

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/633

<u>Applicant</u>	Mr CHAN Ho Yin represented by Mr HUI Kwán Yee
<u>Site</u>	Lot 664 in D.D. 23, Po Sam Pai, Tai Po, New Territories
<u>Site Area</u>	About 206.67 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Agriculture” (“AGR”) (about 148m ² or 72%) and “Village Type Development” (“V”) (about 58m ² or 28%)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claims to be an indigenous villager¹ of Po Sam Pai, seeks planning permission to build a NTEH (Small House) on the application site (the Site) (**Plan A-1**). 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)’ use within “AGR” zone 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	:	195.09m ²
No. of Storeys	:	3
Building Height	:	8.23m
Roofed over Area	:	65.03m ²

Layout of the proposed development including the septic tank proposal is shown on **Drawing A-1**.

1.3 In support of the application, the applicant has submitted application form with plans at **Appendix I**.

¹ As advised by DLO/TP, LandsD, the indigenous villager status of the applicant has yet to be ascertained.

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 at **Appendix I**. They can be summarized as follows:

- (a) the proposed village house is built on vacant agricultural land;
- (b) there is no other available land;
- (c) the Site is surrounded by similar village houses; and
- (d) the previous application (No. A/NE-TK/377) was approved by the Rural and New Town Planning Committee (the Committee) on 6.1.2012. The Small House application is being handled by Tai Po District Lands Office and it requires longer processing time which is beyond the planning approval period.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Assessment Criteria

The set of Interim Criteria for Consideration of Application for 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 one previous application (No. A/NE-TK/377) submitted by the same applicant, which was approved with conditions by the Committee on 6.1.2012 mainly on the considerations that more than 50% of the footprint of the proposed Small House fell within the village ‘environs’ (‘VE’); there was a general shortage of land in meeting the Small House demand at the time of consideration; it was not incompatible with the village setting with existing village houses located to the south of the Site. The planning permission lapsed on 7.1.2016. Details of the previous application are summarized at **Appendix III**.

6. Similar Applications

- 6.1 There are 14 similar applications (No. A/NE-TK/150, 156, 282, 302, 342, 364, 371, 378, 381, 460, 461, 503, 590 and 617) for Small House development within “AGR” zone or straddling the “V” and “AGR” zones in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Nine similar applications (No. A/NE-TK/156, 282, 302, 342, 378, 381, 460, 461 and 503) covering eight sites (**Plan A-1**) were approved with conditions by the

Committee in 2003-2014 mainly on the considerations of complying with the Interim Criteria in that more than 50% of the footprint of the proposed Small Houses fell within the “V” zone/village ‘environs’ (‘VE’) and there was a general shortage of land to meet the demand for Small House development in the “V” zone of the concerned villages at the time of consideration.

- 6.3 For the remaining five applications, two of them (No. A/NE-TK/150 and 371) located on “AGR” zone were rejected by the Committee in 2003 and 2011 mainly for reasons of not complying with the Interim Criteria in that the proposed Small House fell outside both the “V” zone and the ‘VE’ of any recognized villages; and setting of undesirable precedent. Another two applications (No. A/NE-TK/364 and 590) covering the same site and one application (No. A/NE-TK/617) were rejected by the Committee between 2011 and 2017 mainly for the reasons of being not in line with the planning intention of “AGR” zone and the setting of undesirable precedent. For application No. A/NE-TK/590, it was also rejected for the reasons of not complying with the Interim Criteria in that the proposed development would have adverse landscape and geotechnical impacts on the surrounding areas and land was still available within the “V” zone.
- 6.4 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

7. **The Site and Its Surrounding Areas** (Plans A-1 and A-2a, and photo on Plans A-3 and A-4)

7.1 The Site is:

- (a) vacant and partly covered by grasses and groundcovers; and
- (b) accessible via footpath linking to local track off Ting Kok Road.

7.2 The surrounding areas are predominately rural in character. To the immediate east and south of the Site, there are village clusters of Po Sam Pai. A mature woodland is to its north. Active and fallow agricultural land are found to its northeast and northwest.

8. **Planning Intentions**

- 8.1 The planning intention of the “V” zone 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.
- 8.2 The planning intention of the “AGR” zone 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? - Footprint of the Small House - Application site	20% 28%	80% 72%	- Majority part of the footprint of the proposed Small House and the Site falls within the “AGR” zone.
2.	Within village ‘environs’ (‘VE’)? - Footprint of the Small House - Application site	54% 46%	46% 54%	- As more than 50% of the footprint of the Small House falls within the ‘VE’ of Po Sam Pai, the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	- Land required to meet Small House demand: about 7.36 ha (equivalent to 294 Small House sites). The outstanding Small House applications are 70 ² while the 10-year Small House demand forecast for the same villages is 224. - Land available to meet Small House demand within the “V” zone of the villages concerned: about 4.61 ha (equivalent to 184 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural development point of view as there are active agricultural activities in the vicinity, agricultural infrastructure such as footpath and water supply are available, and the Site possesses potential for agricultural rehabilitation.

² Among the 70 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>
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are rural in character with the village clusters of Po Sam Pai to the immediate east and south of the Site.
6.	Within Water Gathering Ground (WGG)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?		✓	- The Commissioner for Transport (C for T) has no in-principle objection to the application from traffic engineering viewpoint.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN of DSD) has no in-principle objection to the application from public drainage viewpoint and advises that there is no existing public drain in the vicinity of the Site. - Should the application be approved, approval condition on the submission and implementation of drainage proposal is recommended.
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed Small House, it is unlikely to cause major pollution.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
12.	Landscape impact?	✓		<ul style="list-style-type: none"> - The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from landscape planning point of view as the Site is situated at the edge of existing mature woodland, approval of the application would set an undesirable precedent to similar developments within the same “AGR” zone leading to further encroachment to the woodland. - Should the application be approved, approval condition on submission and implementation of tree preservation and landscape proposal is recommended.
13.	Geotechnical impact?		✓	
14.	Local objections conveyed by DO?		✓	

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

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

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) District Officer/Tai Po, Home Affairs Department;
- (c) Director of Electrical and Mechanical Services;
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (e) Chief Engineer/Consultants Management, Drainage Services Department; and

- (f) Project Manager/North, Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 9.1.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 30.1.2018, five public comments with four from local villagers and one from individual were received (**Appendix VI**). They object to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; not comply with the Interim Criteria; setting of undesirable precedent; uncertainty of the indigenous villager status of the applicant; high potential for agricultural rehabilitation; unsustainability; possible adverse sewage impact; adverse fung shui impact and blockage of footpath for local villagers.

11. Planning Considerations and Assessments

- 11.1 The Site falls mainly within “AGR” zone (about 72%) with a minor portion (about 28%) encroaching onto “V” zone . The proposed 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 and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application as there are active agricultural activities in the vicinity, agricultural infrastructure such as footpath and water supply are available, and the Site possesses potential for agricultural rehabilitation.
- 11.2 According to DLO/TP, LandsD’s record, the total number of outstanding Small House applications for Po Sam Pai and San Tau Kok is 70 while the 10-year Small House demand forecast for the concerned village is 224. Based on the latest estimate by the Planning Department, about 4.61 ha (or equivalent to about 184 Small House sites) of land are available within the “V” zone of Po Sam Pai and San Tau Kok. As more than 50% of the proposed Small House footprint falls within the ‘VE’ of the Po Sam Pai, DLO/TP, LandsD has no objection to the application.
- 11.3 The Site is vacant and partly covered by grasses and groundcovers (**Plans A-2a and A-4**). The proposed Small House is not incompatible with the surrounding areas which are mainly rural in character with village clusters of Po Sam Pai to the immediate east and south of the Site, a mature woodland to its north, and active and fallow agricultural land to its northeast and northwest. CTP/UD&L, PlanD advises that, while adverse impact on significant landscape resources from the proposed development is not anticipated, there are some reservations on the application from landscape planning point of view as approval of the application would set an undesirable precedent to similar developments within the same “AGR” zone leading to further encroachment to the existing mature woodland. DEP advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution. CE/MN, DSD has no in-principle objection to the application, and advises that there are no existing public drains and public sewerage in the vicinity of the

Site. An approval condition on the submission and implementation of drainage proposal is recommended to ensure no adverse drainage impact to the adjacent area. Other relevant Government departments including CE/C, WSD, CHE/NTE, HyD, C for T and D of FS have no objection to or adverse comment on the application.

- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the 'VE' of Po Sam Pai (**Plan A-2a**). While land available (about 4.61 ha or equivalent to about 184 Small House sites) within the "V" zone is insufficient to fully meet the future Small House demand (294 Small House sites), it is capable to meet the outstanding 70 Small House applications (**Plan A-2b**). 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. In this regard, it is considered more appropriate to concentrate the proposed Small House developments 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 previously approved application (No. A/NE-TK/377) submitted by the same applicant and there is no significant change in planning circumstances since the previous application was approved in 2012. Therefore, sympathetic consideration may be given to the application.
- 11.5 Nine similar applications (No. A/NE-TK/156, 282, 302, 342, 378, 381, 460, 461 and 503) covering eight sites in the vicinity of the Site were approved with conditions by the Committee between 2003 and 2014 (**Plan A-1**) mainly on the considerations of being generally in compliance with the Interim Criteria in that more than 50% of the Small House footprints fell within the 'VE'; there was a general shortage of land in meeting the demand for Small House development in the "V" zone of the concerned villages at the time of consideration. Their planning circumstances are not similar to those of the current application.
- 11.6 There are five applications covering four sites rejected by the Committee (**Plan A-1**). Two applications (No. A/NE-TK/150 and 371) were rejected by the Committee in 2003 and 2011 mainly for reasons of not complying with the Interim Criteria in that the proposed Small House fell outside both the "V" zone and the 'VE' of any recognized villages; and setting of undesirable precedent. Another two applications (No. A/NE-TK/364 and 590) covering the same site and one application (No. A/NE-TK/617) were rejected by the Committee between 2011 and 2017 mainly for the reasons of being not in line with the planning intention of "AGR" zone and the setting of undesirable precedent. For application No. A/NE-TK/590, it is rejected also for not complying with the Interim Criteria in that the proposed development would have adverse landscape and geotechnical impacts on the surrounding areas and land was still available within the "V" zone.
- 11.7 Regarding the public comments objecting to the application mainly on the grounds of being not in line with the planning intention of "AGR" zone; not complying with the Interim Criteria; setting of undesirable precedent; high potential for agricultural rehabilitation; unsustainability; possible adverse sewage impact, adverse fung shui impact and blockage of footpath for local

villagers, the planning assessments and comments of concerned Government departments in 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 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 suggested for Members' reference:

Approval Conditions

- (a) 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 tree preservation and landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board; and
- (c) 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 which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. The "AGR" zone is also intended to and 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 this planning intention; and
 - (b) land is still available within the "V" zone of Po Sam Pai and San Tau Kok 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 infrastructure and services.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses 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
Appendix II	Interim Criteria
Appendix III	Previous Application
Appendix IV	Similar Applications
Appendix V	Government Departments' Detailed Comments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Site Plan submitted by the Applicant
Plan A-1	Location Plan
Plans A-2a & 2b	Site Plans
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MARCH 2018**