

REVIEW OF APPLICATION NO. A/YL-TT/484
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed House (New Territories Exempted House - Small House)
in “Agriculture” and “Village Type Development” Zones,
Lot 3090 S.B in D.D. 120, Tin Liu Tsuen, Yuen Long, New Territories**

1. Background

- 1.1 On 4.9.2019, the applicant, Mr. WU Siu Yin, represented by Mr. WU Wai Shing, sought planning permission to build a house (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 mainly falls within an area zoned “Village Type Development” (“V”) (about 62.9%) and partly within an area zoned “Agriculture” (“AGR”) (about 37.1%) on the approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16 (**Plan R-1**).
- 1.2 On 1.11.2019, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone 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 provided in the submission to justify a departure from the planning intention;
 - (b) the proposed Small House development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that there is no general shortage of land in meeting the demand for Small House development in the “V” zones of Tin Liu Tsuen and Sham Chung Tsuen; and
 - (c) land is still available within the “V” zones of Tin Liu Tsuen and Sham Chung Tsuen which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zones for more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-TT/484 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 1.11.2019 (Annex B)
 - (c) Secretary of the Board’s letter dated 15.11.2019 (Annex C)

2. Application for Review

- 2.1 On 27.11.2019, the applicant applied, under s.17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application. The applicant's representative submitted written representation in support of the application (**Annex D**).
- 2.2 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 14.2.2020 for consideration of the review application has been rescheduled, and the Board has agreed to adjourn consideration of the application. The review application is now scheduled for consideration by the Board at this meeting.

3. Justification from the Applicant

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

- (a) The majority of the Site falls within the "V" zone on private land. While the planning intention of the "AGR" zone is not disputed, the proposal does not deviate from the planning intention of the "V" zone either.
- (b) The 2006 Population By-census data is outdated and should not be used in determining whether there is general shortage of land in meeting the demand for Small House development in the "V" zones of Tin Liu Tsuen and Sham Chung Tsuen. Besides, there is existing acute demand for housing in Hong Kong, including rural villages.
- (c) Although to confine Small House development within the remaining land available within the "V" zones of Tin Liu Tsuen and Sham Chung Tsuen would be ideal, one needs to establish the actual ownership of those land, as some land are already owned by others/ developer(s) for other purposes. It is questionable that such land could be acquired/ used for building Small House.

4. Background of the Site

The Site is currently not subject to planning enforcement action.

5. The Section 16 Application

The Site and Its Surrounding Areas (Plans R-2a to R-4)

- 5.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by RNTPC are described in paragraph 8 of **Annex A**. There has been no major change in the situation since then.
- 5.2 The Site is:
- (a) located at the south-eastern fringe of Tin Liu Tsuen;
- (b) outside the village 'environs' ('VE') of any recognised village (**Plan R-1**);

- (c) accessible by a local track leading from Sham Chung Road (**Plans R-2a and R-3**); and
- (d) generally flat and overgrown with vegetation.

5.3 The surrounding areas have the following characteristics:

- (a) predominantly rural in character with village houses generally to the immediate and further north, and fallow/cultivated agricultural land to the immediate east, south and west;
- (b) some scattered vacant/unused land, a storage yard and construction sites can be found in the vicinity; and
- (c) the aforementioned storage yard in the vicinity of the Site is suspected unauthorised development subject to enforcement action taken by the Planning Authority.

Planning Intention

5.4 There has been no change in planning intention of the concerned “V” and “AGR” zones as mentioned in paragraph 9 of **Annex A**, which are recapitulated below.

5.5 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 other agricultural purposes.

5.6 The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

Assessment Criteria

5.7 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 is at Appendix II of **Annex A**.

Previous Application

5.8 There is no previous application at the Site.

Similar Applications

- 5.9 There are nine similar applications (No. A/YL-TT/168, 213, 214, 215, 350, 356, 382, 390 and 464) for NTEH/Small House development within or straddling the same “V” and/or “AGR” zones since the first promulgation of the Interim Criteria on 24.11.2000. Out of the nine applications, five were approved with/without conditions, while the remaining four were rejected. Details of the applications are summarised in Appendix III of **Annex A** and the locations of the sites are shown on **Plan R-1**.
- 5.10 The five approved applications (No. A/YL-TT/168, 213, 214, 350 and 390) were approved with/without conditions by RNTPC between 2004 and 2016 mainly on the considerations that the proposals were generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the “V” zone; there was a general shortage of land to meet the demand for Small House development in the concerned “V” zones at the time of consideration; the proposal was not incompatible with the surrounding areas; relevant government departments had no adverse comment on the proposal (except for the Director of Agriculture, Fisheries and Conservation (DAFC) for applications No. A/YL-TT/213 and 350); and no local objections were received on the applications.
- 5.11 Application No. A/YL-TT/215 was rejected by RNTPC on 2.11.2007 on the consideration that the proposal was not in line with the planning intention of the “AGR” zone; the proposal did not comply with the Interim Criteria in that there was no general shortage of land in meeting the demand of Small House development at the time of consideration and more than 50% of the proposed NTEH footprint fell outside the “V” zone; and no information was submitted to demonstrate that there were no suitable sites within the “V” zone for the proposed development.
- 5.12 Applications No. A/YL-TT/356 and 382 were rejected by RNTPC on 9.10.2015 and 15.7.2016 respectively on similar considerations as application No. A/YL-TT/215, except for the additional consideration that the proposed Small House footprints fell entirely outside the ‘VE’ and “V” zone (for the former application); and that sufficient land was still available within the “V” zone of Muk Kiu Tau Tsuen to meet the demand of Small House development (for the latter application).
- 5.13 The last application (No. A/YL-TT/464) was rejected by RNTPC on 31.5.2019 on the consideration that the proposal was not in line with the planning intention of the “AGR” zone; and that sufficient land was still available within the “V” zones of Tin Liu Tsuen and Sham Chung Tsuen to meet the demand of Small House development.

6. Comments from Relevant Government Departments

- 6.1 Comments on the s.16 application made by relevant government departments are stated in paragraphs 10.1 to 10.3 and Appendix IV of **Annex A**.
- 6.2 The following government departments have no further comments on the review application and largely maintain their previous views on the s.16 application as stated in Appendix IV of **Annex A**. The main views are largely recapitulated below:

Land Administration

6.2.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) There is one Small House application under processing within the Site, which is at departmental circulation stage.
- (b) The number of outstanding Small House applications of Tin Liu Tsuen and Sham Chung Tsuen are 69 (including 2 nos. of Private Treaty Grant applications where their processing were withheld in light of the judgment of the Judicial Review case on Small House policy in 4/2019) and 6 respectively. The 10-year forecasts of Small House demand for Tin Liu Tsuen (2018-2027) and Sham Chung Tsuen (2016-2025) are 180 and 18 respectively. The figures of the 10-year forecast are provided by the Indigenous Inhabitant Representatives of Tin Liu Tsuen and Sham Chung Tsuen and she is unable to verify such information.
- (c) The proposed Small House footprint does not fall within the 'VE' boundary of any recognised village. If a proposed Small House site is outside or more than 50% of it is outside the 'VE' boundary of a recognised village, it will be rejected under the Small House policy even though the applicant is an indigenous villager who has successfully sought planning permission. Her office's approval to Small House grant is not automatic even though the applicant has obtained approval from the Board. The grant is subject to all criteria being met and all relevant factors being considered.
- (d) The indigenous villager status and eligibility of the applicant for the subject planning application to apply for Small House has not yet been verified by her office. Regarding the subject case, should planning approval be given to the application, the registered lot owner should inform her office, and her office will consider the Small House application acting in the capacity as the landlord and there is no guarantee that such application would be approved. Any applications, if approved, would be subject to such terms and conditions including, among others, the payment of premium and/or administrative fee as may be imposed by her department.

Nature Conservation

6.2.2 Comments of the DAFC:

The Site falls within "AGR" and "V" zones and is currently fallow land overgrown with grasses. Agricultural activities are active in the vicinity, and agricultural infrastructure such as road access and water source are available. The Site can be used for agricultural activities such as open-field cultivation, green house and plant nursery. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

6.3 The following government departments have no further views/comments on the

review application and maintain their previous views on the s.16 application as stated in paragraphs 10.1 to 10.3 and Appendix IV of **Annex A**.

- (a) Commissioner for Transport (C for T);
- (b) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (c) Director of Environmental Protection (DEP);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (e) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (f) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (g) Director of Fire Services (D of FS);
- (h) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD); and
- (i) District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD).

6.4 The following government departments maintain their previous views of having no comment on the review application:

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (c) Commissioner of Police (C of P).

7. Public Comments Received During Statutory Publication Periods

7.1 On 6.12.2019, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 27.12.2019, three public comments were received (**Annexes E-1 to E-3**). Kadoorie Farm & Botanic Garden Corporation and Designing Hong Kong Limited (**Annexes E-1 and E-2**) objected to the review application on similar grounds as per the s.16 stage in that the proposal is not in line with the planning intention of the “AGR” zone; land is still available within the “V” zones for Small House development; and approval of the application would set an undesirable precedent leading to a general degradation of the local environment. An individual (**Annex E-3**) also objected to the review application as there is no general shortage of land in meeting the demand for Small House development in the relevant “V” zones.

7.2 Six public comments, all objecting to the application, received at the s.16 application stage are set out in paragraph 11 of **Annex A**.

8. Planning Considerations and Assessments

8.1 The application is for a review of RNTPC’s decision on 1.11.2019 to reject the subject application for a proposed house (NTEH - Small House) at a site straddling the “AGR” (about 26.2% of the proposed NTEH footprint) and “V” zones (about 73.8%) on the OZP (**Plan R-1**). The application was rejected mainly on the grounds of departure from the planning intention of the “AGR” zone; incompliance with the Interim Criteria and that land was still available within the “V” zones of Tin Liu Tsuen and Sham

Cheung Tsuen for Small House development. The applicant submitted justifications in support of the review application mainly on grounds that the application did not deviate from the planning intention of the “V” zone; the data used in determining the general shortage of land was outdated; there was acute demand for housing in Hong Kong; and it was uncertain that land within the “V” zones of Tin Liu Tsuen and Sham Chung Tsuen could be acquired for development of the Small House. Since the consideration of the subject application by the RNTPC on 1.11.2019, there is no change in planning circumstances.

- 8.2 In terms of planning intention, the applicant concurs with the planning intention of the “AGR” zone, which is to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. While the applicant argued that the proposal does not deviate from the planning intention of the “V” zone, it should be noted that about 37.1% of the Site and about 26.2% of the proposed NTEH footprint falls within the “AGR” zone. The proposed Small House 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. No strong planning justification has been provided to justify a departure from the planning intention of the “AGR” zone. In this regard, while other departments have no adverse comment on/objection to the application, DAFC does not support the application from agricultural point of view as there are agricultural infrastructures (i.e. road access and water source) nearby, the Site can be used for agricultural activities and the Site possesses potential for agricultural rehabilitation.
- 8.3 In terms of the applicant’s criticism over the use of outdated 2006 Population By-census data to determine the demand and supply of land for Small House development, it should be noted that Census data has not been used in the consideration of this planning application. According to DLO/YL, LandsD’s latest record, the total number of outstanding Small House applications for Tin Liu Tsuen and Sham Chung Tsuen is 75 (i.e. equivalent to about 1.88 ha of land) while the total 10-year forecast of Small House demand, as provided by the Indigenous Inhabitant Representatives of Tin Liu Tsuen (2018-2027) and Sham Chung Tsuen (2016-2025), is 198 (i.e. about 4.95 ha of land). From these latest record and information, land is required to accommodate a total of 273 Small Houses within the relevant “V” zones, equivalent to about 6.83 ha of land. DLO/YL, LandsD advises that the proposed Small House does not fall within the ‘VE’ of any recognised village (**Plan R-2a**). Based on the latest estimation by PlanD, about 300 Small House sites (equivalent to about 7.5 ha of land) are available within the relevant “V” zones for Tin Liu Tsuen and Sham Chung Tsuen, which can accommodate the outstanding Small House application and the forecasted long-term Small House demand. As such, the proposed development does not comply with the Interim Criteria in that there is no general shortage of land in meeting the demand for Small House development in the “V” zones of Tin Liu Tsuen and Sham Chung Tsuen. It is therefore considered more appropriate to concentrate the proposed Small House development within the “V” zones for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 8.4 In terms of the territorial acute demand for housing, a number of short, medium and long-term measures have been proposed to boost housing and land supply in Hong Kong. Setting aside such measures, it should be noted that “V” zones remain primarily intended for development of Small Houses by indigenous villagers. The applicant also questioned the likelihood to acquire land owned by others within the relevant “V”

zones for building Small House. However, land transaction amongst private parties is not a material planning consideration.

- 8.5 There are nine similar applications within the subject “AGR” and “V” zones, of which four were rejected on the grounds that the proposal was not in line with the planning intention of the “AGR” zone; there was no general shortage of land in meeting the demand of Small House development within the “V” zones at the time of consideration; and/or no information was submitted to demonstrate why suitable sites within the concerned “V” zones could not be made available for Small House development. The remaining five applications were approved with/without conditions mainly on the consideration, amongst others, that the application was in line with the Interim Criteria; there was a general shortage of land to meet the demand for Small House development in the concerned “V” zones; and relevant government departments consulted had no adverse comment on the application. However, the circumstances of the current application are not similar to the above approved applications. Overall, rejecting this application would be in line with RNTPC’s previous decisions.
- 8.6 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 7 above, the planning considerations and assessments in paragraphs 8.1 to 8.5 above are relevant.

9. Planning Department’s Views

- 9.1 Based on the assessments made in paragraph 8, having taken into account the public comments as mentioned in paragraph 7, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 1.11.2019, 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 to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification provided in the submission to justify a departure from the planning intention;
 - (b) the proposed Small House development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that there is no general shortage of land in meeting the demand for Small House development in the “V” zones of Tin Liu Tsuen and Sham Chung Tsuen; and
 - (c) land is still available within the “V” zones of Tin Liu Tsuen and Sham Chung Tsuen which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zones for more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 9.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 13.3.2024. 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 a 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 F**.

10. Decision Sought

- 10.1 The Board is invited to consider the application for a review of RNTPC's decision and decide whether to accede to the application.
- 10.2 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.
- 10.3 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.

11. Attachments

Plan R-1	Location Plan with Similar Applications
Plan R-2a	Site Plan
Plan R-2b	Estimated Amount of Land Available for Small House Development within the "V" Zones
Plan R-3	Aerial Photo
Plan R-4	Site Photos
Annex A	RNTPC Paper No. A/YL-TT/484
Annex B	Extract of minutes of the RNTPC Meeting held on 1.11.2019
Annex C	Secretary of the Board's letter dated 15.11.2019
Annex D	Letter received by the Board on 27.11.2019 from the applicant applying for review and justifications
Annexes E-1 to E-3	Public comments received during statutory publication period of the review application
Annex F	Recommended Advisory Clauses