

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/674

<u>Applicant</u>	Mr. CHEUNG Yu Fong
<u>Site</u>	Lot 1363 S.B RP in D.D. 8, Ping Long, Tai Po, New Territories
<u>Site Area</u>	About 328.3m 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 Three Houses (New Territories Exempted House (NTEHs) - Small Houses)

1. The Proposal

1.1 The applicant seeks planning permission to build three NTEHs (Small Houses) on the application site (the Site) (**Plan A-1**) for himself and his two sons, who claim to be indigenous villagers of Tai Om in Tai Po¹. 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 within the “AGR” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of each of the proposed Small House developments 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 Houses and the proposed sewerage connection are shown on **Drawing A-1**.

¹ The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that as no Small House application is received for the Site, the eligibility for Small House grants could not be verified.

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

- (a) application form with attachments received on 16.8.2019 **(Appendix I)**
- (b) supplementary information received on 19.8.2019 **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are provided in Part 8 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the applicant is an indigenous villager of Tai Om and would like to build three Small Houses on his own land to meet the housing needs for himself and his two sons (i.e. Mr. CHEUNG Kin Bong, Kenneth and Mr. CHEUNG Kin Hay), who are also entitled to build a Small House under the existing policy;
- (b) the applicant cannot build Small Houses on his land because the Site is located outside the “V” zone. However, there are a number of Small Houses already built on the adjacent land (Lots 1377 S.A RP, 1377 S.B and 1377 RP in D.D. 8) located outside the “V” zone, for which a precedent has been set;
- (c) if the application is approved by the Board, the applicant will proceed to apply for subdividing the Site into 3 portions. Should the application be rejected, he would launch an appeal and the Board will have the responsibility to explain why it does not follow the precedent set. The Small House policy should ensure equal and fair treatment for all male indigenous villagers;
- (d) as the Site is no longer cultivated, it would constitute a loss to the applicant and the society economically if it continues to remain unused; and
- (e) in view of the high property prices in Hong Kong, if the application is not approved, his sons will need to apply for public housing which will add a significant burden on the already strained resources of public housing.

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

There is no previous application at the Site.

6. Similar Applications

6.1 There are 31 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. 13 of them were approved and 18 were rejected.

6.2 Among the 13 approved applications, four of them (No. A/NE-LT/247, 253, 254 and 264) were approved with conditions by the Committee before the criterion (i) of the Interim Criteria came into effect on 23.8.2002. Another six applications (No. 295, 369, 428, 430, 473 and 476) were approved with conditions by the Committee between 2003 and 2013 mainly on the grounds of being in line with the Interim Criteria in that more than 50% of the Small House footprint was 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 developments were able to be connected to the planned sewerage in the area. Application No. A/NE-LT/476 was also approved as the entire Small House footprint fell within the “V” zone and ‘VE’. After the Board’s adoption of a more cautious approach in approving Small House applications in August 2015, applications No. A/NE-LT/595, 598 and 622 were approved by the Committee between 2016 and 2017 mainly on sympathetic considerations as the site was surrounded by existing Small Houses/ approved applications and could be considered as infill development; and the proposed development was able to be connected to the public sewerage. Application No. A/NE-LT/622 was also approved as a major portion (about 84%) of the Small House footprint fell within the “V” zone.

6.3 For the remaining 18 applications (No. A/NE-LT/309, 315, 349, 393, 415, 427, 508, 512, 520, 534, 546, 560, 572, 573, 609, 625, 626 and 637), they were rejected by the Committee or the Board on review between 2003 and 2018 mainly on the grounds of being not in line with the planning intention of “AGR” zone; not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside both the “V” zone and ‘VE’; the proposed development located within WGG was not able to be connected to the existing or planned sewerage system; insufficient information to demonstrate that the proposed development would not cause adverse impact on water quality in the area; and/or land was still available within the concerned “V” zones for Small House development. Applications No. A/NE-LT/546, 560, 572, 573, 609, 625, 626 and 637 were also rejected as land was still available within the “V” zone for Small House development.

6.4 Details of the above similar applications are summarized at **Appendix III** 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) flat and covered with grass;
- (b) adjoining existing village houses to its immediate north; and
- (c) accessible from Lam Kam Road via a local track.

7.2 The surrounding areas are predominantly rural in character with a mix of village houses, fallow agricultural land and tree groups. Village cluster of San Tong is found to the north 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.	Within “V” zone ? - Footprint of the Small Houses - Application site	-	100%	- Both the Site and the footprint of the proposed Small Houses fall entirely within “AGR” zone.
2.	Within ‘VE’? - Footprint of the Small Houses - Application site	-	100%	- As the Site and the the footprint of the proposed Small Houses do not fall within any ‘VE’, DLO/TP, LandsD does not support the application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet Small House demand in San Tong, Chuen Shui Tseng, Ping Long and Tai Om: about 8.38 ha (equivalent to 335 Small House sites). The outstanding Small House applications are 55 ² while the 10-year Small House demand forecast for the same villages is 280 ³ . <u>Land Available</u> - Land available to meet Small House demand within the “V” zones of the villages concerned: about 7.33 ha (equivalent to 292 Small House sites) (Plan A-2b).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		
4.	Compatible with the planning intention of “AGR” zone?		✓	- 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.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character mainly occupied with tree groups, fallow agricultural land and village houses.
6.	Within WGG?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application as it does not comply with the Interim Criteria in that more than 50% of

² Among the 55 outstanding Small House applications, 37 of them fall within the “V” zone and 18 straddle or outside the “V” zone. For those 18 applications straddling or being outside the “V” zone, three of them have obtained valid planning approval from the Board.

³ The 10-year Small House demand forecast of 280 is for Ping Long and Tai Om only as such figures for San Tong and Chuen Shui Tseng were not provided by the respective Indigenous Inhabitant Representatives (IIRs).

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				the footprint of the proposed Small Houses falling outside both the 'VE' and the "V" zone.
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 comment on the application.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) has general reservation on the application but considers the application only involving development of three Small Houses can be tolerated on traffic grounds.
10.	Drainage impact?	✓		- 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?	✓		- The Director of Environmental Protection (DEP) has no objection to the application as the applicant has proposed to connect the Small Houses to the existing public sewer at Ping Long which has available capacity (Plan A-2a). - Approval condition on connection to public sewer is required.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning perspective as no existing tree is found within the Site and adverse impact arising from the proposed developments on landscape resources within the Site is not anticipated.
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 IV**.

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

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) Director of Electrical and Mechanical Services;
- (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 23.8.2019, the application was published for public inspection. During the statutory public inspection period, four public comments were received from the Hong Kong Bird Watching Society and three individuals (**Appendix V**) objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land is still available to meet the future Small House demand; the

proposed development should be confined within “V” zone; the high density of the proposed development may induce wall effect and obstruct air ventilation to the surrounding village houses; there is currently insufficient space for pedestrian access and emergency vehicular access purposes; and setting of an undesirable precedent.

11. Planning Considerations and Assessments

- 11.1 The application is for three proposed Small Houses at the Site falling within an area zoned “AGR” on the OZP. 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 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 water source and 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 San Tong, Chuen Shui Tseng, Ping Long and Tai Om villages is 55 while the 10-year Small House demand forecast for the same villages is 280⁴. Based on the latest estimate by the Planning Department, about 7.33 ha of land (or equivalent to about 292 Small House sites) are available within the “V” zones concerned (**Plan A-2b**). As the proposed Small House footprints fall entirely outside both the ‘VE’ and the “V” zone, DLO/TP of LandsD does not support the application and advises that the application will not be considered under the Small House Policy. CE/C of WSD also objects to the application as it does not comply with the Interim Criteria in that more than 50% of the proposed Small House footprints falling outside both the ‘VE’ and the “V” zone.
- 11.3 The Site, located to the south of San Tong village cluster, is currently vacant and overgrown with grass. The proposed development is not incompatible with the surrounding area which is predominantly rural in character occupied by tree groups, abandoned farmlands and village houses (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no objection to the application from the landscape planning perspective as no existing tree is found within the Site and adverse impact on significant landscape resources within the Site arising from the proposed developments is not anticipated.
- 11.4 The Site falls within the upper indirect WGG. The applicant has proposed to connect the proposed Small Houses to the existing public sewer at Ping Long, which is located near the Site (**Plan A-2a**). DEP has no objection to the application provided that the applicant shall connect the proposed Small Houses 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

⁴ The 10-year Small House demand forecast of 280 is for Ping Long and Tai Om only as such figures for San Tong and Chuen Shui Tseng were not provided by the respective IIRs.

of three Small Houses can be tolerated on traffic grounds. Other relevant Government departments including CE/MN of DSD, CHE/NTE of HyD, PM(N) and H(GEO) of CEDD, and D of FS have no objection to or adverse comment on the application.

- 11.5 Regarding the Interim Criteria (**Appendix II**), although the proposed Small Houses located within WGG would be able to be connected to the public sewerage system (**Plan A-2a**), it does not comply with the Interim Criteria in that the proposed Small House footprints fall entirely outside both the “V” zone and ‘VE’ of any recognized villages (**Plan A-2a**). While land available within the “V” zones of San Tong, Chuen Shui Tseng, Ping Long and Tai Om villages (about 7.33 ha or equivalent to about 292 Small House sites) is insufficient to fully meet the future Small House demand (i.e. 335 Small Houses), it is capable to meet the 55 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 in 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 Houses within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 11.6 According to **Plan A-2a**, there are 11 similar applications for Small House development in close proximity to the Site since the first promulgation of the Interim Criteria on 24.11.2000. Applications No. A/NE-LT/295 and 476 were approved in 2003 and 2013 respectively mainly on the grounds of being in line with the Interim Criteria in that more than 50% of the Small House footprint was 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 in the area. Application No. A/NE-LT/476 was also approved as the entire Small House footprint fell within both the “V” zone and ‘VE’. The remaining nine applications were rejected between 2006 and 2016. Three of them (No. A/NE-LT/349, 508 and 520) covering the same site were rejected in 2006 and 2014 mainly for the reasons of not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside both the “V” zone and the ‘VE’; there was no general shortage of land in meeting the Small House demand; and land was still available within the “V” zone for Small House development. Application No. A/NE-LT/415 was rejected in 2011 mainly for the reason of not being able to be connected to the planned public sewers. The other four applications (No. A/NE-LT/534, 560, 572 and 573) were rejected in 2015 and 2016 mainly for the reasons of not complying with Interim Criteria in that there was no general shortage of land in meeting the Small House demand and land was still available within the “V” zone for Small House development. Applications No. A/NE-LT/572 and 573 were also rejected as the proposed development was not able to be connected to the planned sewerage system. The current application is similar to the above rejected cases in that more than 50% of the proposed Small House footprints fall outside both the “V” zone and the ‘VE’; and land was still available within the “V” zone for Small House development.

- 11.7 The applicant argues that there are Small Houses already built on the adjacent land (i.e. Lots 1377 S.A RP, 1377 S.B and 1377 RP in D.D. 8) outside the “V” zone. As shown on **Plan A-2a**, the above lots located to the immediate northwest of the Site were subject to approved planning applications No. A/NE-LT/33, 34, 35 and 169, which were approved by the Committee between 1996 and 1998 before the first promulgation of the Interim Criteria in 2000, mainly for the reasons that the proposed Small House was close to the village proper of San Tong Village and the ‘VE’ of Chuen Shui Tseng; and would not have any significant adverse impacts on the environment, traffic and drainage conditions of the area. It should be noted that the current application will be assessed in accordance with the prevailing Interim Criteria as detailed in paragraph 11.5 above.
- 11.8 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10, 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 current submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that the footprints of the proposed Small House development fall entirely outside the “V” zone and the ‘VE’ of any recognized village; and
 - (c) land is still available within the “V” zones of San Tong, Chuen Shui Tseng, Ping Long and Tai Om which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zones 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 4.10.2023, 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 the Town Planning Board.

Advisory Clauses

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

13. Decision Sought

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

14. Attachments

Appendix I	Application form and attachments received on 16.8.2019
Appendix Ia	Supplementary information received on 19.8.2019
Appendix II	Relevant Revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
Appendix III	Similar applications
Appendix IV	Detailed comments from relevant Government departments
Appendix V	Public comments
Appendix VI	Recommended advisory clauses
Drawing A-1	Layout plan with 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 Developments within "V" zone

Plan A-3
Plan A-4

Aerial Photo
Site Photos

**PLANNING DEPARTMENT
OCTOBER 2019**