

REVIEW OF APPLICATION NO. A/NE-TKL/617
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed House (New Territories Exempted House - Small House)
Lot 265 S.J RP in D.D. 79, Ping Yeung Village, Ta Kwu Ling, New Territories

1. Background

- 1.1 On 15.5.2019, the applicant, Mr. CHAN Wai Kin represented by Mr. HUI Kwan Yee, sought planning permission to build a New Territories Exempted House (NTEH) - Small House at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls entirely within an area zoned "Agriculture" ("AGR") on the approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14 (**Plan R-1**).
- 1.2 On 5.7.2019, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (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;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that more than 50% of the footprint of the proposed Small House falls outside the "Village Type Development" ("V") zone and the 'Village Environ' ('VE') of Ping Yeung Village; and
 - (c) land is still available within the "V" zone of Ping Yeung 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.
- 1.3 For Members' reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-TKL/617 **(Annex A)**
 - (b) Extract of minutes of the RNTPC meeting held on 5.7.2019 **(Annex B)**
 - (c) Secretary of Town Planning Board's letter dated 19.7.2019 **(Annex C)**

2. Application for Review

On 8.8.2019, the applicant represented by Mr. HUI Kwan Yee applied, under section 17(1) of the Ordinance, for a review of the Committee's decision to reject the application (**Annex D**). The applicant has not submitted any written representation in support of the review application.

3. The Section 16 Application

The Site and its Surrounding Areas (**Plans R-1, R-2**, aerial photo on **Plan R-3** and site photos on **Plan R-4**)

3.1 The situation of the Site and the surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has not been any major change in planning circumstances of the area since then (**Plan R-2**).

3.2 The Site is:

- (a) currently vacant, flat and overgrown with grass;
- (b) located to the immediate west of the "V" zone and 'VE' of Ping Yeung Village; and
- (c) accessible via a local road.

3.3 The surrounding areas have the following characteristics:

- (a) predominantly rural in character where village houses and fallow agricultural land are found;
- (b) to the immediate east is vacant land and a car park;
- (c) to the further east are village houses within the "V" zone of Ping Yeung Village with some fallow agricultural land and vacant land; and
- (d) to the north, west and south are fallow/active agricultural land with scattered tree groups.

Planning Intention

3.4 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.

Assessment Criteria

3.5 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 was promulgated on 7.9.2007 which is at Appendix II of **Annex A**.

Previous Application

- 3.6 The Site is not involved in any previous planning application.

Similar Applications

- 3.7 When the s.16 application was considered by the Committee on 5.7.2019, there were 19 similar applications for Small House development since the first promulgation of the Interim Criteria on 24.11.2000. Since then, there is one additional similar application (No. A/NE-TKL/619) (**Plan R-1**).
- 3.8 Among these similar cases, 10 similar 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 R-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 "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.
- 3.9 Six applications were approved by the Committee between October 2016 and December 2018 (i.e. after a more cautious approach is adopted by the Board) (**Plan R-1**). Of them, four applications (No. A/NE-TKL/543 to 546) were approved by the Committee on 14.10.2016 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 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. One application (No. A/NE-TKL/604) was approved by the Committee on 7.12.2018 on sympathetic consideration as the proposed Small House is located in close proximity to a number of existing Small Houses and approved Small House applications; and 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.
- 3.10 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 outside/ 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.

- 3.11 Since the s.16 application, one similar application (No. A/NE-TKL/619) was rejected by the Committee on 2.8.2019 on the considerations that the proposed development is not in line with the planning intention of the “AGR” zone; and land is still available within the “V” zone of Ping Yeung Village where land is primarily intended for Small House development (**Plan R-1**).
- 3.12 Details of the above similar applications are summarized in **Annex E** and their locations are shown on **Plan R-1**.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 9 and Appendix IV of **Annex A**.
- 4.2 For the review application, the following Government departments have been further consulted and maintain their previous views on the s.16 application as stated in paragraph 9.1 of **Annex A** which are recapitulated below:

Land Administration

- 4.2.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):
- (a) the Site falls outside the ‘VE’ of Ping Yeung Village;
 - (b) the applicant has been certified by the Indigenous Inhabitants Representative in statutory declaration that the applicant is an indigenous villagers of Ping Yeung in Ta Kwu Ling Heung;
 - (c) the Site is not covered by any Modification of Tenancy/Building Licence;
 - (d) the subject Small House application was submitted to his office and it was rejected in April 2019 under the NT Small House Policy as the Site falls outside the ‘VE’ of Ping Yeung and the “V” zone on the approved OZP. She objects to the subject planning application; and
 - (e) the number of outstanding Small House applications and the number of 10-year Small House demand forecast for Ping Yeung Village is 65 and 1,035 respectively. The figures of the 10-year Small House demand forecast were provided by the relevant Indigenous Inhabitant Representatives without any supporting evidence and her office is not in a position to verify the forecast.

Traffic

- 4.2.2 Comments of the Commissioner for Transport (C for T):
- (a) she has reservation on the application. Such type of development should be confined within the “Village Type Development” (“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; and

- (b) notwithstanding the above, the application involves the construction of one Small House. She considers that the subject application can be tolerated unless being rejected on other grounds.

Environment

4.2.3 Comments of the Director of Environmental Protection (DEP):

- (a) in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution; and
- (b) the septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the ProPECC PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” and are duly certified by an Authorized Person.

Landscape

4.2.4 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) she has no objection to the application from the landscape planning perspective;
- (b) based on the aerial photo of 2018, the Site is situated in an area of rural landscape character surrounded by village houses and vegetated areas. No significant landscape resource of high sensitivity is observed within the Site;
- (c) in view of the above, significant adverse impact on existing landscape resources arising from this application is not anticipated. Moreover, existing village houses and some permitted small house developments are found in close proximity to the Site, the proposed development under this application is considered not entirely incompatible with the surrounding environment; and
- (d) it is noted that space within the Site is limited; there is insufficient space for meaningful landscaping. Should the Board approve the application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.

Drainage

4.2.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) he has no objection to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

Agriculture

4.2.6 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

the Site is a currently a vacant land. 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. As the Site possess potential for agricultural rehabilitation, the application is not supported from agriculture point of view.

Fire Safety

4.2.7 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application; and
- (b) the applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

Water Supply

4.2.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application;
- (b) for provision of water supply to the development, the applicant may need to extend his/her inside services to nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards; and
- (c) the standard pedestal hydrant cannot be provided in the vicinity of the

Site.

4.3 For the review application, District Officer (North), Home Affairs Department (DO(N), HAD) has been further consulted and his views on the review application are summarised as follows:

- he has consulted the locals regarding the application. The Vice-Chairman of Ta Kwu Ling District Rural Committee, the incumbent North District Council member of subject constituency, three out of four Indigenous Inhabitant Representatives (IIRs) and the Resident Representative (RR) of Ping Yeung had no comment on the proposal. The remaining IIR indicated that unless the applicant is an indigenous villager of Ping Yeung Village, he would object to the application.

4.4 The following Government departments have been further consulted and maintain their previous views of having no comment on the review application:

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

5. Public Comments Received During Statutory Publication Period

5.1 On 16.8.2019, the review application was published for public inspections. During the statutory public inspection period, four public comments were received (**Annex F**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Kadoorie Farm and Botanic Garden Corporation, Hong Kong Bird Watching Society and Designing Hong Kong Limited object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; approval of the application would set an undesirable precedent for other similar applications; land is still available within the “V” zone of Ping Yeung which is primarily intended for Small House development; and ‘destroy first, build later’ should not be tolerated as it would further legitimize the current misuse of the “AGR” zone.

5.2 The public comments received at the s.16 application stage are set out in paragraph 10 of **Annex A**.

6. Planning Considerations and Assessments

6.1 The applicant sought planning permission for development of a NTEH (Small House) at the Site. The subject application was rejected by the RNTPC on 5.7.2019 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the proposed development does not comply with the Interim Criteria in that more than 50% of the footprint of the proposed Small House falls outside the “V” zone and the ‘VE’ of Ping Yeung Village; and land is still available within the “V” zone of Ping Yeung Village where land is primarily intended for Small House development. The applicant has not submitted any written representation in support of the review application.

- 6.2 The Site falls within an area entirely zoned “AGR” on the OZP. 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 maintains his view of not supporting the review application as the Site possesses potential for agricultural rehabilitation.
- 6.3 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ping Yeung Village is 65¹ while the 10-year Small House demand forecast for the same village is 1,035. According to the latest estimate by PlanD, about 5.22 ha (equivalent to 208 Small House sites) of land are available in the “V” zone of Ping Yeung Village for Small House development (**Plan R-2b**). As the proposed Small House footprint falls entirely outside the ‘VE’ of Ping Yeung Village and the “V” zone concerned, DLO/N of LandsD maintains her view of objecting to the review application and advised that the subject Small House application was rejected in April 2019.
- 6.4 The Site 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 R-2a and R-3**). CTP/UD&L, PlanD maintains her view of having no objection to the review application as significant adverse impact arising from the proposed use on existing landscape resources is not anticipated. C for T also maintains his view 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 review application.
- 6.5 Regarding the Interim Criteria, the proposed development with more than 50% of the footprint of the proposed Small House Development outside both the ‘VE’ and the “V” zone of the concerned village would normally not be approved unless under very exceptional circumstances. While land available within the “V” zone is insufficient to fully meet the future Small House demand of 1,100 Small Houses (**Plan R-2b**), such available land (about 5.22 ha or equivalent to 208 Small House sites) is capable to meet the 65 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. There is no significant change in planning circumstances since the application was rejected by the RNTPC, and there is no strong reason to depart from the RNTPC’s previous decision.

¹ Among the 65 outstanding Small House applications, 37 of them fall within the “V” zone and 28 straddle or outside the “V” zone. For those 28 applications straddling or being outside the “V” zone, 6 of them have obtained valid planning approval from the Board.

- 6.6 There is no previous application for the Site. There is one similar application No. A/NE-TKL/183 in proximity to the Site (**Plan R-2a**), which was rejected by the Board on review in February 2002 mainly on the considerations that the proposed Small House development did not comply with the Interim Criteria as more than 50% of the footprint of the proposed Small Houses fell mainly outside the “V” zone and ‘VE’ of a recognised village; the application was not in line with the planning intention of the “AGR” zone; and the approval of the application would set undesirable precedents for similar applications. The circumstances of the current review application are similar to the rejected application.
- 6.7 Regarding the public comments objecting to the review application as mentioned in paragraph 5 above, Government departments’ comments and the planning assessments above are relevant.

7. Planning Department’s Views

- 7.1 Based on the assessments made in paragraph 6, having taken into account the public comments mentioned in paragraph 5 and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone in the Ping Che and Ta Kwu Ling area which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that more than 50% of the footprint of the proposed Small House falls outside the “V” zone and the ‘VE’ of Ping Yeung Village; and
 - (c) land is still available within the “V” zone of Ping Yeung 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.
- 7.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until **8.11.2023**, 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

- 7.3 The recommended advisory clauses are attached at **Annex G**.

8. Decision Sought

- 8.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 8.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permission, and the date when the validity of the permission should expire.

9. Attachments

Drawing R-1	Layout Plan
Plan R-1	Location plan
Plan R-2a	Site plan
Plan R-2b	Estimated amount of land available for Small House development within "V" zone
Plan R-3	Aerial photo
Plan R-4	Site photo
Annex A	RNTPC Paper No. A/NE-TKL/617
Annex B	Extract of minutes of the RNTPC meeting held on 5.7.2019
Annex C	Secretary of the Town Planning Board's letter dated 19.7.2018
Annex D	Letter received on 8.8.2019 from the applicant applying for a review of the RNTPC's decision
Annex E	Similar applications
Annex F	Public Comments
Annex G	Recommended Advisory Clauses

**PLANNING DEPARTMENT
NOVEMBER 2019**

TPB Paper No. 10592

**For Consideration by
the Town Planning Board on 8.11.2019**

**REVIEW OF APPLICATION NO. A/NE-TKL/617
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House – Small House)
in “AGR” zone**

Lot 265 S.J RP in D.D. 79, Ping Yeung Village, Ta Kwu Ling, New Territories