

TOWN PLANNING BOARD

**TPB Paper No. 10390
for Consideration by
the Town Planning Board
on 23.2.2018**

REVIEW OF APPLICATION NO. A/NE-KTS/454
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed 2 Houses (New Territories Exempted Houses (NTEHs) in
“Agriculture” Zone, Lots 493 S.A and 493 RP in D.D. 94,
Hang Tau Tsuen, Kwu Tung South, Sheung Shui, New Territories**

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Lots 493 S.A and 493 RP in D.D. 94, Hang Tau Tsuen, Kwu Tung South,
Sheung Shui, New Territories**

1. Background

- 1.1 On 8.5.2017, the applicant, Ms. IP Jennifer Jiang Gee, sought planning permission under s.16 of the Town Planning Ordinance (the Ordinance) to build 2 NTEHs at the application site (the Site) in Hang Tau Tsuen. The Site falls within “Agriculture” (“AGR”) zone on draft Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/15 at the time of submission and approved Kwu Tung South OZP No. S/NE-KTS/16 currently in force (**Plan R-1**). The Site is partly fenced and mainly occupied by a plant nursey (**Plan R-4**).
- 1.2 On 23.6.2017, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons are:
- (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 and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the current submission for a departure from the planning intention; and
 - (b) approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would lead to further extension of village development beyond the existing “Village Type Development” (“V”) zone boundary resulting in irreversibly further reduction of farmland and degradation of the agricultural environment of the “AGR” zone.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-KTS/454 (Annex A)
 - (b) Extract of minutes of the RNTPC Meeting held on 23.6.2017 (Annex B)
 - (c) Secretary of the Board’s letter dated 14.7.2017 (Annex C)

2. Application for Review

- 2.1 On 29.7.2017, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC’s decision to reject the application. In support of the review, the applicant submitted the following documents:

- (a) Written representation received on 29.7.2017 (Annex D)
- (b) Further information (FI) dated 19.12.2017 providing justifications (accepted and exempted from publication and recounting requirements) (Annex E)

2.2 The review application was originally scheduled for consideration by the Board on 20.10.2017. On 20.10.2017, at the request of the applicant, the Board agreed to defer a decision on the review application. Upon receipt of the FI by the applicant on 19.12.2017, the review application is rescheduled for consideration by the Board at this meeting on 23.2.2018.

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in the applicant's written representation and FI at **Annexes D and E**. They are summarized as follows:

Similar Cases

- (a) There are some similar approved cases in the vicinity. The subject application is not the first case and would not set precedent. 3 Small Houses at Lots 385 S.A, 385 S.B and 385 S.C (**Plan R-2**) on agricultural land were approved by the Board 8 to 10 years ago. Besides, Application No. A/NE-KTS/255 at Lot 496 S.G for a Small House was approved on 30.11.2007. Small House at Lot 448 S.A nearby is under construction which involves application No. A/NE-KTS/359¹ and a previous application approved by the Board on 4.9.2009. These two houses are also on "AGR" zone. They are located in the vicinity of the Site and have the same planning context (i.e. zoning, planning intention and characteristics of the surrounding areas) as the Site. However, retaining fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes is not applicable to these 2 sites. The considerations of these planning applications and the subject application by the Board are inconsistent. The reasons for approving the 2 applications should be applicable to the subject application. The applicant wonders if revising the subject of the application to Small House could help obtaining planning permission.
- (b) For traffic aspect, the 2 lots (Lot 496 S.G and Lot 448 S.A) have already set undesirable precedent. For land administrative aspect, part of Lot 496 S.G (Application No. A/NE-KTS/255) is within the Village 'Environ' ('VE') (**Plan R-2**), similar to the subject application but the former was approved.
- (c) Only 3 lots (Lots 493 S.A and 493 RP (i.e. the Site) and Lot 494) in the "AGR" zone are available for house development, and other land in the vicinity is owned by 2 companies and not available for villagers to build Small Houses. Therefore, approving the application would not result in increasing number of application for house development in the area.

¹ Lot 488 S.A in D.D. 94 involves 2 applications submitted by the same applicant. Application No. A/NE-KTS/279 for a Small House was approved with conditions by the RNTPC on 4.9.2009. Another application No. A/NE-KTS/359 for a Small House was withdrawn in 2014.

Agricultural Use

- (d) The Site has not been used for farming for more than 50 years and it is not an area with high value for agricultural activities nor with high landscape value. The plant nursery in the Site does not belong to the applicant as the Site is occupied by the farmer of the adjacent plant nursery without applicant's agreement. The applicant wishes to build houses at the Site to prevent her land from occupation by others. The applicant indicates that the boundary of the Site in the site photos/aerial photo (**Plans R-3 and R-4**) is inaccurate in that the temporary structure should fall outside the Site².

4. 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**)

- 4.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraph 7 of **Annex A**. There has been no material change of the situations since then (**Plan R-2**).
- 4.2 The Site is:
- (a) partly fenced and occupied by a plant nursery. A temporary single-storey structure for storage use is found mainly within the Site;
 - (b) about half of the Site (49%) is within the Village 'VE' of Hang Tau Village; and
 - (c) not accessible by vehicles.
- 4.3 The surrounding areas are predominantly rural in character and have the following characteristics:
- (a) to the east is a track; and to the north, northeast and further east are plant nurseries and scattered domestic structures;
 - (b) to the south are fallow agriculture land, temporary open storage of tyres and domestic structures ; and
 - (c) to the immediate west and northwest are fallow agriculture land; and to the further west and northwest are village houses of Hang Tau Village.

Planning Intention

- 4.4 There has been no change of planning intention of "AGR" zone, which is mentioned in paragraph 8 of **Annex A**.
- 4.5 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

² The boundary of the Site on **Plans R3 and R4** is delineated with reference to the survey base produced by Lands Department and the objects in the vicinity of the Site. The temporary structure is found mainly within the Site.

other agricultural purposes.

Previous Application

- 4.6 There is no previous application on the Site.

Similar Applications

- 4.7 The relevant 2 similar applications for NTEH (not Small House) at the time of the consideration of the s.16 application are mentioned in paragraph 6 at **Annex A**. Details of the applications are summarized at Appendix II of **Annex A** and their locations are shown on **Plans R-1** and **R-2**. There is no new similar application since then.
- 4.8 The 2 similar applications (No. A/NE-KTS/236 and 237) for NTEH (not Small House) in the same “AGR” zone in the vicinity of the Site (**Plans R-1** and **R-2**) were rejected by the RNTPC in 2006 mainly on the grounds that the proposed development is not in line with the planning intention for the area; there is no strong planning justification in the submission for a departure from the planning intention; and the approval of the application would set an undesirable precedent for similar applications in the future, resulting in substantial cumulative adverse traffic impact in the area.
- 4.9 In the applicant’s written representation, three planning applications no. A/NE-KTS/255, 279 and 359 (**Plan R-2**) all for Small House development are mentioned. Application No. A/NE-KTS/255 was approved by the RNTPC in 2007. Applications No. A/NE-KTS/279 and 359 involve the same site. The former was approved by the RNTPC in 2009 whereas the latter was withdrawn by the applicant in 2014.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 9 of **Annex A**.
- 5.2 For the review application, the following Government department has been further consulted and their comments are summarized as follows:

District Officer’s Comments

- 5.2.1 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):
- (a) he has consulted the locals from 21.8.2017 to 1.9.2017; and
 - (b) the North District Council (NDC) member of the subject constituency, the Chairman of the Sheung Shui District Rural Committee (SSDRC), the two Indigenous Inhabitant Representatives (IIRs) and Resident Representative of Hang Tau have no comment on the application.

- 5.3 The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application as below:

Land Administration

- 5.3.1 The District Lands Officer/North, Lands Department (DLO/N, LandsD)’s previous comments are stated in paragraph 9.1.1 in **Annex A** and recapitulated below:
- (a) the Site comprises Lots No. 493 S.A and 493 RP. The proposed NTEH on Lot No. 493 S.A falls partly within the ‘VE’ of Hang Tau Village but the other one on Lot No. 493 RP falls mostly outside the ‘VE’ of the Village;
 - (b) the Site is not covered by Modification of Tenancy/Building Licence; and
 - (c) the proposed NTEH development on the Site is not acceptable from both lease and land administration points of view.

Traffic

- 5.3.2 The Commissioner for Transport (C for T)’s previous comments on the application are stated in paragraph 9.1.2 in **Annex A** and recapitulated below:
- (a) she has reservation on the application. Such type of 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; and
 - (b) notwithstanding the above, the application only involves two NTEHs. The application can be tolerated unless the application is rejected on other grounds.

Environment

- 5.3.3 The Director of Environmental Protection (DEP)’s previous comments on the application are stated in paragraph 9.1.3 in **Annex A** and recapitulated below:
- (a) in view of the small-scale nature of the proposed development, the application alone is unlikely to cause major pollution; and
 - (b) 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 Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” and are duly certified by an Authorized Person.

Landscape

5.3.4 The Chief Town Planner/Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD)'s previous comments on the application are stated in paragraph 9.1.4 in **Annex A** and recapitulated below:

- (a) he has no objection to the application from the landscape planning perspective;
- (b) the Site is located in an area of rural landscape character comprising mainly village type developments, some active farmlands and a few patches of woodland. The Site is at the periphery of Hang Tau Village surrounded by some active farmland at its north and east and the other adjoining areas are vacant and covered by wild grasses. The Site is in use as plant nursery where there is a small temporary structure and potted plants are kept at hard paved area. There are also a few young common trees of low landscape value found within the Site. Approvals were granted to a number of Small House developments in the vicinity of the Site within the "AGR" zone in the last few years. Thus the proposed NTEHs are not entirely incompatible with the surrounding landscape setting. Significant adverse impact on the existing landscape resource arising from the proposed development is not anticipated; and
- (c) should approval to the application be given by the Board, he would recommend the inclusion of approval condition requiring the submission and implementation of landscape proposal.

Drainage

5.3.5 The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD)'s previous comments on the application are stated in paragraph 9.1.5 in **Annex A** and recapitulated below:

- (a) he has no objection to the application from public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement drainage proposal for the Sites 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

5.3.6 The Director of Agriculture, Fisheries and Conservation (DAFC)'s previous comments on the application are stated in paragraph 9.1.6 in **Annex A** and recapitulated below:

- (a) he does not support the application from agriculture point of view; and
- (b) some fruits trees and ornamental trees were growing at the Site. The

Site should be retained for agricultural use.

Fire Safety

5.3.7 The Director of Fire Services (D of FS)'s previous comments on the application are stated in paragraph 9.1.7 in **Annex A** and recapitulated below:

- (a) he has no in-principle objection to the application; and
- (b) the applicant is reminded to observe the '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

5.3.8 The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD)'s previous comments on the application are stated in paragraph 9.1.8 in **Annex A** and recapitulated below:

- (a) he has no comment on the application; and
- (b) for provision of water supply to the development, the applicant may need to extend his/her inside services to the 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 his department's standards.

5.4 The following Government departments have no further comment on the review application and maintain their previous views of having no comment on the s.16 application as below:

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
- (b) Project Manager (New Territories East), Civil Engineering and Development Department (PM(NTE), CEDD).

6. Public Comments on the Review Application Received During Statutory Publication Periods

On 11.8.2017, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 1.9.2017, a total of 7 public comments were received from 4 members of the general public, Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong Limited and The Hong Kong Bird Watching Society (**Annexes F-1 to F-7**). Amongst them, a general public submitting 7 letters supports the application; 2 general public have no comment; and the remaining 4 commenters object to the application. The major views of the public comments are summarized as follows:

Supportive view (Annex F-1)

- (a) the Site should be used for house development as it is not good for agricultural use and has not been using for farming for more than 50 years;
- (b) it is unfair that an application for house development with part of the site (i.e. Lot 496 S.G) outside the 'VE' was approved by the Board, whereas majority of the Lot 493 S.A (western part of the Site) under the subject application within the 'VE' was rejected; and
- (c) Lot 493 RP (eastern part of the Site) is within 300ft of the 'VE' of Hang Tau and is located about 200ft away from the old village house of an indigenous villager. DLO/N would approve Small House application if the Small House is within 300ft from the oldest village house.

Objection reasons (Annexes F-4 to F-7)

- (a) the application is not in line with the planning intention of "AGR" zone;
- (b) village houses should be confined to the "V" zone and sited close to the village proper;
- (c) the Site has a high potential for farmland rehabilitation. Active/fallow farmland is found in the surrounding of the Site. The proposed NTEHs would lead to a permanent loss of arable agricultural land and reduce the potential for rehabilitation for agricultural activities. These agricultural land should be retained and rehabilitated under the new Agricultural Policy; and
- (d) approval of the application would set an undesirable precedent of encouraging further encroachment on "AGR" zone. The cumulative impacts of approving such applications would result in irreversibly further reduction of farmland and degradation of the agricultural environment of the "AGR" zone.

7. Planning Considerations and Assessments

- 7.1 On 23.6.2017, the RNTPC rejected the application for two NTEHs for reasons of not being in line with the planning intention of the "AGR" zone, no strong planning justification for a departure from the planning intention, setting an undesirable precedent for similar applications within the "AGR" zone, leading to further extension of village development beyond the existing "V" zone boundary, and further reduction of farmland and degradation of the agricultural environment of the "AGR" zone. In response, the applicant states in the written representation that there are similar approved Small House applications in the vicinity of the Site; the similar approved applications have already set undesirable precedent; the Site has not been used for farming for more than 50 years; and it does not have high value for agricultural use. The planning assessments on these aspects are in the following paragraphs.

Similar Cases

- 7.2 The applicant has mentioned 5 approved Small Houses at Lots 385 S.A, 385 S.B, 385 S.C, 496 S.G and 488 S.A (**Plan R-2**) as similar cases. The first 3 lots fall within "V" zone where planning permission for Small House development is not required. For another two lots (496 S.G and 488 S.A), the relevant planning applications no.

A/NE-KTS/255 and A/NE-KTS/279 approved in 2007 and 2009 are for Small House development, and are different from the subject application for NTEH. The Board's considerations on these two types of application are not the same. The grounds of approving these 2 applications are not entirely applicable to the subject application.

- 7.3 There is no similar approved application for NTEH in the vicinity of the Site. On the contrary, there are two similar applications (No. A/NE-KTS/236 and 237) for NTEH (**Plans R-1 and R-2**) rejected by the RNTPC in 2006 mainly on the grounds of being not in line with the planning intention for the area and setting an undesirable precedent for similar applications. The rejection of the current application is in line with the recent consideration and decision of the RNTPC and the Board. Moreover, DLO/N has advised that the proposed NTEH development is not acceptable from both lease and land administration points of view.

Agricultural Use

- 7.4 The Site falls within the "AGR" zone which is intended 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. The proposed NTEH development is not in line with the planning intention of the "AGR" zone. The applicant states that the Site does not have high value for agricultural use and it has not been used for farming for more than 50 years. In this regard, DAFC does not support the application from agriculture point of view as some fruit trees and ornamental trees are growing at the Site and the Site should be retained for agricultural use. There is no strong planning justification in the submission for a departure from the planning intention.
- 7.5 While the proposed NTEHs are not entirely incompatible with the surrounding landscape setting, C for T has reservation on the application and considers that NTEH development should be confined within the "V" zone as far as possible. Approval of the application would set an undesirable precedent for similar applications within this "AGR" zone. The cumulative effect of approving such applications would lead to further extension of village development beyond the existing "V" zone boundary resulting in irreversibly further reduction of farmland and degradation of the agricultural environment of the "AGR" zone.

Public Comments

- 7.6 Seven public comments are received during statutory public inspection period. Amongst them, 4 public comments object to the application mainly on the grounds of not in line with the planning intention of "AGR" zone; confining house development to the "V" zone; high potential for farmland rehabilitation; leading to permanent loss of arable agricultural land; setting an undesirable precedent, as stated in paragraphs 6 above. In this regard, relevant Government departments' comments and planning assessments as stated in paragraphs 7.2 to 7.5 above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessment made in paragraph 7, and having taken into account the local views and public comments mentioned in paragraphs 5.2.1 and 6 respectively, and given that there is no change in the planning circumstances since the consideration of the subject application by the RNTPC on 23.6.2017, 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 which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the current submission for a departure from the planning intention; and
- (b) approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would lead to further extension of village development beyond the existing “V” zone boundary resulting in irreversibly further reduction of farmland and degradation of the agricultural environment of the “AGR” zone.

8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 23.2.2022, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) the provision of septic tanks, as proposed by the applicant, at locations to the satisfaction of the Director of Lands or of the Town Planning Board;
- (b) the submission and implementation of 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

8.3 The recommended advisory clauses are attached at **Annex G**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC’s decision and decide whether to accede to the application.
- 9.2 Should the Board decide to approve the review 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.
- 9.3 Alternatively, should the Board decide to reject the review application, Members are invited to advise what reasons for rejection should be given to the applicant.

10. Attachments

Annex A	RNTPC Paper No. A/NE-KTS/454
Annex B	Extract of Minutes of the RNTPC Meeting held on 23.6.2017
Annex C	Secretary of the Town Planning Board's Letter dated 14.7.2017
Annex D	Applicant's Letter dated 29.7.2017
Annex E	FI dated 19.12.2017
Annexes F-1 to F-7	Public Comments on the review application
Annex G	Advisory Clauses
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plan R-4	Site Photos

**PLANNING DEPARTMENT
FEBRUARY 2018**