

REVIEW OF APPLICATION NO. A/YL-PH/798
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed House (New Territories Exempted House (NTEH) - Small House)
in “Residential (Group D)” zone,
Lot 2961 RP (Part) in D.D. 111, Lo Uk Tsuen, Pat Heung, Yuen Long**

1. Background

1.1 On 21.11.2018, the applicant, 鄧亦佃 represented by 鄧玉輝, sought planning permission to use the application site (the Site) for proposed house (NTEH - Small House). The Site falls within “Residential (Group D)” (“R(D)”) zone on the approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11 (**Plan R-1**). The Site is currently used for open storage of vehicles for sale (**Plans R-2a and R-4**).

1.2 On 18.1.2019, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reason was:

the application does not comply with the Interim Criteria in that the Site and the footprint of the proposed Small House falls entirely outside the ‘Village Environ’ (‘VE’) of any recognized village and the “Village Type Development” (“V”) zone. Land is still available within the “V” zone of Wang Toi Shan, Lo Uk Tsuen, Leung Uk Tsuen and Chuk Hang, where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House close to the existing village cluster within the “V” zone for a more orderly development pattern, efficient use of land and provision of infrastructure and services. There is no exceptional circumstance to justify approval of the application.

1.3 For Members’ reference, the following documents are attached:

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|-----|---|--------------------|
| (a) | RNTPC Paper No. A/YL-PH/798 | (Annex A) |
| (b) | Extract of minutes of the RNTPC meeting held on 18.1.2019 | (Annex B) |
| (c) | Secretary of the Board’s letter dated 1.2.2019 | (Annex C) |

1.4 The Site is not subject to any planning enforcement action.

2. Application for Review

On 8.2.2019, the applicant’s representative, Chief Force Limited, applied under section 17(1) of the Town Planning Ordinance for a review of the RNTPC’s decision to reject the application (**Annex D**). On 20.2.2019, the applicant’s representative submitted a letter providing justifications for the review of the decision of the RNTPC (**Annex E**).

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 at **Annex E**. They can be summarized as follows:

- (a) Land within the "V" zone nearby the Site is occupied by burial grounds and owned by Tso Tong, which is difficult for Small House development.
- (b) Other land within the "V" zone is not owned by the applicant's family and he does not have the right for development.
- (c) There are many small house clusters in the vicinity of the Site (**Drawing R-1**). The proposed use is not incompatible with the surrounding environment.
- (d) There are some open storage yards near the Site and such use does not in line with the planning intentions of "V" and "R(D)" zones. The applicant would like to rectify the problem through this application.

4. **The Section 16 Application**

The Site and its Surrounding Areas (**Plans R-1, R-2a**, aerial photo on **Plan R-3** and 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 paragraphs 8.1 and 8.2 of **Annex A**. There has been no material change of the situations since then (**Plans R-2a and R-4** refer).
- 4.2 The Site is:
 - (a) paved, fenced and currently used as open storage for vehicles for sale;
 - (b) not within the 'VE' of any recognized village; and
 - (c) accessible from Kam Tin Road.
- 4.3 The surrounding area is predominantly rural in nature with residential dwellings/structures, open storage yards, workshops, a film studio and a plant nursery, with the following characteristics (**Plans R-2a and R-3**):
 - (a) to its north and northwest within the "V" zone are mainly residential dwellings/structures. To its further north and west are open storage yards;
 - (b) to its east within the "R(D)" zone are mainly open storage/storage yards, car servicing, a canteen and a vehicle repair workshop; and
 - (c) to its south across Kam Tin Road are open storage yards, vehicle repair workshop, a plant nursery and a film studio.

Planning Intention

- 4.4 There has been no change of planning intention of the “R(D)” zone, which is mentioned in paragraph 9 of **Annex A**.
- 4.5 The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board.

Assessment Criteria

- 4.6 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 promulgated on 7.9.2007 is at Appendix II of **Annex A**.

Previous Application

- 4.7 The Site is not the subject of any previous application.

Similar Application

- 4.8 There is one similar application for house (NTEH - Small House) (Application No. A/YL-PH/540), which partly falls within the same “R(D)” zone and partly within the adjacent “V” zone, approved with conditions by the Committee since the first promulgation of the Interim Criteria in November 2000 at the time of the consideration of the s.16 application. Details of the application are summarized in Appendix III of **Annex A** and its location is shown on **Plan R-1**. There is no new similar application since then.
- 4.9 Application No. A/YL-PH/540 was approved with conditions by the Committee on 11.5.2007 mainly for the reasons that the proposed development generally complied with the Interim Criteria in that it fell within ‘VE’ of Wang Toi Shan and 77% of the NTEH footprint fell within “V” zone; not incompatible with the surrounding areas; and no adverse comment from relevant departments.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 10 of **Annex A**.
- 5.2 For the review application, the relevant Government departments have been further consulted and the comments are summarized as follows:

Land Administration

- 5.2.1 Comments of the DLO/YL, LandsD:

- (a) The Site is an Old Schedule Agricultural Lot held under the Block Government Lease.
- (b) According to the Approved Pat Heung OZP No. S/YL-PH/11, the villages (i.e. Wang Toi Shan and Lo Uk Tsuen) fall within the “V” zone on the OZP. However, Wang Toi Shan Shan Tsuen, Wing Ning Lei, Ho Lik Pui and Yau Uk Tsuen are not on the list of recognized villages.
- (c) The Site does not fall within any Village Environs Boundary (VEB) of a recognized village.
- (d) According to his records, his office did not receive any Small House (SH) application on the Site from the applicant of the S.16 application. The indigenous villager’s status and eligibility of the applicant has not yet been verified. Under normal procedure, when SH applications are received and due for processing, DLO/YL will consider the applications acting in the capacity as the landlord at its sole discretion in accordance with the New Territories (NT) SH policy, including verification of the SH applicants’ statuses. There is no guarantee that such applications would be approved.
- (e) According to his records, the Site is covered by Short Term Waiver for the purpose of trading and storage of vehicles and vehicle parts.
- (f) The numbers of outstanding Small House applications are 46 for Wang Toi Shan, 13 for Lo Uk Tsuen, 4 for Leung Uk Tsuen, and 17 for Chuk Hang respectively.
- (g) The 10-year forecast of Small House demand is 1,000 for Wang Toi Shan (2018-2027), 150 for Lo Uk Tsuen (2017-2026), 30 for Leung Uk Tsuen (2018-2027) and 480 for Chuk Hang (2018-2027). The 10-year forecast is provided by the Indigenous Inhabitant Representative of the respective villages and DLO/YL is unable to verify such information.
- (h) If a proposed Small House site is outside or more than 50% of it is outside the VEB of a recognized village and the “V” zone which encircles the recognized village, the concerned Small House application will be rejected under the NT SH Policy even though the applicant is an indigenous villager who has successfully sought planning permission.
- (i) Given that the Site neither falls within any VEB of a recognized village nor “V” zone which encircles recognized villages, even the planning approval is given by the Board, the concerned SH application would be rejected under the NT SH policy.
- (j) According to his record, houses highlighted on drawing submitted by the applicant (**Drawing R-1**) are covered by Building Licenses issued in the year of 1983.

District Officer's Comments

- 5.2.2 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has not received any comments from the locals upon close of consultation and he has no particular comment on the application.

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

Traffic

- 5.3.1 Comments of the Commissioner for Transport (C for T):

Considering there is neither parking provision nor vehicular access to the lot and the induced traffic is minimal, he has no comment on the application.

- 5.3.2 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD):

- (a) HyD does not and will not maintain the accesses connecting the Site and Kam Tin Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

- 5.3.3 Comments of the Director of Environmental Protection (DEP):

- (a) In view of the small population and nature of the proposed development, 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 Environmental Protection Department (EPD)'s 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 (AP).
- (b) The applicant is reminded to duly address the potential noise impacts through the provision of suitable mitigation measures to ensure compliance with the relevant planning standards and statutory requirements.

Drainage

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

- (a) He has no in-principle objection to the proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the applicant (i) to submit a drainage proposal and (ii) to implement the drainage proposal for the development to the satisfaction the Director of Drainage Services or of the Board should be included.

Fire Safety

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

- (a) He has no specific comment on the application.
- (b) The applicant is reminded to follow the “New Territories Exempted Houses – A Guide to Fire Safety Requirements” published by LandsD.

Electricity

5.3.6 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) In the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

Building Matters

5.3.7 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) Noting that the building to be erected on the Site will be NTEH under the Buildings Ordinance (Application to the New

Territories) Ordinance (Cap 121), DLO/YL should be in a better position to comment on the application.

- (b) In case DLO/YL decides not to issue the certificates of exemption for the site formation works and/or drainage works associated for the NTEH development, such works will require prior approval and consent under the Buildings Ordinance. In the circumstance, an Authorised Person (AP) should be appointed as the coordinator for the proposed works. The applicant may approach DLO/YL or seek AP's advice for details.

Nature Conservation

5.3.8 Comments of the Director of Agricultural, Fisheries and Conservation (DAFC):

Noting that the Site is located in "R(D)" zone and is adjacent to Kam Tin Road, he has no comment on the application from nature conservation point of view.

- 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 below:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Project Manager (West), Civil Engineering and Development Department;
and
- (c) Commissioner of Police.

6. Public Comments Received During Statutory Publication Period

- 6.1 On 22.2.2019, the review application was published for public inspection. During the first three weeks of the statutory public inspection periods, which ended on 15.3.2019, one public comment from an individual was received (**Annex F**). The commenter objects to the application mainly on the grounds that the review has no justification as the application does not comply with the Interim Criteria.
- 6.2 During the s.16 application stage, two public comments from individuals objecting to the application were received. The grounds of objection are stated in paragraph 11 of the RNTPC paper in **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of RNTPC's decision on 18.1.2019 to reject the application for proposed house (NTEH - Small House) at the Site. The rejection reasons were that the application does not comply with the Interim Criteria in that the Site and the footprint of the proposed Small House falls entirely outside the 'VE' of any recognized village and the "V" zone, and there is no exceptional circumstance to justify approval of the application. In support of the review application, the applicant submitted justifications mainly on the grounds that

the land within the “V” zone nearby the Site is occupied by burial grounds and owned by Tso Tong which is difficult for Small House development; other land within the “V” zone is not owned by the applicant’s family and he does not have the right for development; the proposed use is not incompatible with the surrounding environment as there are many small house clusters in the vicinity of the Site; and the application could address the problem of existing open storage yards near the Site which are not in line with the planning intentions of “V” and “R(D)” zones. The updated planning considerations and assessments are appended below.

- 7.2 The application is for proposed house (NTEH – Small House) at the Site zoned “R(D)”. The planning intention of “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings, and also for low-rise, low-density residential developments subject to planning permission from the Board. The proposed Small House development which will phase out existing open storage use at the Site is generally in line with the planning intention of the “R(D)” zone.
- 7.3 According to DLO/YL, LandsD, the total number of outstanding Small House applications for Wang Toi Shan, Lo Uk Tsuen, Leung Uk Tsuen and Chuk Hang is 80. As provided by the Indigenous Inhabitant Representatives of the villages, the 10-year Small House demand forecast for these villages is about 1,660. According to the latest estimation by PlanD, about 32.2ha (i.e. equivalent to about 1,287 Small House sites) of land is available within “V” zone. There is sufficient land available within the “V” zone to meet the outstanding Small House applications but cannot fully meet the 10-year Small House demand of the concerned villages (**Plan R-2b**). Regarding the applicant’s claim that land within the “V” zone for Small House development is limited as some are occupied by burial grounds and owned by Tso Tong, it should be noted that in general, burial ground has been excluded in estimating the land available for Small House development in the “V” zone.
- 7.4 While the proposed use is considered not incompatible with the surrounding environment, the application does not comply with the Interim Criteria in that the Site and the footprint of the proposed Small House does not fall within the ‘VE’ of any recognized village nor “V” zone. According to the Interim Criteria, development of NTEH/Small House with more than 50% of the footprint outside both the ‘VE’ and the “V” zone would normally not be approved except under very exceptional circumstances. It is considered more appropriate to concentrate the proposed Small House close to the existing village cluster within the “V” zone for a more orderly development pattern, efficient use of land and provision of infrastructure and services. There is no exceptional circumstance to justify approval of the application.
- 7.5 The applicant stated that the proposed Small House development is not incompatible with the surrounding environment as there are many Small House clusters in the vicinity of the Site. It is noted that there are four village houses to the north of the Site, three of them fall within the “R(D)” zone and one straddling the “V” and “R(D)” zones (**Plan R-2a**). Other village houses are located within the “V” zone to the further west of the Site. For the three village houses in the “R(D)” zone, DLO/YL stated that these houses are covered by Building Licenses issued in 1983. They were in existence before the gazetting of

the Pat Heung Interim Development Permission Area (IPDA) Plan on 5.10.1990, and thus may be tolerated. Regarding the village house straddling “V” and “R(D)” zones, it is subject to a similar application (No. A/YL-PH/540) straddling the same “R(D)” zone and adjoining “V” zone, which was approved with conditions by the Committee in 2007 mainly for the reason that the proposed development was in line with the Interim Criteria as it fell entirely within the ‘VE’ of Wang Toi Shan and about 77% of the proposed NTEH footprint falls within the “V” zone (**Plan R-2a**). It is different from the current application with the Site and the footprint of the proposed Small House entirely falling outside “V” zone and ‘VE’.

- 7.6 The government departments consulted maintained their previous view of no adverse comment or no objection to the application.
- 7.7 One public comment objecting to the application was received during the statutory publication period at the s.17 review stage of the application mainly on the grounds as stated in paragraph 6 above. In this regard, the planning considerations and assessments above are relevant.

8. **Planning Department’s Views**

- 8.1 Based on the assessments made in paragraph 7 and having taken into account the public comment in paragraph 6, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 18.1.2019, the Planning Department maintains its previous view of not supporting the review application for the following reason:

the application does not comply with the Interim Criteria in that the Site and the footprint of the proposed Small House falls entirely outside the ‘VE’ of any recognized village and the “V” zone. Land is still available within the “V” zone of Wang Toi Shan, Lo Uk Tsuen, Leung Uk Tsuen and Chuk Hang, where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House close to the existing village cluster within the “V” zone for a more orderly development pattern, efficient use of land and provision of infrastructure and services. There is no exceptional circumstance to justify approval of the application.

- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 26.4.2023, 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 **Annex G**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 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.
- 9.3 Alternatively, 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.

10. Attachments

Annex A	RNTPC Paper No. A/YL-PH/798
Annex B	Extract of minutes of the RNTPC meeting held on 18.1.2019
Annex C	Secretary of the Board's letter dated 1.2.2019
Annex D	Letter dated 8.2.2019 from the applicant applying for review of the application
Annex E	Supplementary information received on 20.2.2019 providing justifications to support the review application
Annex F	Public comment on the review application
Annex G	Advisory Clauses
Drawing R-1	Site Plan and its Surrounding Small House Development
Plan R-1	Location Plan with Similar Application
Plan R-2a	Site Plan
Plan R-2b	Estimated Amount of Land Available for Small House Development within the "V" Zone
Plan R-3	Aerial Photo
Plan R-4	Site Photos

**PLANNING DEPARTMENT
APRIL 2019**