

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-TKL/611 to 613

- Applicants** : Mr. LEE Sum Loi (Application No. A/NE-TKL/611)
Mr. YEUNG Ying Loi (Application No. A/NE-TKL/612)
Mr. LEE Fur Sau (Application No. A/NE-TKL/613)
all represented by Glister Engineering Consultants Company
- Sites** : Lots 1085 S.C and 1086 S.C (Application No. A/NE-TKL/611)
Lots 1085 S.B, 1086 S.B, 1088 S.A ss18 (Application No. A/NE-TKL/612)
(Part) and 1088 S.A RP (Part)
Lots 1088 S.A ss11, 1088 S.A ss1 S.G and (Application No. A/NE-TKL/613)
1089 S.G
all in D.D. 82, Tong Fong Tsuen, Ta Kwu Ling, New Territories
- Site Areas** : 111.3 m² (about) (Application No. A/NE-TKL/611)
122.78 m² (about) (Application No. A/NE-TKL/612)
122.1 m² (about) (Application No. A/NE-TKL/613)
- 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”)
- Applications** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposals

- 1.1 The applicants, who claimed to be indigenous villagers¹, seek planning permissions to build a proposed NTEH (Small House) on each of the application sites (the Sites) in Tong Fong Village, Ta Kwu Ling (**Plan A-1**). The Sites fall within an area zoned “AGR” 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, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).
- 1.2 Details of each of the three proposed NTEHs (Small Houses) are as follows:

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicants have been certified by the respective Indigenous Inhabitants Representative in statutory declaration that the applicants are indigenous villagers of Lei Uk (i.e. applicants of No. A/NE-TKL/611 & 613) and Fung Wong Wu (i.e. applicant of No. A/NE-TKL/612) in Ta Kwu Ling Heung.

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

Layouts of the three proposed Small Houses (including septic tanks) under applications No. A/NE-TKL/611 to 613 are shown on **Drawings A-1 to A-3** respectively. The applicants indicate that the uncovered areas of the Sites would be used as garden of their proposed Small Houses.

1.3 The Sites are subject of three previously approved planning applications as listed below:

<u>Current application</u>	<u>Previous application</u>	<u>Approval / Extension of Approval</u>
No. A/NE-TKL/611	No. A/NE-TKL/393	Approved with approval conditions on 11.1.2013 and extended once to 11.1.2019
No. A/NE-TKL/612	No. A/NE-TKL/425	Approved with approval conditions on 1.3.2013 and extended once to 1.3.2019
No. A/NE-TKL/613	No. A/NE-TKL/400	Approved with approval conditions on 11.1.2013 and extended once to 11.1.2019

1.4 The current applications are submitted by the same applicants of the respective previous applications. According to DLO/N, LandsD, the Small House applications at the Sites were approved in principle in 2017 but yet to be executed. Compared with the last previous applications, major development parameters including the layouts of the proposed Small Houses under the current applications remain unchanged (**Plan A-2a**).

1.5 In support of the application, the applicants have submitted the Application Forms with attachment (**Appendices Ia, Ib and Ic**) which were received by the Board on 11.4.2019.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the applications are detailed in Part 9 of the Application Forms at **Appendices Ia to Ic** respectively. They can be summarized as follows:

- (a) the applicants are indigenous villagers and entitled for Small House grant under the Small House Policy;
- (b) the subject sites fall within the village 'environs' ('VE');
- (c) the proposed Small House development is compatible with the surrounding area and there are similar Small House applications approved in the vicinity of the Site; and
- (d) the applicants are registered owner of respective lots.

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

The applicants are the "current land owners" of their respective lots. 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 Applications

- 5.1 The Sites are involved in part / entirely of five previous planning applications (No. A/NE-TKL/317, 330, 393, 400 and 425) (**Plans A-1b and A-2a**). The former two applications were for temporary open storage of construction machinery and construction materials whereas the latter three for Small House developments.
- 5.2 Application No. A/NE-TKL/317 was rejected by the Board on review on 11.9.2009 on the grounds that the proposed development was not in line with the planning intention of the "AGR" zone; the application did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses in that no previous planning approval had been granted to the application site and there were adverse departmental comments on the application; and it would generate adverse environmental and landscape impacts on the surrounding areas. Application No. A/NE-TKL/330 was also rejected by the Rural and New Town Planning Committee (the Committee) on 18.12.2009 on the similar grounds of Application No. A/NE-TKL/317 (**Plan A-1b**).
- 5.3 Each of the Sites under applications No. A/NE-TKL/611, 613 and 612 is the subject of the previous application No. A/NE-TKL/393, 400 and 425 respectively for the development of a Small House submitted by same applicant as the current application. Applications No. A/NE-TKL/393 and 400 for the development of Small House were approved on 11.1.2013 mainly on the grounds that the application generally complied with the Interim Criteria in that the footprints of the proposed Small Houses fell entirely / mostly within the 'VE' and there was a general shortage of land within the "Village Type Development" ("V") zone at the time of consideration; the proposed developments were not incompatible with the surrounding area; and significant adverse environmental, drainage, traffic and landscape impact were not anticipated. The planning permissions were extended once to 11.1.2019 under the application No. A/NE-TKL/393-1 and 400-1 respectively. The planning permissions lapsed on 12.1.2019.
- 5.4 For application No. A/NE-TKL/425, it was approved on 1.3.2013 mainly on the grounds that the application generally complied with the Interim Criteria that the footprints of the proposed Small Houses fell entirely within the 'VE' and there was a general shortage of land within the "V" zone at the time of consideration; the proposed developments were not incompatible with the surrounding area; and significant adverse environmental, drainage, traffic and landscape impact were not anticipated. That planning permission was extended once to 1.3.2019 under the application No. A/NE-TKL/425-1. The planning permission lapsed on 2.3.2019. Compared with the last previous applications, major development parameters including layouts of the proposed Small Houses under applications remain unchanged.
- 5.5 Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plans A-1b and A-2a**.

6. Similar Applications

- 6.1 There are 22 similar applications for Small House development within / partly within the “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1a**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 A total of 21 applications involving 19 sites were approved with conditions by the Committee between August 2011 and January 2017 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 within the “V” zone of the same village in meeting the Small House demand; the proposed Small House developments were not incompatible with the surrounding rural and village environment; the proposed developments were not expected to have significant adverse impacts on the surrounding area; and previous/similar applications were approved by the Committee. All the approval cases are in the vicinity of the Sites (**Plan A-2a**).
- 6.3 One application No. A/NE-TKL/576 which is located near Ping Che Road and away from the approval case sites (**Plan A-1a**) was rejected by the Committee on 22.12.2017 mainly on the considerations that the proposed development was not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone. It was considered more appropriate to concentrate the proposed Small House development close to the existing village cluster.
- 6.4 Details of the applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1a**.

7. The Sites and Their Surrounding Areas (Plans A-1a, A-2a and A-2b, and aerial photo on Plan A-3 and site photos on Plan A-4a)

- 7.1 The Sites are:
 - (a) vacant, flat and partly covered with grass (**Plan A-4**);
 - (b) located in close proximity to the village proper of Tong Fong Village; and
 - (c) accessible via a local access road from Ping Che Road.
- 7.2 The surrounding areas have the following characteristics (**Plan A-2a**):
 - (a) rural landscape character dominated by village houses, temporary structures, active/ fallow agricultural land and vacant land;
 - (b) to the immediate north and south are village houses under construction / vacant land with Small House applications approved by the Committee (**Plan A-2a**); and
 - (c) to the further west are Ping Che Road and to the further north are village proper of Tong Fong Village.

8. Planning Intention

The planning intention of the “AGR” zone in the Ta Kwu Ling and Ping Che area is intended 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 applications have 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 Sites - Footprints of the proposed Small Houses	- -	100% 100%	- The Sites and the footprints of the proposed Small Houses fall entirely within the “AGR” zone.
2.	Within ‘VE’? - The Sites - Footprints of the proposed Small Houses	100% 100%	- -	- DLO/N, LandsD advises that the Sites fall entirely within the ‘VE’ of Tong Fong.
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 Tong Fong: about 4.025 ha (equivalent to 161 Small House sites). The outstanding Small House applications for Tong Fong Village are 27 ² while the 10-year Small House demand forecast for the same village is 134.
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		- Land available to meet the Small House demand within the “V” zone of Tong Fong Village : about 1.39 ha (equivalent to 55 Small House sites) (Plan A-2b).

² Among the 27 outstanding Small House applications, 12 of them fall within the “V” zone and 15 straddle or outside the “V” zone. For those 15 applications straddling or being outside the “V” zone, there is no valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) states that the agricultural activities are active in the vicinity and agricultural infrastructure such as road access and water source are available. As the Sites possess potential for agricultural rehabilitation, the applications are not supported from agriculture point of view.
5.	Compatible with surrounding area/ development?	✓		- The proposed Small Houses are not incompatible with the surrounding rural setting and environment dominated by village houses, temporary structures and clustered tree groups (Plan A-2a).
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 applications. The applicants are 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 applications and advises that Small House developments should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed developments are not expected to be significant, such type of developments 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 applications involve the construction of three Small Houses. She considers that the applications can be tolerated unless they are rejected on other grounds.

10.	Drainage impact?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the applications and advises that an approval condition on the submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	<ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed developments, the applications alone are unlikely to cause major pollution.
12.	Landscaping impact?		✓	<ul style="list-style-type: none"> The Chief Town Planner / Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the applications from the landscape planning point of view. - The Sites are located in the rural landscape character comprises village houses, temporary structures and clustered tree groups. The proposed Small Houses are considered not incompatible with the surrounding environment. - The Sites are mostly hard paved and no significant landscape resources of high sensitivity are observed within the Sites. Moreover, there are at least 13 approved planning applications for development of Small Houses in the close proximity of the Sites. Significant adverse impact on existing landscape resources arising from the proposed developments are not anticipated. - In consideration of the limited space within the application boundaries, it is considered not necessary to impose a landscape condition.

13.	Local objections conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that he has consulted the locals. The Chairperson of Ta Kwu Ling District Rural Committee, the incumbent North District Council (NDC) member of the subject constituency, the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Tong Fong Village, had no comments on the proposal.
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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 23.4.2019, the applications were published for public inspection. During the first three weeks of the statutory public inspection period, 4 public comments on each applications were received (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee and a NDC member indicate no comment on the applications. Designing Hong Kong Limited and an individual object to each of the application mainly on the ground that there is high potential for agricultural rehabilitation of the Site; land is still available in the “V” zone of Tong Fong Village; the proposed development did not provide details of implementation of drainage and landscape proposal; and the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone.

11. Planning Considerations and Assessments

11.1 The Sites fall entirely within an area zoned “AGR” on the OZP. The proposed Small House developments are 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 applications from the agriculture point of view as the Sites possess potential for agricultural rehabilitation.

- 11.2 The applications are cross-village Small House applications. Based on DLO/N, LandsD's records, the total number of outstanding Small House applications for Tong Fong Village is 27 while the 10-year Small House demand forecast for the same village is 134. According to the latest estimate by PlanD, about 1.39 ha (equivalent to about 55 Small House sites) of land are available in the "V" zone of Tong Fong Village for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the proposed Small House falls entirely within the 'VE' of Tong Fong.
- 11.3 The Sites are situated to the south of the "V" zone of Tong Fong Village, which is currently vacant, flat and partly covered with grass. There are approved Small House applications to the north and south of the Sites (**Plans A-2a and A-4**). The proposed Small Houses are not incompatible with the surrounding rural setting comprising village houses, temporary structures and clustered tree groups. Significant adverse landscape impact arising from the proposed developments is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the applications from the landscape planning perspective. C for T has reservation on the applications and considers that Small House developments should be confined within the "V" zone as far as possible but given that the proposed developments involve three Small Houses, they 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 applications.
- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprints of the proposed Small Houses fall within the 'VE' of Tong Fong (**Plan A-2a**). While land available within the "V" zone is insufficient to fully meet total future Small House demand of 161 Small Houses, it is noted that land (about 1.39 ha or equivalent to 55 Small House sites) is still available within the "V" zone to meeting the outstanding 27 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, it is noted that each of the Sites are the subject of a previously approved planning application and the processing of the Small House grants is already at an advance stage. According to DLO/N, LandsD, the Small House applications at the Sites were approved in principle in 2017 but yet to be executed. Besides, the Sites are bounded by approved Small Houses to their north and south, the implementation of which are forming a new village cluster in the locality (**Plans A-2a and Plan A-2b**). In this regard, sympathetic consideration might be given to the applicants.
- 11.5 It is noted that there are 22 similar applications for Small House developments in the vicinity of the Site (**Plan A-2a**) and 21 of them were approved between 2011 and 2017 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 within the "V" zone of the same village in meeting the Small House demand; the proposed Small House developments were not incompatible with the surrounding rural and village environment; the proposed developments were not expected to have significant adverse impacts on the surrounding area; and previous/similar applications were approved by the Committee. All the approval cases are in the vicinity of the Sites (**Plan A-2a**). The only rejected application No. A/NE-TKL/576 which is located near Ping Che Road and away from the approved cases was rejected by the Committee on 22.12.2017 mainly on the considerations that

the proposed development was not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone. It was considered more appropriate to concentrate the proposed Small House development close to the existing village cluster. There has been no any major change in planning circumstances of the area since the approval of the similar applications.

- 11.6 Regarding the adverse public comments as detailed in paragraph 10, the Government department’s comments and the planning assessment 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 applications.
- 12.2 Should the Committee decide to approve the applications, it is suggested that each of the permissions shall be valid until 31.5.2023, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the 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 applications, 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 Tong Fong 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 applications and decide whether to grant or refuse to grant the permissions.
- 13.2 Should the Committee decide to approve the applications, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permissions, and the date when the validity of the permissions should expire.
- 13.3 Alternatively, should the Committee decide to reject the applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.

14. Attachments

Appendices Ia, Ib & Ic	Application Forms with attachments received on 11.4.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Previous Applications
Appendix IV	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 Ping Che and Ta Kwu Ling area
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawings A-1, A-2 & A-3	Layout Plans
Plan A-1a	Location Plan
Plan A-1b	Previous Applications Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the “V” zone of Tong Fong Village for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos