

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/582

- Applicant** : Mr. LAM Chu Sek
- Site** : Lot 796 S.A in D.D.84, Ha Shan Kai Wat, Ta Kwu Ling, New Territories
- Site Area** : 312.9 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
- Zonings** : “Agriculture” (“AGR”) (87.5% of the Site) and
“Village Type Development” (“V”) (12.5% of the Site)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, who claimed to be an indigenous villager¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ha Shan Kai Wat, Ta Kwu Ling (**Plans A-1 and A-2a**). The Site falls within an area mostly zoned “AGR” with a minor portion zoned “V” on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. According to the Notes of the OZP, ‘House (NTEH only)’ is always permitted in “V” zone while ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ within “AGR” zone is a Column 2 use, which requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed NTEH (Small House) are as follows:

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

¹ According to District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be an indigenous villager of Shan Kai Wat of Ta Kwu Ling Heung. His eligibility for Small House concessionary grant has yet to be ascertained.

- 1.3 The applicant indicated that the uncovered area of the Site would be used as garden for the proposed Small House. Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**
- 1.4 In support of the application, the applicant has submitted the Application Form with attachment (**Appendix I**) which were received by the Board on 15.1.2018.

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 in **Appendix I**. They can be summarised as follows:

- (a) the applicant is an indigenous villager and entitled for Small House grant under the Small House Policy. Such right is protected by the Basic Law Article 40;
- (b) the “V” zone of Ha Shan Kai Wat Village is too small and land available within “V” zone is not enough to meet the high demand for Small House;
- (c) there are similar approved Small House applications within Ha Shan Kai Wat Village (i.e. Application No. A/NE-TKL/374 at Lot 684 S.A in D.D. 77);
- (d) agricultural activities in the Site and in the vicinity have been inactive for over 40 years and the potential for agricultural rehabilitation is low;
- (e) the applicant will migrate back to Hong Kong for retirement and thus needs a house to live; and
- (f) the Site is the only land parcel owned by the applicant for construction of his own Small House.

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 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

There is no previous application for the Site.

6. Similar Applications

- 6.1 There are 20 similar applications for Small House development within / partly within the “AGR” zone in the vicinity of the Sites in the Ping Che and Ta Kwu Ling area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 A total of 12 applications involving 11 sites were approved with conditions by the Committee between April 2011 and August 2017 mainly on the considerations that the applications generally complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the ‘VE’ and there was a general shortage of land within the “V” zone at the time of consideration; the proposed Small House developments were not incompatible with the surrounding rural and village environment; and the proposed developments were not expected to have significant adverse impacts on the surrounding area. The latest application (No. A/NE-TKL/569) was approved by the Committee on 25.8.2017 in which the application site is located to the south of the “V” zone of Ha Shan Kai Wat Village (**Plan A-1**). The application was approved mainly on the consideration that the site was the subject of a previous application No. A/NE-TKL/365, which was approved in July 2011, submitted by the father of the applicant.
- 6.3 The other eight applications were rejected by the Committee between July 2015 and August 2017 mainly on the grounds that the proposed Small House developments were not in line with the planning intention of “AGR” zone; and land was still available within the “V” zone of Ha Shan Kai Wat Village for Small House development and it was considered more appropriate to concentrate Small House development within the “V” zone so as to ensure an orderly development pattern, efficient use of land and provision of infrastructure and services.
- 6.4 Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.
- 6.5 For Members’ information, another similar application (No. A/NE-TKL/583) for proposed house (NTEH – Small House) in Ha Shan Kai Wat Village to the west of the Site (**Plan A-1**) will be considered by the Committee at the same meeting.

7. The Site and Its Surrounding Area (Plans A-1, A-2a and A-2b, A-3 and A-4)

- 7.1 The Site is:
 - (a) currently vacant, flat and overgrown with grass;
 - (b) located to the immediate north of the “V” zone of Ha Shan Kai Wat Village (**Plan A-2a**);
 - (c) not served by any vehicular access; and
 - (d) the eastern part of the Site encroaches on a nullah with sidewalk/footpath and a natural stream course (**Plan A-2a**).

7.2 The surrounding area has the following characteristics:

- (a) predominantly rural in character where village houses and active / fallow agricultural land are found;
- (b) to the north are some fallow and active agricultural land with scattered tree groups;
- (c) to the south are village houses within the “V” zone of Ha Shan Kai Wat Village with some fallow agricultural land and vacant land (**Plan A-2a**).

8. Planning Intentions

8.1 The planning intention of the “AGR” zone in Ping Che and Ta Kwu Ling area is to primarily 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.

8.2 The planning intention of the “V” zone in the Ping Che and Ta Kwu Ling area is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

9. 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 - Footprints of the proposed Small Houses	12.5% -	87.5% 100%	- The Site of the proposed Small House falls within an area largely zoned “AGR” with a minor portion zoned “V”. - The footprint of the proposed Small House falls entirely within “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%	- -	DLO/N, LandsD advises that the Site falls entirely within the ‘VE’ of Ha Shan Kai Wat Village.

	Criteria	Yes	No	Remarks
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	<p>- Land required to meet the Small House demand in Ha Shan Kai Wat Village: about 4.02 ha (equivalent to 161 Small House sites)². The outstanding Small House applications for Ha Shan Kai Wat Village are 29 while the 10-year Small House demand forecast for the same village is 132.</p> <p>- Land available to meet the Small House demand within the “V” zone of Ha Shan Kai Wat Village: about 1.81 ha (equivalent to 72 Small House sites) (Plan A-2b).</p>
4.	Compatible with the planning intention of “AGR” zone?		✓	Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from the agriculture point of view as the Site is abandoned land overgrown with grasses. Active agricultural activities can be found in the vicinity and footpath and water service are available to the Site, thus the Site is arable and possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		The proposed development is not incompatible with surrounding setting and environment dominated by village houses, fallow agricultural land and scattered tree groups. (Plan A-2b) .
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)?		✓	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.

² Among the 29 outstanding Small House applications, there are 4 Small House applications straddling or outside the “V” zone that have already obtained planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
9.	Traffic impact?	✓		<ul style="list-style-type: none"> - 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 an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial. - Notwithstanding the above, the application only involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		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.
11.	Sewage impact?	✓		<ul style="list-style-type: none"> - Director of Environmental Protection (DEP) does not support the application. - The location of the proposed septic tank and soakaway system is very close to an existing nullah and a natural watercourse (less than 10 m) (Plan A-2a), at which the current proposed location of the soakaway pit does not meet the minimum clearance distance of 15 m between the soakaway and the watercourse as required under the ProPECC Note PN5/93. Thus, the soakaway has to be relocated to meet the clearance distance. - The applicant should provide information to demonstrate that the septic tank and soakaway system will be constructed in compliance with the ProPECC PN5/93 requirements including the 15 m minimum clearance distance between the soakaway and the watercourse.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
12.	Landscaping impact?	✓		<ul style="list-style-type: none"> - Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has reservation on the application from the landscape planning point of view. - The proposed Small House is not entirely incompatible with the landscape setting. The Site is located within a large area of abandoned farmland at a distance away from the Ha Shan Kai Wat Village. - A narrow nullah with sidewalk/footpath connecting to a natural watercourse for irrigation/drainage use is found running within the Site along the eastern boundary (Plan A-2a). Both the nullah and natural watercourse are of low landscape value as the watercourse is less than 100 m in length and is decked over at the other end underneath the road/surfaced area. No significant landscape resources will be adversely affected arising from the proposed Small House. - Nonetheless, there is no information regarding the construction access to the Site, thus potential adverse impact arising from additional vegetation clearance for the access cannot be ascertained. - There is still land available within the “V” zone for the proposed use. Approval of the proposed Small House application may encourage more similar applications, resulting in extension of village development beyond the existing “V” zone boundary and irreversibly altering the landscape character of the “AGR” zone. - Should the application be approved by the Board, an approval condition on submission and implementation of landscape proposal is recommended.
13.	Local objection conveyed by DO?		✓	District Officer (North) (DO(N)) advises that a North District Council (NDC) member of the subject constituency 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 IV**.

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

10. Public Comments Received During Statutory Publication Period

On 23.1.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received (**Appendix V**). A NDC member supports the application as it provides convenience to the villagers whereas the Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The other four public comments, submitted by Kadoorie Farm and Botanic Garden Corporation, World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited and one individual, object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; there is land available in “V” zone of the village; there are similar rejected applications in the Ha Shan Kai Wat Village; and approval of the application would set an undesirable precedent for similar applications in the area.

11. Planning Considerations and Assessments

11.1 The Site falls within an area mostly zoned “AGR” with a minor portion encroached onto “V” zone. The proposed Small House development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the 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 Ha Shan Kai Wat Village is 29 while the 10-year Small House demand forecast for the same village is 132. According to the latest estimate by PlanD, about 1.81 ha (equivalent to 72 Small House sites) of land are available in the “V” zone of Ha Shan Kai Wat Village for Small House development (**Plan A-2b**). The footprint of the proposed Small House falls entirely within the ‘VE’ of Ha Shan Kai Wat Village.

- 11.3 The Site is situated in an area of rural village character in close proximity to the existing village, and the proposed Small House development is not incompatible with the surrounding environment (**Plans A-2a** and **A-3**). Whilst significant adverse landscape impact arising from the proposed development is not anticipated, there is potential adverse impact arising from additional vegetation clearance for access to the Site. In this regard, CTP/UD&L, PlanD has reservation on the application from the landscape planning point of view. C for T considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development only involves the construction of one Small House, the application could be tolerated. DEP does not support the application as the location of the proposed septic tank and soakaway system is very close to an existing nullah and a natural watercourse (less than 10 m) (**Plan A-2a**), at which the current proposed location of the soakaway pit does not meet the minimum clearance distance of 15 m between the soakaway and the watercourse as required under the ProPECC Note PN5/93. Other Government departments consulted, including D of FS, CE/C of WSD and CE/MN of DSD, have no adverse comment on or no objection to the application.
- 11.4 Regarding the nullah and footpath within the Site, DO(N), HAD advises that these facilities are constructed and maintained by his office with consent from the lot owner. He further advises that the proposed Small House should be located as far away from these facilities as possible. The applicant is reminded to maintain the footpath at the Site or find an alternative route to bypass the Site during and after building works. DLO/N, LandsD advises that if the footpath within the Site is affected by the proposed development, his office may consider if necessary and appropriate to include a clause to ensure that free passage on the portion of the footpath is to be provided at all times within the Site, should the Small House grant application be approved.
- 11.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Ha Shan Kai Wat Village (**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 1.81 ha or equivalent to 72 Small House sites) is still available within the “V” zone to meet the outstanding 29 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 and special consideration would be given to sites with previous planning approvals for Small House development. As such, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services. Besides, the proposed development does not meet the Interim Criteria in that the proposed development may cause adverse sewerage impact on the surrounding area.
- 11.6 There are 20 similar applications for Small House development with/partly within the “AGR” zone in the vicinity of the Sites and 11 of them were approved by the Committee between 2011 and 2014 (**Plan A-1**) mainly on the considerations that they complied with the Interim Criteria; the proposed Small Houses were not incompatible with the surrounding rural and village environment; and the proposed developments were not expected to have significant adverse impacts on the surrounding area. The latest application (No. A/NE-TKL/569) approved by the Committee on 25.8.2017 was the subject of a previously approved application No. A/NE-TKL/365. Special

consideration was given to that application as the applicant of that previously approved application was the father of the applicant under application No. A/NE-TKL/569. The other eight similar applications were rejected by the Committee between 2015 and 2017 mainly on the grounds that the proposed Small House developments were not in line with the planning intention of “AGR” zone and land was still available within the “V” zone of Ha Shan Kai Wat Village for Small House development. The circumstance of the current application is similar to those rejected applications.

- 11.7 Regarding the adverse public comments mainly on the planning intention of “AGR” zone, there is land available in “V” zone of the village, similar rejected applications in the Ha Shan Kai Wat Village and the setting of undesirable precedents for similar applications in the area, 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 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 in the Ping Che and Ta Kwu Ling 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;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories in that the proposed development is close to a stream course and there is insufficient information in the submission to demonstrate that the proposed development would not cause adverse sewerage impact on the surrounding areas; and
 - (c) land is still available within the “V” zone of Ha Shan Kai Wat Village where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 2.3.2022, 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;
- (b) the submission and implementation of drainage proposal to the satisfaction of the

Director of Drainage Services or of the Town Planning Board; and

- (c) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of 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 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 permissions 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 with Attachment received on 15.1.2018
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Similar s.16 Applications for Proposed House (NTEH – Small House) within/partly within the “Agriculture” zone in the Ping Che and Ta Kwu Ling Area
Appendix IV	Comments from Relevant Government Departments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the “V” zone of Ha Shan Kai Wat for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2018**