

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/604

- Applicant** : Mr. CHAN, Benny represented by Ms. LEE Wai Leung
- Site** : Lot 176 in D.D. 79, Ping Yeung Village, Ta Kwu Ling, New Territories
- Site Area** : 197.42 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
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, who claimed himself an indigenous villager¹ of Ping Yeung Village of Ta Kwu Ling Heung, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ping Yeung Village, Ta Kwu Ling (**Plans A-1 and A-2a**). The Site falls within “AGR” on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. According to the Notes of the OZP, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ is a Column 2 use in the “AGR” zone requiring 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 |
- 1.3 The applicant indicates that the uncovered area of the Site would be used as garden and circulation area of the proposed Small House. Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**.

¹ According to District Lands Officer/North, Lands Department (DLO/N, LandsD), there is no Small House application received on the Site. His office is unable to advise whether the applicant is eligible for Small House grant.

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

- (a) Application Form with Attachments received on 12.10.2018 (**Appendix I**)
- (b) Supplementary Information received on 18.10.2018 (**Appendix Ia**)
- (c) Further Information received on 12.11.2018 (**Appendix Ib**)
- (d) Further Information received on 29.11.2018 (**Appendix Ic**)

2. Justifications from the Applicant

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

- (a) the applicant obtained a written justification (**Appendix Ic**) from one of the Indigenous Inhabitant Representative of Ping Yeung Village to justify that he is indigenous villager of Ping Yeung Village and entitled for Small House grant under the Small House Policy;
- (b) there is insufficient land available in the “Village Type Development” (“V”) zone of Ping Yeung Village to meet the long-term Small House demand of the indigenous villagers;
- (c) the applicant do not possess any land in the “Village Type Development” (“V”) zone; he plans to purchase the subject lot upon the granting of planning approval of subject application;
- (d) septic tank would be provided for the proposed Small House; the applicant will apply to sewage connections when the public sewers are available in the vicinity;
- (e) no tree felling would be involved for the application.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is not the “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by obtaining consents from the concerned land owners. 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 18 similar applications for Small House development within/partly within the “AGR” zone (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000 (**Appendix II**).
- 6.2 Of 18 similar applications, three applications (No. A/NE-TKL/183, 369 and 383) were rejected by the Board on review/the Committee between February 2002 and December 2012 mainly on the considerations that the proposed Small House developments did not comply with the Interim Criteria as the footprints of the proposed Small Houses fell mainly outside the “V” zone and ‘VE’ of a recognised village; the applications were not in line with the planning intention of the “AGR” zone; and the approval of the applications would set undesirable precedents for similar applications.
- 6.3 For other 15 applications, 10 applications were approved with conditions by the Committee of the Board between November 2001 and August 2013 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-1**) mainly on the considerations that the applications 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 in meeting the demand for Small House development in the “Village Type Development” (“V”) zone of the same village; 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 environmental and traffic impacts on the surrounding areas. For the remaining five applications, four applications (No. A/NE-TKL/543 to 546) were approved by the Committee on 14.10.2016 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1**) on sympathetic consideration as the proposed Small Houses situated in close proximity to the sites of approved Small House applications (e.g. No. A/NE-TKL/438 and 440) though the land available within the “V” zone was able to meet the outstanding applications at the time of consideration. One application (No. A/NE-TKL/599) for 6 Small Houses was subsequently approved by the Committee on 19.10.2018 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1**) on sympathetic consideration as the proposed Small Houses were sandwiched by the aforementioned four Small House applications (No. A/NE-TKL/543 to 546) and considered as an infill Small House development at the fringe of the ‘VE’ while a new village cluster was forming in the locality though the land available within the “V” zone was able to meet the outstanding applications at the time of consideration.
- 6.4 Details of these applications are summarized at **Appendix III** and their locations are shown on **Plans A-1 and A-2a**.

7. The Site and Its Surrounding Area (**Plans A-1, A-2a and A-2b, aerial photo on Plan A-3 and site photos on Plan A-4**)

- 7.1 The Site is:
 - (a) located at the southwestern fringe of the ‘VE’ of Ping Yeung Village and are about 40m away from the “V” zone and village proper of Ping Yeung Village (**Plans A-2a and A-2b**);
 - (b) currently fenced off, mainly covered by wild grasses with small hard-paved area at its north; and

- (c) encroached on an existing track at the north-eastern portion of the site (**Plan A-2a**).

7.2 The surrounding area has the following characteristics:

- (a) situated in a rural setting dominated by village houses, temporary structures for domestic uses, fallow agricultural land with some warehouses and open storage use;
- (b) to the immediate west are two temporary structures and five planning applications No. A/NE-TKL/543 to 546 and 599 which were approved by the Committee on 14.10.2016 and 19.10.2018 respectively for the development of Small House(s) (**Plan A-2a**);
- (c) to the immediate north are some village houses while to the immediate southeast are planning applications No. A/NE-TKL/438 and 440 which were approved by the Committee each for the development of a Small House (**Plan A-2a**);
- (d) to the immediate northeast are existing track and to the further northeast is the village proper and the “V” zone of Ping Yeung Village (about 40m) (**Plan A-2a**);
- (e) to the further northwest is an open storage of construction materials and some temporary domestic structures, and
- (f) to the further south are vacant land and fallow agricultural land with some warehouses.

8. Planning Intention

The planning intention of the “AGR” zone in Ping Che and Ta Kwu Ling 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 summarized 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. |

| | Criteria | Yes | No | Remarks |
|----|--|-------------------------|-------------------|---|
| 2. | <p>Within 'VE'?</p> <ul style="list-style-type: none"> - The Site - Footprint of the proposed Small House | <p>100%</p> <p>100%</p> | <p>-</p> <p>-</p> | <p>- DLO/N, LandsD advises that the footprint of the proposed Small House entirely within the 'VE' of Ping Yeung Village.</p> |
| 3. | <p>Sufficient land in "V" zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?</p> | | ✓ | <p>- Land required to meet the Small House demand in Ping Yeung Village: about 116.78 ha (equivalent to 4,671 Small House sites). The outstanding Small House applications for Ping Yeung Village are 71² while the 10-year Small House demand forecast for the same village is 4,600.</p> <p>- Land available to meet the Small House demand within the "V" zone of Ping Yeung Village: about 5.44 ha (equivalent to 217 Small House sites) (Plan A-2b).</p> |
| | <p>Sufficient land in "V" zone to meet outstanding Small House application?</p> | ✓ | | |
| 4. | <p>Compatible with the planning intention of "AGR" zone?</p> | | ✓ | <p>- The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is a fallow land. Agricultural infrastructures such as road access and water source are available. The application is not supported from agriculture point of view as the Site possesses potential for agricultural rehabilitation.</p> |
| 5. | <p>Compatible with surrounding area/development?</p> | ✓ | | <p>- The proposed Small House is not entirely incompatible with the surrounding rural setting and environment dominated by domestic structures, fallow agricultural land, open storage yards and warehouses (Plan A-2a).</p> |
| 6. | <p>Within Water Gathering Grounds (WGGs)?</p> | | ✓ | |
| 7. | <p>Encroachment onto planned road networks and public works boundaries?</p> | | ✓ | |

² Among the 71 outstanding Small House applications, 40 of them fall within the "V" zone and 31 straddle or outside the "V" zone. For those 31 applications straddling or being outside the "V" zone, 10 of them have obtained valid planning approval from the Board.

| | Criteria | Yes | No | Remarks |
|-----|--|------------|-----------|---|
| 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. |
| 9. | Traffic impact? | ✓ | | - 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 developments 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. He 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 for the application. |
| 11. | Sewage impact? | | ✓ | - The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed developments, 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 landscape planning perspective. - According to her site record, the site is partly fenced off, mainly covered by wild grasses with small hard-paved area at its north. A small plant i.e. <i>Musa sp.</i> (蕉) is found within the Site and 2 small young common trees outside the site boundary at the northwest and the east respectively are observed. |

| | Criteria | Yes | No | Remarks |
|-----|---------------------------------|------------|-----------|---|
| | | | | <p>Significant changes or disturbances to the existing landscape resource arising from the proposed use are not anticipated.</p> <p>- Should the application be approved, approval condition for submission and implementation of a landscape proposal is recommended.</p> |
| 13. | Local objection conveyed by DO? | ✓ | | - District Officer (North) (DO(N)) advises that he has consulted the locals. One of the four Indigenous Inhabitant Representatives (IIRs) of Ping Yeung objected the proposal with a view that the applicant is not descendant of Sit Wan Tso and Sit Kin Tso. The incumbent North District Council (NDC) member of subject constituency had no comments on the proposal. |

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

- (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 applications:

- (a) Chief Highway Engineer/New Territories East, Highways Department; and
- (b) Project Manager (North), Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 19.10.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received respectively (**Appendix V**). A NDC member and the Chairman of Sheung Shui District Rural Committee indicate no comment on the application. Designing Hong Kong Limited and The Hong Kong Bird Watching Society object to the application mainly on the grounds that land is still available within the “V” zone for Small House development; approval of the application is 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. One villager of Ping Yeung Village also objects the application mainly on the ground that the application site is neither located in “Village Type Development” zone nor located closely to Ping Yeung Village; approval of the application is not in line with the planning intention of the “AGR”

zone and will encourage the proliferation of septic tanks. An individual also raises object to the application on the considerations that the proposed Small House are not in line with planning intention of the “AGR” zone.

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 Ping Yeung Village is 71 while the 10-year Small House demand forecast for the same village is 4,600. According to the latest estimate by PlanD, about 5.44 ha (equivalent to 217 Small House sites) of land are available in the “V” zone of Ping Yeung Village for Small House development (**Plan A-2b**). DLO/N, LandsD advises that Small House footprint under the application fall entirely within the ‘VE’ of Ping Yeung Village.
- 11.3 The Site is mainly covered by wild grasses with small hard-paved area at its north. It is located to the southwest of the “V” zone and village proper of Ping Yeung Village (**Plans A-3 and A-4**). The proposed Small House development is not entirely incompatible with the surrounding rural landscape character dominated by domestic structures and fallow agricultural land (**Plan A-2**). CTP/UD&L, PlanD has no objection to the application from landscape planning perspective. According to her site record, the site is partly fenced off, mainly covered by wild grasses with small hard-paved area at its north. A small plant i.e. *Musa sp.*(蕉) is found within the Site and two small young common trees outside the site boundary at the northwest and the east respectively are observed. Significant changes or disturbances to the existing landscape resource arising from the proposed use are not anticipated. 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 developments involve 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/no objection to the application.
- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprints of the proposed Small Houses fall within the ‘VE’ of Ping Yeung 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 5.44 ha or equivalent to 217 Small House sites) is still available within the “V” zone to meet the 71 outstanding 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 developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services. Nevertheless, the proposed Small House is located in close proximity to a number of existing Small Houses and 7 approved Small House applications for 12 houses forming a new village cluster in the locality (**Plans A-2a and A-2b**).

- 11.5 There are 11 similar applications for Small House development in the vicinity of the Site and 6 of them were approved by the Committee between November 2011 and August 2013 (i.e. before the adoption of a more cautious approach by the Board) (**Plan A-2a**) mainly on considerations that they complied with the Interim Criteria; there was a general shortage of land in meeting the demand for Small House development in the “V” zone of the same village; the proposed Small House developments were not incompatible with the surrounding rural environment; and the proposed developments were not expected to have significant adverse impacts on the surrounding areas. For the remaining five similar applications, four applications (No. A/NE-TKL/543 to 546) were approved by the Committee on 14.10.2016 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-2a**) on sympathetic consideration as the proposed Small Houses situated in close proximity to the sites of approved Small House applications (e.g. No. A/NE-TKL/438 and 440) though the land available within the “V” zone was able to meet the outstanding applications at the time of consideration. One application for 6 Small Houses (No. A/NE-TKL/599) was subsequently approved by the Committee on 19.10.2018 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-2a**) on sympathetic consideration as the proposed Small Houses were sandwiched by the aforementioned four Small House applications (No. A/NE-TKL/543 to 546) and considered as an infill Small House development at the fringe of the ‘VE’ while a new village cluster was forming in the locality though the land available within the “V” zone was able to meet the outstanding applications at the time of consideration. The circumstances of the subject application are similar to applications No. A/NE-TKL/543 to 546 and 599 approved between 2016 and 2018.
- 11.6 Regarding the local views and adverse public comments objecting to the application on the grounds as summarized in paragraphs 9.1 and 10 above, Government departments’ comments and planning assessments in the above paragraphs 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 7.12.2022, 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 you, at a location to the satisfaction of the Director of Lands or of the TPB;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the TPB; and
- (c) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the TPB.

Advisory Clauses

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

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 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 Ping Yeung Village 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 applicants.

14. Attachments

| | |
|---------------------|---|
| Appendix I | Application Form with attachments received on 12.10.2018 |
| Appendix Ia | Supplementary Information received on 18.10.2018 |
| Appendix Ib | Further Information received on 12.11.2018 |
| Appendix Ic | Further Information received on 29.11.2018 |
| Appendix II | Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories |
| Appendix III | 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 Site in the Ping Che and Ta Kwu Ling area |
| Appendix IV | Detailed Comments from Relevant Government Departments |
| Appendix V | Public Comments |
| Appendix VI | Recommended Advisory Clauses |
| Drawings 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 Ping Yeung Village for Small House Development |
| Plan A-3 | Aerial Photo |
| Plan A-4 | Site Photos |