

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

**APPLICATION NO. A/NE-LYT/665**

- Applicant** : Mr. PANG Hing Lung represented by Mr. PANG Chi Tong
- Site** : Lot 1603 S.A in D.D.76, Kan Tau Tsuen, Fanling, New Territories
- Site Area** : 118.9 m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP)  
No. S/NE-LYT/17
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

**1 The Proposal**

1.1 The applicant, who claims himself an indigenous villager<sup>1</sup>, seeks planning permission to build a proposed NTEH (Small House) on the application site (the Site) at Kan Tau Tsuen, Fanling (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. 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 “AGR” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) development are as follows:

Total Floor Area	:	195.09 m <sup>2</sup>
Number of Storeys	:	3
Building Height	:	8.23 m
Roofed Over Area	:	65.03 m <sup>2</sup>

1.3 The applicant indicates that the uncovered area of the Site would be used as gardening and agricultural use. Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**.

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<sup>1</sup> As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be an indigenous villager of Fanling Village of Fanling Heung. His eligibility for Small House concessionary grant has yet to be ascertained.

- 1.4 The Site is part of the subject of a previous planning application No. A/NE-LYT/545 for development of three Small Houses. The application was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 22.8.2014 and the planning permission lapsed on 23.8.2018. Compared with the previous application, major development parameters including the site area and layout of the proposed Small House under the current application are the same.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 11.5.2018 **(Appendix I)**
  - (b) Letter dated 28.6.2018 requesting for deferment of consideration of the application **(Appendix Ia)**
  - (c) Further Information received on 13.8.2018 **(Appendix Ib)**
  - (d) Further Information received on 28.8.2018 **(Appendix Ic)**
- 1.6 At the request of the applicant (**Appendix Ia**), the Committee of the Board agreed on 6.7.2018 to defer making a decision on the application for two months pending the preparation of further information to address the comments of Planning Department. The applicant submitted the further information (**Appendices Ib and Ic**) on 13.8.2018 and 28.8.2018 respectively and the application is re-scheduled for consideration by the Committee on 5.10.2018.

## **2 Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in part 9 of the Application Form at the Further Information at **Appendices I, Ib and Ic** respectively. They can be summarized as follows:

- (a) the applicant is an indigenous villager of Fanling Village and is entitled for the construction of a Small House under the Government's Small House Policy;
- (b) the Site was part of the subject of a previously approved planning application No. A/NE-LYT/545. A fresh application for the Site is submitted due to the change of the applicant under the previously approved planning application;
- (c) the applicant under the previously approved planning application, Mr. PANG Chun Kit, was the cousin of the applicant of the current application. An application for extension of time for commencement for the proposed Small House under the previously approved planning application is not practical due to the death of Mr. PANG Chun Kit. A fresh planning application is therefore required; and
- (d) the orientation and layout of the proposed Small House under the current application is identical to that of the previously approved planning application at Lot 1603 S.A in D.D.76.

## **3 Compliance with the "Owner's Consent/Notification" Requirements**

The applicant is the sole "current land owner" of the lot. Detailed information would be deposited at the meeting for Members' inspection.

#### **4 Assessment Criteria**

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (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. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

#### **5 Previous Application**

- 5.1 The Site is part of the subject of a previous planning application No. A/NE-LYT/545 for development of three Small Houses. The application was approved with conditions by the Committee on 22.8.2014 mainly on the grounds that the application generally complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the village 'environs' ('VE'); there was a general shortage of land within the "Village Type Development" ("V") zone of Kan Tau Tsuen at the time of consideration; and the proposed Small House developments were not incompatible with the surrounding area. The planning permission of that previous application lapsed on 23.8.2018. Two of the three Small House sites are also the subject of Applications No. A/NE-LYT/666 and A/NE-LYT/667, each for the development of a Small House. These applications were approved by the Committee on 6.7.2018 on sympathetic consideration as they were the subject of previous approved planning application No. A/NE-LYT/545 and submitted by the same applicants.
- 5.2 For the subject application, it is noted that the development parameters and site layout in relation to Lot 1603 S.A (i.e. the Site) are the same as those under the previous planning application No. A/NE-LYT/545 except that the applicant of the current application is different from the previously approved scheme.
- 5.3 Details of the previous application are summarised at **Appendix III** and its location is shown on **Plan A-1**.

#### **6 Similar Applications**

- 6.1 There are 87 similar applications involving 72 sites for Small House development within/partly within the "AGR" zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among these similar cases, 53 applications were approved with conditions by the Committee of the Board between March 2001 and January 2015 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-1**) mainly on the considerations that the applications generally complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell within the 'VE' and there was a general shortage of land within the "V" zone of the same village in meeting the Small House demand; and the proposed development was not expected to have significant adverse traffic, drainage, environmental and/or landscape impacts on the surrounding area. 26 other applications were also approved by the Committee between December 2015 and July 2018 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1**) mainly for reasons of being the subject of previous approved applications; being situated in close proximity to the "V" zone of Kan Tau Tsuen; being situated in close proximity to existing village houses; and the implementation of new Small Houses under construction and approved Small House development nearby are forming a new village cluster in the locality.

- 6.3 The other eight applications were rejected by the Committee or the Board on review between March 2010 and December 2017 mainly for reasons that the proposed Small House development did not comply with the Interim Criteria as the footprint of the proposed Small House fell mainly/entirely outside the “V” zone and the ‘VE’ of a recognized village; the proposed development was not in line with the planning intention of the “AGR” zone; and approval of the application would set an undesirable precedent for similar applications in the area.
- 6.4 Details of the applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

## **7 The Site and its Surrounding Areas (Plans A-1, A-2a and A-2b, aerial photo on Plan A-3 and site photo on Plan A-4)**

- 7.1 The Site is:
- (a) located to the southeast of the “V” zone of Kan Tau Tsuen;
  - (b) currently vacant, flat, and partly overgrown with grass; and
  - (c) accessible on foot via an existing footpath on a vacant land connecting a village road (**Plan A-3**).
- 7.2 The surrounding areas have the following characteristics:
- (a) rural landscape character dominated by active/fallow agricultural land, village houses and temporary structures;
  - (b) to the north is the site of an approved Small House application No. A/NE-LYT/666 and village houses intermixed with temporary structures for domestic purpose and to the further northeast is a plant nursey;
  - (c) to the northwest is the village proper of Kan Tau Tsuen;
  - (d) to the east and southeast are active/fallow agricultural land, vacant/unused land and the Tan Shan River; and
  - (e) to the west and southwest are the sites of planning applications for Small House developments approved by the Committee (**Plan A-2b**).

## **8 Planning Intention**

The planning intention of the “AGR” zone in Lung Yeuk Tau and Kwan Tei South area 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.	Within “V” zone? - The Site  - Footprint of the proposed Small House	-  -	100%  100%	- The Site and the footprint of the proposed Small House falls entirely within the “AGR” zone.
2.	Within ‘VE’? - The Site  - Footprint of the proposed Small House	52.2%  68%	47.8%  32%	- DLO/N, LandsD advises that more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Kan Tau Tsuen.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	- Land required to meet the Small House demand in Kan Tau Tsuen: about 4.25 ha (equivalent to 170 Small House sites). The outstanding Small House applications for Kan Tau Tsuen are 74 <sup>2</sup> while the 10-year Small House demand forecast for the same village is 96.
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		- Land available to meet the Small House demand within the “V” zone of Kan Tau Tsuen: about 2.12 ha (equivalent to 84 Small House sites) ( <b>Plan A-2b</b> ).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) stated that the Site is fallow land covered by grasses. The agricultural activities in the vicinity are active. Agricultural infrastructure such as road access and water supply are available. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agriculture point of view.

<sup>2</sup> Among the 74 outstanding Small House applications, 15 of them fall within the “V” zone and 59 straddle or outside the “V” zone. For those 59 applications straddling or being outside the “V” zone, 35 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 rural setting and environment dominated by agricultural land, village houses and temporary structures ( <b>Plan A-2a</b> ).
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) has reservation on the application and advises that Small House development should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the "V" zone, if permitted, will set undesirable precedent cases for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial.  - Notwithstanding the above, the application involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping 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.  - Landscape condition is not recommended as the building layout almost occupied the entire Site leaving inadequate space for tree planting.
13.	Local objections conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that he has consulted the locals. The Indigenous Inhabitant Representative and the Resident Representative of Kan Tau Tsuen support the proposal mainly on the grounds that the application site is adjacent to the “V” zone of Kan Tau Tsuen and the proposed development would not cause adverse drainage and traffic impacts on the surrounding areas. The Chairman of Fanling District Rural Committee (FDRC) has no comment on the application.

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Details of comments from Government departments are at **Appendix V**.

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

9.3 The following Government departments have no comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department; and

- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department.

## **10 Public Comments Received During Statutory Publication Period**

On 18.5.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, five public comments were received (**Appendix VI**). A North District Council member, Chairmen of Sheung Shui District Rural Committee and FDRC indicate no comment on the application. Designing Hong Kong Limited and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; land is still available within the “V” zone; approval of the application will encourage the creation of further village clusters and the prevalence of random developments with septic tanks; high potential for agricultural rehabilitation of the Site; shortage of land of parking and access; and adverse environmental impacts on the surrounding areas caused by the proposed development.

## **11 Planning Considerations and Assessments**

- 11.1 The Site falls entirely within an area zoned “AGR” on the OZP. The proposed Small House development is not in line with the planning intention of the “AGR” zone which is intended to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agriculture point of view as the Site possesses potential for agricultural rehabilitation.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Kan Tau Tsuen is 74 while the 10-year Small House demand forecast for the same village is 96. According to the latest estimate by PlanD, about 2.12 ha (equivalent to 84 Small House sites) of land are available in the “V” zone of Kan Tau Tsuen for Small House development (**Plan A-2b**). DLO/N, LandsD advises that majority portion of the footprint of the proposed Small House falls within the ‘VE’ of Kan Tau Tsuen.
- 11.3 The Site is situated to the southeast of the “V” zone of Kan Tau Tsuen, which is currently vacant, flat and partly overgrown with grass. The village proper of Kan Tau Tsuen is located to the northwest and there are approved Small House applications to the west and southwest of the Site (**Plan A-2a**). The proposed Small House development is not incompatible with the surrounding environment which is dominated by active/fallow agricultural land, village houses, temporary structure and vacant/unused land (**Plans A-2a and A-3**). Significant adverse landscape impact arising from the proposed development is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the application from the landscape planning point of view. C for T has reservation on the application and considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development involves one Small House, it could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment on or no objection to the application.
- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Kan Tau Tsuen (**Plan A-2a**). While land available within the “V” zone is insufficient to fully meet the future Small House demand,



it is noted that land (about 2.12 ha or equivalent to 84 Small House sites) is still available within the “V” zone to meeting the outstanding 74 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. As such, 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. Nevertheless, the proposed Small House can be considered as an infill site bounded by three approved Small House applications No. A/NE-LYT/666, 667 and 557 at its north, west and south respectively (**Plan A-2a**). There are also approved Small House applications at different stages of development nearby, the implementation of which are forming new village clusters in the locality (**Plans A-2a and A-2b**). In this regard, sympathetic consideration might be given to the applicant.

- 11.5 There are 39 similar applications for Small House development in the vicinity of the Site (**Plan A-2**). Except for Application No. A/NE-LYT/417 rejected by the Committee in 2010 on the grounds that the footprint of the proposed Small House fell mainly outside the “V” zone and ‘VE’ of a recognized village, all other 38 applications were approved by the Committee between July 2002 and July 2018. The Site was part of the subject of a previous application (No. A/NE-LYT/545) for three Small Houses approved by the Committee on 22.8.2014. That planning permission lapsed on 23.8.2014. Two of the three Small Houses under that application were also the subject of two applications (No. A/NE-LYT/666 and A/NE-LYT/667), each for the development of a Small House. The two applications were approved by the Committee on 6.7.2018 mainly on the ground that they were the subject of previous approval submitted by the same applicants. The Site under the current application is just next to these two lately approved cases.
- 11.6 Regarding the adverse public comments mainly on the grounds that the proposed developments are not in line with the planning intention of the “AGR” zone; land is still available within the “V” zone; approval of the application encourage the creation of further village clusters and prevalence of random developments with septic tanks; high potential for agricultural rehabilitation of the Sites; shortage of land of parking and access; and adverse environmental impacts on the surrounding areas caused by the proposed developments, Government departments’ comments and 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 has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 5.10.2022, 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 provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and

- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

#### Advisory Clauses

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

12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:

- (a) the proposed development is not in line with the planning intention of the "AGR" zone in the Lung Yeuk Tau and Kwan Tei South area which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. 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" zone of Kan Tau Tsuen 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 infrastructures and services.

### **13 Decision Sought**

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, 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**

<b>Appendix I</b>	Application form with attachments received on 11.5.2018
<b>Appendix Ia</b>	Letter dated 28.6.2018 requesting for deferment of consideration of the application
<b>Appendix Ib</b>	Further Information received on 13.8.2018
<b>Appendix Ic</b>	Further Information received on 28.8.2018
<b>Appendix II</b>	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
<b>Appendix III</b>	Previous Application
<b>Appendix IV</b>	Similar s.16 Applications for Proposed House (New Territories Exempted House (NTEH) - Small House) within/partly within the "AGR" Zone in the vicinity of the Sites in the Lung Yeuk Tau and Kwan Tei South area

<b>Appendix V</b>	Detailed Comments from Relevant Government Departments
<b>Appendix VI</b>	Public Comments
<b>Appendix VII</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2a</b>	Site Plan
<b>Plan A-2b</b>	Estimated Amount of Land Available within the “V” zone of Kan Tau Tsuen for Small House Development
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photo

**PLANNING DEPARTMENT  
OCTOBER 2018**