

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/583

- Applicant** : Mr. LAM Jacky Chi Fan
- Site** : Lot 796 S.D in D.D. 84, Ha Shan Kai Wat, Ta Kwu Ling, New Territories
- Site Area** : 248.3 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”) (96.5% of the Site) and
“Village Type Development” (“V”) (3.5% 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 Sha Kai Wat, Ta Kwu Ling (**Plans A-1 and A-2a**). The Site falls within an area mostly zoned “AGR” with a very 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)’ is a Column 2 use within “AGR” zone, 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 Ki 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 Small House applications approved 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; and
- (e) 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

- 5.1 The Site is the subject of a previous planning application (No. A/NE-TKL/512) for development of a Small House. The previous application is submitted by the same applicant as the current application. The application was rejected by the Committee on 3.7.2015 mainly on the considerations that the application was not in line with the planning intention of the “AGR” zone in the Ping Che and Ta Kwu Ling area and land was still available within the “V” zone of Ha Shan Kai Wat Village in meeting the demand for Small House development.

- 5.2 Compared with the previous application (No. A/NE-TKL/512), the site area and major development parameters including the disposition of the proposed Small House generally remain the same.
- 5.3 Details of the previous application are summarised at **Appendix III** and its location is shown on **Plans A-1 and A2**.

6. Similar Applications

- 6.1 There are 19 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 seven 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 IV** and their locations are shown on **Plan A-1**.
- 6.5 For Members’ information, another similar application (No. A/NE-TKL/582) for proposed house (NTEH – Small House) in Ha Shan Kai Wat Village to the east 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**); and

(c) not served by any vehicular access.

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; and
- (c) to the south are village houses within the “V” zone of Ha Shan Kai Wat Village with some fallow agricultural land, vacant land and a nullah running in the south-north direction to the east of the Site (**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:

	Criteria	Yes	No	Remarks
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	3.5% -	96.5% 100%	- The Site of the proposed Small House falls within an area largely zoned “AGR” with a very minor portion zoned “V” zone. - The footprint of the proposed Small House falls entirely within “AGR” zone.
2.	Within ‘VE’? - The Site	100%	-	DLO/N, LandsD advises that the Site falls entirely within the ‘VE’ of Ha Shan Kai Wat Village.

	Criteria	Yes	No	Remarks
	- Footprint of the proposed Small House	100%	-	
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?		✓	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?	✓		<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. - 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.

	Criteria	Yes	No	Remarks
				<ul style="list-style-type: none"> - 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 V**.

- (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 applications:

- (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 very 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. 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 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. 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. The Site is the subject of a previous application (No. A/NE-TKL/512) for Small House development rejected by the Committee on 3.7.2015. There is no significant change in planning circumstances since the previous application was rejected.
- 11.5 There are 19 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 seven 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.

- 11.6 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; and
- (b) 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 VII**.

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

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	Previous s.16 Application
Appendix IV	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 V	Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	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**