

REVIEW OF APPLICATION NO. A/NE-FTA/191
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed 5 Houses (New Territories Exempted Houses - Small Houses) in “Agriculture” Zone
Lots 208 S.A to 208 S.E & 208 RP in D.D. 52, Sheung Shui Wa Shan,
Sheung Shui, New Territories**

1. Background

- 1.1 On 29.4.2019, the applicants, 廖錦海先生, 廖智傑先生, 廖智康先生, 廖傳恩先生 and 廖哲希先生 represented by 林志權先生, sought planning permission to build 5 houses (New Territories Exempted Houses (NTEHs) - Small Houses) 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 Fu Tei Au and Sha Ling Outline Zoning Plan No. S/NE-FTA/16 (**Plan R-1**).
- 1.2 On 21.6.2019, 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 developments are not in line with the planning intention of the “AGR” zone in the Fu Tei Au and Sha 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; and
 - (b) land is still available within the “Village Type Development” zone of Wa Shan 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-FTA/191 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 21.6.2019 (Annex B)
 - (c) Secretary of Town Planning Board’s letter dated 5.7.2019 (Annex C)

2. Application for Review

On 25.7.2019, the applicants’ representative applied, under s.17(1) of the Ordinance, for review of the RNTPC’s decision to reject the application (**Annex D**). The applicants have 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-2a, R-3b and site photos on Plans 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 been no material change of the situation since then.
- 3.2 The Site is:
- (a) currently vacant and covered by vegetation and trees; (**Plans R-3 and R-4**)
 - (b) located to the northwest of village cluster of Wa Shan Village and falls entirely within the 'VE' of the same village; and
 - (c) only accessible by a footpath (**Plans R-2a and R-3**).
- 3.3 The surrounding areas have the following characteristics:
- (a) to the immediate north within "AGR" zone are some active/fallow agricultural land, vacant land and a village house and to the further north are site of open storage and vacant land which fall within an area zoned "Other Specified Uses (Port Back-Up Uses)" on the OZP (**Plan R-2a**);
 - (b) to the east are a toilet and a footpath leading to the village cluster of Wah Shan Village within the "V" zone (**Plan R-2b**);
 - (c) to the immediate south are some active agricultural land and to the further south across the nullah is the village cluster of Wa Shan Village; and
 - (d) to the west are some village houses and active/fallow agricultural land.

Planning Intention

- 3.4 The planning intention of the "AGR" zone in the Fu Tei Au and Sha Ling area is intended 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.

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 applications were considered by the RNTPC on 21.6.2019, there were 27 similar applications involving 21 sites for Small House development within /partly within the “AGR” zone in the vicinity of the Site in Fu Tei Au and Sha Ling area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. There has been no change in the number of similar applications since then.
- 3.8 Among these similar cases, 20 applications were approved with conditions by the Committee between July 2008 and September 2014 (i.e. before a more cautious approach is adopted by the Board) (**Plan R-1**). These applications were approved by the Committee 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 within the “V” zone of the same village in meeting the Small House demand; the proposed Small House developments were not incompatible with the surrounding rural and village environment; the proposed developments were not expected to have significant adverse impacts on the surrounding area. The remaining six approved applications No. A/NE-FTA/161, 164, 169, 170, 171 and 172 (**Plan R-1**) were also approved by the Committee between September 2016 and June 2017 (i.e. after a more cautious approach is adopted by the Board) mainly for the reason of being the subject of previously approved applications (No. A/NE-FTA/105, 90, 119, 120, 121 and 122 respectively).
- 3.9 One similar application to the west of the Site (**Plan R-1**) (No. A/NE-FTA/188) was rejected by the Committee in January 2019 mainly on the considerations that the proposed development was not in line with the planning intention of “AGR” zone and there was no strong planning justification in the submission for a departure from the planning intention; and land was still available within the “V” of Wah Shan Village for Small House development. It was 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.
- 3.10 Details of the above similar applications are summarized at **Appendix III of Annex A** and their locations are shown on **Plans R-1 and R-2a**.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 applications made by relevant Government departments are stated in paragraph 9 and Appendix IV of **Annex A**.
- 4.2 The following Government departments have no further comments on the review application 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 entirely within the ‘VE’ of Wa Shan Village;

- (b) according to the submission, the applicant together with his sons and grandsons claimed themselves to be indigenous villagers of Sheung Shui Village. However, their eligibility for Small House grant cannot be ascertained since no Small House applications on the Site have been received;
- (c) the Site is not covered by any Modification of Tenancy/ Building Licence;
- (d) the number of outstanding Small House applications and the number of 10-year Small House demand forecast for Wa Shan Village is 62 and 295 respectively. The figures of the 10-year Small House demand forecast were provided by the relevant Indigenous Inhabitant Representatives without any supporting evidence and his office is not in a position to verify the forecasts; and
- (e) no Small House applications in respect to the Site have been received by his office.

Agriculture

4.2.2 Comments of the Director of Agriculture, Fisheries & Conservation (DAFC):

- (a) the Site is currently a fallow land overgrown with weeds. Agricultural activities are active in the vicinity, and agricultural infrastructures such as footpath and water supply are available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agriculture point of view; and
- (b) from nature conservation point of view, the Site has some fruit trees and is overgrown with common weeds. A mature *Cinnamomum camphora* (樟樹) was found outside the northeastern boundary of Lot 208 S.D. While he has no strong view on the application from nature conservation point of view, should the application be approved, the applicant should be reminded to avoid disturbing the mature *Cinnamomum camphora* nearby.

Traffic

4.2.3 Comments of the Commissioner for Transport (C for T):

- (a) he 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;

- (b) notwithstanding the above, the application only involves construction of five Small Houses. He considers that the application can be tolerated unless it is rejected on other grounds; and
- (c) the local track/ footpath leading the Site is not managed by TD. The land status, management and maintenance responsibilities of the local track should be clarified with the relevant lands and maintenance authorities accordingly.

Environment

4.2.4 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

4.2.5 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) according to the aerial photo of 2019, the Site is situated in an area of rural landscape character surrounded by village houses, open storage sites and clustered tree groups. According to her recent site visit, the Site is mostly covered by vegetation and some existing trees of common species, i.e. fruit trees such as *Dimocarpus longan* (龍眼), *Mangifera indica* (芒果) etc., are observed within the site along the southern boundary;
- (c) according to the layout plan for the proposed development, despite some existing fruit trees will be affected, no landscape resource of high sensitivity i.e. rare/protected species, Old and Valuable Tree (OVT) etc. is found within the site. Hence, significant adverse impact on sensitive 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 application site. The proposed development under this application is considered not entirely incompatible with the surrounding environment;
- (d) since there is no major public frontage along the site boundary, should the TPB approve this application, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on

enhancing the quality of public realm is not apparent; and

- (e) should the application be approved by the Board, the applicant should be advised that approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. Tree removal applications should be submitted direct to DLO for approval.

Drainage

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

- (a) he has no in-principle 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 a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent areas. The general requirements of a drainage proposal are at **Annex E**; and
- (c) the Site is in an area where no public sewer connection is available.

Water Supply

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

- (a) he has no objection to the application; and
- (b) for provision of water supply to the development, the applicant may need to extend the 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 should be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Fire Safety

4.2.8 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.

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

- he has consulted the locals regarding the application. The Indigenous Inhabitant Representative (IIR) of Wa Sha Tsuen supports the application on the grounds that the private lots in “V” zone are mainly under the ownership of Tso Tong, the Government should allow the villagers to exercise their rights to build Small House outside “V” zone. The Chairman of Sheung Shui District Rural Committee, the incumbent North District Council member of N15 Constituency cum IIR of Sheung Shui Heung, the remaining two IIRs and the Resident Representative (RR) of Sheung Shui Heung, and the RR of Wa San Tsuen have no comment on the application.

4.4 The following Government departments maintain their previous views of having no comment on the review applications:

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

5. Public Comments Received During Statutory Publication Period

- 5.1 On 2.8.2019, the review application was published for public inspection. 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 review application. The Hong Kong Bird Watching Society, The Kadoorie Farm and Botanic Garden and an individual object to the application mainly on the grounds that the proposed developments are not in line with the planning intention of the “AGR” zone; potential adverse sewerage impact to the nearby nullah; there is high potential for agricultural rehabilitation at the Site; land is still available within the “V” zone for Small House development; and approval of the application would set an undesirable precedent to the future similar applications within the “AGR” zone.
- 5.2 Five public comments (one no comment and four adverse comments) were received at the s.16 application stage and are set out in paragraph 10 of the RNTPC Paper in **Annex A**.

6. Planning Considerations and Assessments

- 6.1 The application for five proposed Small Houses was rejected by the RNTPC on 21.6.2019 mainly on the grounds of being not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone of Wa Shan Village for Small House development. The applicant has not submitted any written representation in support of the review application.
- 6.2 The Site falls entirely within an area zoned “AGR” on the OZP. The proposed Small House developments are not in line with the planning intention of the “AGR” zone which is intended 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 from the agriculture point of view as the Site possesses potential for agricultural rehabilitation. Agricultural activities are active in the vicinity, and agricultural infrastructures such as footpath and water supply are available. The Site

can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc.

- 6.3 Based on DLO/N, LandsD's records, the total number of outstanding Small House applications for Wa Shan Village is 62¹ while the 10-year Small House demand forecast for the same village is 295. According to the latest estimate by PlanD, about 2.91 ha (equivalent to 116 Small House sites) of land are available in the "V" zone of Wa Shan Village for Small House development (**Plan R-2b**). DLO/N, LandsD advises that the Site falls entirely within the 'VE' of Wa Shan Village.
- 6.4 The Site is situated in an area of rural landscape character surrounded by village houses, active/ fallow agricultural land, open storage sites and clustered tree groups. Existing village houses and some permitted small house developments are found in close proximity to the Site. The proposed Small Houses are considered not entirely incompatible with the surrounding environment (**Plans R-2b and R-3**). Significant adverse landscape impact arising from the proposed developments is not anticipated. In this regard, CTP/UD&L of PlanD has no objection to the application from the landscape planning perspective. C for T has reservation on the application and considers that Small House development should be confined within the "V" zone as far as possible but given that the proposed developments only involves five Small Houses, the subject application could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment or no objection to the application.
- 6.5 Regarding the Interim Criteria, the footprints of the proposed Small Houses fall entirely within the 'VE' of Wa Shan Village (**Plan R-2a**). While land available within the "V" zone is insufficient to fully meet the future Small House demand of 357 Small Houses, such available land (about 2.91 ha or equivalent to 116 Small House sites) is capable to meet the 62 outstanding Small House applications (**Plan R-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. As such, 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. 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.
- 6.6 There are 27 similar applications for Small House development within/partly within the "AGR" zone in the vicinity of the Site in the Fu Tei Au and Sha Ling area (**Plan R-1**). Among these applications, 20 applications were approved by the RNTPC between July 2008 and September 2014 (i.e. before a more cautious approach is adopted by the Board). After the adoption of a more cautious approach by the Board, six applications (No. A/NE-FTA/161, 164, 169, 170, 171 and 172) were approved by the RNTPC between September 2016 and June 2017 mainly for the reason of being

¹ Among the 62 outstanding Small House applications, none of them are located on Government land. 31 of them fall within the "V" zone and 31 straddle or outside the "V" zone. For those 31 applications straddling or being outside the "V" zone, 10 of them have obtained valid planning approval from the Board.

the subject of previously approved applications. One similar application to the west of the Site (**Plan R-1**) (No. A/NE-FTA/188) was rejected by the RNTPC in January 2019 mainly on the considerations that the proposed development was not in line with the planning intention of “AGR” zone and there was no strong planning justification in the submission for a departure from the planning intention; and land was still available within the “V” of Wah Shan Village for Small House development. The planning circumstances of the current application are similar to that 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 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 developments are not in line with the planning intention of the “AGR” zone in the Fu Tei Au and Sha 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; and
- (b) land is still available within the “V” zone of Wa Shan 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 **25.10.2023**, 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 photos
Annex A	RNTPC Paper No. A/NE-FTA/191
Annex B	Extract of minutes of the RNTPC meeting held on 21.6.2019
Annex C	Secretary of the Town Planning Board's letter dated 5.7.2019
Annex D	Letter received on 25.7.2019 from the applicant's representative applying for a review of the RNTPC's decision
Annex E	Requirements of Drainage Proposal
Annex F	Public Comments
Annex G	Recommended Advisory Clauses

**PLANNING DEPARTMENT
OCTOBER 2019**

TPB Paper No. 10584

**For Consideration by
the Town Planning Board on 25.10.2019**

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