613 and 638), they were rejected between 2017 and 2018 mainly for the reason of land being still available within the “V” zone for Small House development. Application No. A/NE-LT/638 was also rejected as it did not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint falls outside the concerned “V” zone/‘VE’. The current application is similar to these three rejected cases as well as the previous application (No. A/NE-LT/639) in terms of land availability within the “V” zone. Since Application No. A/NE-LT/639 was rejected on the same ground in August 2018, there is no change in planning circumstances.

- 11.7 Regarding the public comments objecting to the application for reasons as detailed in paragraph 10 above, 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; and
- (b) land is still available within the “V” zones of Lam Tsuen San Tsuen and San Tsuen Lo Wai 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.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 31.5.2023, 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**.

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 applicant.

14. Attachments

Appendix I	Application form and attachments received on 3.4.2019
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 application
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses
Appendix VIII	Advisory comments of the Chief Engineer/Construction, Water Supplies Department
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
Plans A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MAY 2019**