

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/623

- Applicant** : Mr. LAM Kin Hop represented by Yicon Consultants Limited
- Site** : Lot 689 S.C ss.4 in D.D. 77, Ha Shan Kai Wat, Ta Kwu Ling, New Territories
- Site Area** : 113.1 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”) (about 85.7 m² or 75.8%)
“Village Type Development” (“V”) (about 27.4 m² or 24.2%)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claimed to be an indigenous villager of Shan Kai Wat of Ta Kwu Ling Heung¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ha Shan Kai Wat (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” and “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, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in “V” zone is always permitted whereas such development in “AGR” zone is a Column 2 use 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 Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**. The applicant indicates that the uncovered areas of the Site would be used as garden of his proposed Small House.

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant has been certified by the Indigenous Inhabitants Representative (IIR) in statutory declaration that he is an indigenous villager of Shan Kai Wat in Ta Kwu Ling Heung.

1.4 The Site is the subject of a previous planning application No. A/NE-TKL/356 covering a larger area for two Small Houses. The current application is submitted by the same applicant under previous approval. The application was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 15.4.2011 and the planning permission was extended once to 15.4.2019 under the application No. A/NE-TKL/356-1. The planning permission was lapsed on 16.4.2019. As far as the subject Small House is concerned, the layout and the development parameters under the previous approved scheme and the current application are the same.

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

- (a) Application form with attachment received on 23.7.2019 (Appendix I)
- (b) Supplementary Information received on 24.7.2019 (Appendix Ia)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the Application Form and Supplementary Information at **Appendices I and Ia** respectively. They can be summarized as follows:

- (a) the applicant claimed to be an indigenous villager of Shan Kai Wat and entitled for Small House grant under the Small House Policy;
- (b) the Site falls within the ‘Village Environ’ (‘VE’) of the Shan Kai Wat and fall within an area zoned “AGR” and “V”;
- (c) the Site is the subject of a previous planning permission for two Small House developments (application No. A/NE-TKL/356) (**Plan A-2a**). The planning permission was extended once to 15.4.2019. According to the Town Planning Board Guidelines, no more extension of time for the planning permission would be allowed by the Board. As such, fresh application is submitted;
- (d) the applicant has submitted for Small House grant application during the planning approval period of application No. A/NE-TKL/356;
- (e) the applicant was originally one of the owners of the Site under the previous planning approval, however the land owner of the Site has changed to the applicant’s son due to the family issue. To process the Small House grant application, the applicant is currently trying to obtain the land ownership of the Site; and
- (f) the proposed Small House development is compatible with the surrounding area and the proposed development would bring new landscape features and enhance the environmental qualities in the area.

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 consent from the other “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 subject of a previous planning application (No. A/NE-TKL/356) covering a larger area for two Small Houses. That application was approved by the Committee on 15.4.2011(**Plan A-1**). However, the planning permission was lapsed on 16.4.2019. The current application is submitted by the same applicant under previous approval. The application was approved mainly on the grounds that the application generally complied with the Interim Criteria in 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 the proposed developments were not expected to have significant adverse impacts on the surrounding area. As far as the subject Small House is concerned, the layout and the development parameters under the previous approved scheme and the current application are the same.

5.2 Details of the previous application are summarized at **Appendix III** and its location is shown on **Plans A-1 and A-2**.

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-1**) since the first promulgation of the Interim Criteria on 24.11.2000.

6.2 Before the adoption of a more cautious approach by the Town Planning Board (the Board), a total of 10 applications were approved with conditions by the Committee between 2011 and 2014 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. Since the adoption of a more cautious approach, an application (No. A/NE-TKL/569) was approved by the Committee on 25.8.2017 mainly on the consideration that the site was the subject of a previously approved application No. A/NE-TKL/365 submitted by the father of the applicant.

6.3 The other 11 applications were rejected by the Committee between July 2015 and March 2019 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**.

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

7.1 The Site is:

- (a) vacant, flat and covered with grass;
- (b) located to the eastern fringe of the ‘VE’ and ‘V’ zone of Ha Shan Kai Wat Village; and
- (c) not served by any vehicular access.

7.2 The surrounding areas have the following characteristics:

- (a) predominantly rural in character where village houses and active / fallow agricultural land are found;
- (b) to the north and east are mostly fallow agricultural land;
- (c) to the northwest are sites of approved planning applications (No. A/NE-TKL/373 and 374) for Small House developments;
- (d) to the west are two approved Small House developments which are under construction; and
- (e) to the south are vacant land with Small House applications under processing within the ‘V’ zone of Ha Shan Kai Wat Village and a local road.

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.	<p>Within “V” zone?</p> <ul style="list-style-type: none"> - The Sites - Footprints of the proposed Small House 	<p>24.2%</p> <p>21.3%</p>	<p>75.8%</p> <p>78.7%</p>	<ul style="list-style-type: none"> - The Site of the proposed Small House falls within an area largely zoned “AGR” with a minor portion zoned “V” zone. - The footprint of the proposed Small House falls within an area largely zoned “AGR” with a minor portion zoned “V” zone.
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 Site falls entirely within the ‘VE’ of Ha Shan Kai Wat 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><u>Land Required</u></p> <ul style="list-style-type: none"> - Land required to meet the Small House demand in Ha Shan Kai Wat Village: about 4.08 ha (equivalent to 163 Small House sites). The outstanding Small House applications for Ha Shan Kai Wat Village are 31² while the 10-year Small House demand forecast for the same village is 132.
	<p>Sufficient land in “V” zone to meet outstanding Small House application?</p>	✓		<p><u>Land Available</u></p> <ul style="list-style-type: none"> - Land available to meet the Small House demand within the “V” zone of Ha Shan Kai Wat Village: about 1.80 ha (equivalent to 71 Small House sites) (Plan A-2b).
4.	<p>Compatible with the planning intention of “AGR” zone?</p>		✓	<p>Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from the agriculture point of view. The Site is currently a fallow land overgrown with grasses. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as open field cultivation, greenhouses, etc. The Site possesses potential for agricultural rehabilitation.</p>

² Among the 31 outstanding Small House applications, 7 of them fall within the “V” zone and 24 straddle or outside the “V” zone. For those 24 applications straddling or being outside the “V” zone, 2 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
5.	Compatible with surrounding area/ development?	✓		The proposed development is not incompatible with surrounding setting and environment dominated by village houses and farmland.
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.
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 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?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed developments, the application alone is unlikely to cause major pollution.
12.	Landscaping impact?		✓	- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning point of view. - The Site is situated in an area of rural landscape character surrounded by village houses and farmlands. No significant sensitive landscape resource is observed within the Site, hence, significant adverse impact on existing landscape resources arising from the application is not anticipated. - In view of the limited space within the Site, there is insufficient space for meaningful landscaping; therefore, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.
13.	Local objections conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that the 1 st Vice-Chairman of Ta Kwu Ling District Rural Committee and the IIR of Ha Shan Kai Wat support the proposal. The incumbent North District Council (NDC) member of the subject constituency and the Resident Representative of Ha Shan Kai Wat have no comment on the application.

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

- (a) District Lands Officer/North, Lands Department;
- (b) Commissioner for Transport;
- (c) Director of Environmental Protection;
- (d) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (e) Chief Engineer/Mainland North, Drainage Services Department;
- (f) Director of Fire Services;

- (g) Chief Engineer/Construction, Water Supplies Department;
- (h) Director of Agriculture, Fisheries and Conservation; and
- (i) District Officer (North), Home Affairs Department.

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

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

10. Public Comments Received During Statutory Publication Period

On 29.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Kadoorie Farm and Botanic Garden Corporation, 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; land is still available within the “V” zone of the Ha Shan Kai Wat; 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 31 while the 10-year Small House demand forecast for the same village is 132. According to the latest estimate by PlanD, about 1.80 ha (equivalent to 71 Small House sites) of land are available in the “V” zone of Ha Shan Kai Wat Village for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the proposed Small House falls entirely within the ‘VE’ of Ha Shan Kai Wat Village.
- 11.3 The Site is flat and covered with grass (**Plan A-3**). It is situated in an area of rural village character in close proximity to the existing village houses and the proposed Small House development is not incompatible with the surrounding environment (**Plans A-2a and A-3**). CTP/UD&L, PlanD has no objection to the application as significant adverse impact arising from the proposed use on existing landscape resources is not anticipated. 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 1.80 ha or equivalent to 71 Small House sites) is still available within the “V” zone for Small House development and capable to meet the outstanding 31 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. Nevertheless, the Site is the subject of a previous application No. A/NE-TKL/356 approved by the Committee on 15.4.2011 and the applicant under the current application is the same as the previous approval. Hence, sympathetic consideration might be given to the current application.

- 11.5 It is noted that there are six similar applications for Small House developments in the vicinity of the Site (i.e. applications No. A/NE-TKL/373, 374, 570, 571, 572 and 582) within the ‘VE’ of Ha Shan Kai Wat Village (**Plan A-2a**). Before the adoption of a more cautious approach by the Board, two applications (i.e. applications No. A/NE-TKL/373 and 374) were approved by the Committee in 2012 mainly on the consideration 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. After the adoption of a more cautious approach by the Board, four applications (i.e. applications No. A/NE-TKL/570, 571, 572 and 582) were rejected between August 2017 and March 2018 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. The circumstances of the current application are different from the approved and rejected applications.
- 11.6 Regarding the adverse public comment objecting to the application, Government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 20.9.2023, 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 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 to primarily 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.

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 attachments received on 23.7.2019
Appendix Ia	Supplementary Information received on 24.7.2019
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
SEPTEMBER 2019**