

REVIEW OF APPLICATION NO. A/NE-MUP/128
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed House (New Territories Exempted House - Small House)
Lot 440 S.D in D.D. 37, Man Uk Pin Village, Sha Tau Kok, N.T.

1. Background

- 1.1 On 27.7.2017, the applicant, Mr. CHUNG Chi Wing, 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 Man Uk Pin Outline Zoning Plan (OZP) No. S/NE-MUP/11 (**Plan R-1**).
- 1.2 On 22.9.2017, 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 for the “AGR” zone in the Man Uk Pin 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” (“V”) zone of Man Uk Pin 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-MUP/128 | (Annex A) |
| (b) | Extract of minutes of the RNTPC meeting held on 22.9.2017 | (Annex B) |
| (c) | Secretary of Town Planning Board’s letter dated 13.10.2017 | (Annex C) |

2. Application for Review

On 31.10.2017, the applicant applied under section 17(1) of the Ordinance, for review of the RNTPC’s decision to reject the application (**Annex D**).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in his letter at **Annex D**. They can be summarized as follows:

- (a) The land available for Small House development in “V” zone is not sufficient to meet the 10-year Small House demand for Man Uk Pin Village which is about 380 according to the previous TPB Papers No. A/NE-MUP/115 to 117. However, there is different treatment on the current application as the application is rejected by the Committee with the reason that land is still available within the “V” zone of Man Uk Pin Village for Small House development.
- (b) The proposed Small House under application is within the village environs and close to the village cluster of Man Uk Pin Village and as such, the Small House development is not incompatible with the surrounding development.
- (c) The land available within “V” zone for Small House development is owned by Tso Tong. As it would not be sold to other villagers for Small House development, there is indeed shortage of land available within the “V” zone for Small House development.
- (d) Land in the northern portion of the “V” zone is not suitable for Small House development under the Small House policy as it is close to a river and covered with dense woodland.
- (e) The applicant considers that he is not being treated fairly and has lodged his complaints to Sha Tau Kok District Rural Committee (STKDRC). He also encloses a copy of the letter from STKDRC to the Board on 23.10.2017 to substantiate his application.

4. **The Section 16 Application**

The Site and its Surrounding Areas (Plans R-1, R-2a and R-2b, R-3 and R-4)

- 4.1 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.
- 4.2 The Site is:
 - (a) vacant, overgrown with wild grass and shrubs and northern portion of the Site encroaches onto the existing footpath;
 - (b) located to the east of Man Uk Pin Village (**Plans R-2a and R-2b**); and
 - (c) not served by any vehicular access but accessible by a footpath.
- 4.3 The surrounding areas have the following characteristics:
 - (a) predominantly rural in character where village houses and active / fallow agricultural are found;

- (b) to the west are some fallow agricultural land, domestic structures, areas for parking of vehicles within the “V” zone and to the further north is an area zoned “Government, Institution or Community” (“G/IC”) which is the disused Man Uk Pin Public School and the existing Man Uk Pin Children’s Playground (**Plan R-2a**); and
- (c) to the northeast, east and south are some active/fallow agricultural land and temporary domestic structures and a watercourse running in a northeast-southwest direction to the further west of the Site.

Planning Intention

- 4.4 The planning intention of the “AGR” zone in the Man Uk Pin area 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.

Assessment Criteria

- 4.5 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

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

Similar Applications

- 4.7 When the s.16 application was considered by the RNTPC on 22.9.2017, there were 39 similar applications for Small House development in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan R-1**). There is no additional similar application since then.
- 4.8 A total of 26 similar applications involving 23 sites to the west of the “V” zone of Man Uk Pin Village (**Plan R-1**) were approved with conditions by the Rural and New Town Planning Committee (the Committee) or by the Board on review between July 2008 and April 2017 mainly on 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 in meeting the Small House demand; the proposed Small Houses were not incompatible with the surrounding area; and the proposed Small Houses would unlikely cause adverse environmental, drainage and traffic impacts.
- 4.9 There are another 13 similar applications to the east of the “V” zone of Man Uk Pin Village (**Plan R-1**). 12 of them were rejected by the Committee or by the Board on review between November 2014 and August 2016 mainly on considerations that the proposed developments were not in line with the planning intention of the “AGR” zone and there was no strong planning justification in the submissions for a departure from the planning intention; and land was still available within the “V” zone of Man

Uk Pin Village for Small House development. It was considered more appropriate to concentrate those proposed Small Houses close to the existing village cluster within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services. For the remaining application No. A/NE-MUP/35, it was approved with conditions by the Committee on 19.10.2001 mainly on considerations that the site was largely within the “V” zone and entirely within the ‘VE’ and similar to those of other approved cases as stated in paragraph 4.8 above.

- 4.10 Details of the above similar applications are summarized in Appendix III of **Annex A** and their locations are shown on **Plan R-1**.

5. Comments from Relevant Government Departments

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

Land Administration

- 5.2.1 District Lands Officer/North, Lands Department (DLO/N, LandsD) advises that the number of outstanding Small House applications for Man Uk Pin Village and 10-year Small House demand forecast remain unchanged at 86 and 400 respectively. He further advises that if the only access to adjoining houses (**Plan R-2a**) is affected by the proposed development, his office may consider as appropriate to include a footpath clause to ensure that free passage on the portion of the footpath is to be provided at all times within the Site, should the Small House grant application be approved and maintains his other views on the s.16 application as stated in paragraph 1 of the Appendix IV in **Annex A** and recapitulated below:

- (a) the Site falls entirely within the ‘VE’ of Man Uk Pin Village;
- (b) the applicant claimed himself as an indigenous villager of Man Uk Pin Village of Sha Tau Kok Heung. His eligibility for Small House concessionary grant has yet to be ascertained;
- (c) the Site is not covered by any Modification of Tenancy / Building License;
- (d) the number of outstanding Small House applications and the number of 10-year Small House demand forecast (2017-2026) for Man Uk Pin Village are 86 and 400 respectively. The figure of the 10-year Small House demand forecast was provided by the relevant Indigenous Inhabitant Representative without any supporting evidence and his office is not in a position to verify the forecast; and
- (e) the Small House application was received by his office on 26.6.2013.

Traffic

5.2.2 The Commissioner for Transport (C for T) has no further comment on the review application and maintains her previous views on the s.16 application as stated in paragraph 2 of the Appendix IV 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 construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.

Environment

5.2.3 The Director of Environmental Protection (DEP) has no further comment on the review application and maintains his previous views on the s.16 application as stated in paragraph 3 of the Appendix IV in **Annex A** and recapitulated below:

- (a) in view of the small scale 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 ProPECC PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” and are duly certified by an Authorized Person.

Landscape

5.2.4 Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no further comment on the review application and maintains her previous views on the s.16 application as stated in paragraph 4 of the Appendix IV in **Annex A** and recapitulated below:

- (a) she has reservation on the application from the landscape planning point of view;
- (b) according to the aerial photo of 2015, the Site is situated in an area of rural landscape character comprising of both fallow and active farmland, small village houses clusters and scattered trees;
- (c) based on her site record, the site is located within fallow farmland covered with wild grasses and sparse shrubs. A section of hard paved footpath connecting to the adjacent village located at its northern

boundary. The proposed Small House is not entirely incompatible with the surrounding landscape setting and significant impact on landscape resource arising from the development is not anticipated;

- (d) approval of the application is against the planning intention to 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. It appears that land is still available within the “V” zone for Small House development. Approval of the application would set an undesirable precedent for extending village development into the “AGR” zone which may create a ripple effect leading to gradual irreversible modification and degradation of the rural agriculture landscape character in the area; and
- (e) should the application be approved by the Board, an approval condition on the submission and implementation of landscape proposal should be included.

Drainage

5.2.5 Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no further comment on the review application and maintains his previous views on the s.16 application as stated in paragraph 5 of the Appendix IV 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 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

5.2.6 The Director of Agriculture, Fisheries & Conservation (DAFC) has no further comment on the review application and maintains her previous views on the s.16 application as stated in paragraph 8 of the Appendix IV in **Annex A** and recapitulated below:

- (a) she does not support the application from the agriculture point of view; and
- (b) the Site is a piece of vacant land overgrown with vegetation. The agricultural activities in its vicinity are active and the Site possesses high potential for agricultural rehabilitation.

Fire Safety

5.2.7 The Director of Fire Services (D of FS) has no further comment on the review application and maintains his previous views on the s.16 application as stated in paragraph 6 of the Appendix IV in **Annex A** and recapitulated below:

- (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

5.2.8 Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no further comment on the review application and maintains his previous views on the s.16 application as stated in paragraph 7 of the Appendix IV in **Annex A** and recapitulated below:

- (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 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 WSD’s standards.

District Officer’s Comment

5.2.9 District Officer (North), Home Affairs Department (DO(N), HAD) has the following comments on the review application:

District Officer (North) (DO(N)) advises that he has consulted the locals. The Chairman of STKDRC, the incumbent North District Council (NDC) member of subject constituency, the Indigenous Inhabitant Representative and the Resident Representative of Man Uk Pin have no comment on the application.

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

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

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

- 6.1 On 10.11.2017, the review application was published for public inspection. During the three week statutory public inspection period ended on 1.12.2017, seven public comments were received (**Annex E**). A NDC member supports the application as it can provide convenience to the villagers whereas the Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Another public comment submitted from an individual who has also submitted public comment against the same application during the s.16 stage. He has no objection to the review application provided that an unobstructed access to the north of the Site for access to his house is provided. The other four public comments, submitted by World Wide Fund for Nature Hong Kong, Hong Kong Bird Watching Society, Designing Hong Kong Limited and an individual, object to / raise concern on the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; land is still available within the “V” zone for Small House development; the Site has potential for agricultural rehabilitation; the proposed development would block the footpath; the proposed Small House may have adverse drainage impact; and approval of the application would set an undesirable precedent for similar applications in the area.
- 6.2 The public comments received at the s.16 application stage are set out in paragraph 10 of **Annex A**.

7. **Planning Considerations and Assessments**

- 7.1 The applicant sought planning permission from the Board for development of one NTEH (Small House) at the Site. The subject application was rejected by the RNTPC on 22.9.2017 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone of Man Uk Pin Village for Small House development. There is no strong planning justification in the submission for a departure from the planning intention.
- 7.2 To support the review application, the applicant states that his application received different treatment from those approved applications No. A/NE-MUP/115 to 117. Whilst it was stated in those approved applications that there was insufficient land in “V” zone to meet the Small House demand for Man Uk Pin Village, this application was rejected on the consideration that land was still available within the “V” zone for Small House development. The Small House development is not incompatible with the surrounding environment which comprises of village houses; land within “V” zone is owned by Tso Tong and would not be sold to other villagers thus resulting in shortage of land in “V” zone for Small House development; and the land in the northern portion of the “V” zone is not suitable for Small House development as it is close to a river and covered with woodland.
- 7.3 The Site falls entirely within the “AGR” zone on the OZP (**Plan R-2a**). 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 and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for

cultivation and other agricultural purposes. There are active agricultural land to the immediate east of the Site. DAFC indicates that agricultural activities in its vicinity are active within the subject “AGR” zone (**Plan R-2a**) and the Site possesses high potential for agricultural rehabilitation and thus she does not support the application from agricultural point of view.

- 7.4 The applicant argues that there is different treatment in considering the planning applications No. A/NE-MUP/115 to 117 for which there is general shortage of land in “V” zone to meet the demand for Small House development. 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. The applications No. A/NE-MUP/115 to 117 were approved in mid 2015 before the adoption of the cautious approach. Taking planning applications No. A/NE-MUP/121 to 123 located to the east of the existing village proper of Man Uk Pin and were rejected by the Committee in 2016 and 2017 respectively as examples, cautious approach has been adopted in considering the applications. Since land was still available in the “V” zone for Small House development to meet the outstanding Small House applications provided by DLO/N, LandsD, it was considered more appropriate to concentrate proposed Small Houses close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services. For the current application, although the proposed Small House footprint falls entirely with the ‘VE’ of Man Uk Pin Village, land available within the “V” zone (about 3.44 ha of land or equivalent to 137 Small House sites) is still capable of meeting the 86 outstanding Small House applications. The planning circumstances of the subject application is similar to that of the planning applications No. A/NE-MUP/121 to 123.
- 7.5 Besides, the application sites of applications No. A/NE-MUP/115 to 117 are located to the west of the existing village proper of Man Uk Pin and situated in a typical rural setting surrounded by village houses. Together with the existing village houses and Small Houses under consideration, a village cluster is being formed in the locality (**Plan R-2a**). Unlike the applications No. A/NE-MUP/115 to 117, the current application is located to the east of Man Uk Pin village, which is mainly rural in character. While the proposed Small House is not entirely incompatible with the surrounding rural environment, CTP/UD&L has reservation on the application noting that the Site is situated in an area of rural agriculture landscape character and approval of the application would set an undesirable precedent degrading the rural agriculture landscape character in the area (**Plans R-2a and R-3**). In considering application for Small House development in the area, the Committee has taken into account all relevant factors before making a decision on an application. Since there is active agricultural land to the east of the “V” zone and the chance of agricultural rehabilitation in that part of area is high as advised by DAFC. The Committee consistently approved small House applications to the west of the Man Uk Pin Village but not those to the east of the village where some parcels of land are still under active cultivation (**Plan R-3**).
- 7.6 The applicant advises that the land within “V” zone is owned by Tso Tong and would not be sold to the others for Small House development. In this regard, it should be noted that there are still about 3.44 ha of land (equivalent to 137 small House sites) available within the “V” zone of Man Uk Pin Village (**Plan R-2b**) for Small House

development. Moreover, land ownership may not be a material consideration as it could be subject to change and land parcel could be subdivided to suit development needs and whether the landowners would sell their land to buyers for Small House development is a market decision outside the purview of the Board. Indigenous villages could apply to LandsD for Small House grant on Government land within the “V” zone, and each case would be processed and considered by LandsD in accordance with the Small House Policy.

- 7.7 The applicant argues that the land in the northern part of the “V” zone is not suitable for Small House development as it is close to a river and covered with dense woodland. In estimating the supply of land for Small House sites in “V” zone, PlanD has adopted a consistent approach and would make use of the latest available information. For example, the land occupied by road, existing village houses, steep slope, major tree clusters and the land reserved for stream buffer and the area with NTEH cases already approved by LandsD will be deducted from the area available for Small House development.
- 7.8 There are 39 similar applications for Small House development within / partly within the same “AGR” zone in the vicinity of the Site. The 27 approved applications are mostly located to the west of Man Uk Pin Village. They were approved between 2001 and 2017 mainly on 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 for Small House development; the proposed Small Houses were not incompatible with the surrounding areas; the developments would unlikely cause adverse impacts; and a new village cluster was being formed in the locality upon implementation of the approved Small House applications. Thus the circumstances are different from the current application (**Plans R-1 and R-2a**). For those applications to the east of Man Uk Pin Village, only application (No. ANE-MUP/35) was approved by the Committee on 19.10.2001 and the site is largely zoned “V”. The other 12 applications were rejected between November 2014 and August 2016 mainly on the grounds of being not in line with the planning intention of “AGR” zone and land was still available in “V” zone. There has not been any major change in planning circumstances of the area since the rejection of these similar applications.
- 7.9 Regarding the public comments received during the review application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; land is still available within the “V” zone for Small House development; the Site has potential for agricultural rehabilitation; the proposed development would block the footpath; the proposed Small House may have adverse drainage impact; and approval of the application would set an undesirable precedent for similar applications in the area, Government departments’ comments and the planning assessments above are relevant.

8. **Planning Department’s Views**

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned 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 22.9.2017, 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 in the Man Uk Pin 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 Man Uk Pin 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.

8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until **19.1.2022**, 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 tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (c) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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 conditions and advisory clauses, 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 reason(s) for rejection should be given to the applicant.

10. Attachments

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-MUP/128
Annex B	Extract of minutes of the RNTPC meeting held on 22.9.2017
Annex C	Secretary of the Town Planning Board’s letter dated 13.10.2017
Annex D	Letter received on 31.10.2017 from the applicant applying for a review of the RNTPC’s decision
Annex E	Public Comments
Annex F	Recommended Advisory Clauses

**PLANNING DEPARTMENT
JANUARY 2018**