

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/599

<u>Applicant</u>	Mr. CHEUNG Hin Yeung represented by Mr. HUI Kwan Yee
<u>Site</u>	Lot 975 S.A. in D.D. 7, Wai Tau Tsuen, Tai Po, New Territories
<u>Site Area</u>	About 165 m ²
<u>Plan</u>	Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
<u>Zonings</u>	“Agriculture” (“AGR”) (about 66% of the Site) “Village Type Development” (“V”) (about 34% of the Site)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant¹ seeks planning permission to build an NTEH (Small House) on the application site (the Site) which falls mainly within the “AGR” zone and partly within “V” zone on the OZP (**Plan A-1**). According to the Notes of the OZP, whilst ‘House (NTEH only)’ use is always permitted within the “V” zone, such use (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes) within the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is currently vacant.
- 1.2 Details of the proposed Small House development are as follows:
- | | | |
|-------------------|---|----------------------|
| Roofed over area | : | 47.52m ² |
| Total floor area | : | 142.56m ² |
| Number of storeys | : | 3 |
| Building height | : | 8.23m |
- 1.3 No proposed use is specified for the uncovered area of the Site. The layout of the proposed Small House and septic tank is shown in **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted an application form with attachments on 4.8.2021 (**Appendix I**)

¹ According to District Lands Officer/Tai Po of Lands Department (DLO/TP, LandsD), the applicant is an indigenous villager of Wai Tau Tsuen Village, as confirmed by the Indigenous Inhabitant Representative. However, his eligibility of Small House grant is yet to be ascertained.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the house will be built on vacant agricultural land for residence;
- (b) there is no other available land; and
- (c) there are similar Small Houses built in the vicinity of the Site.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Assessment Criteria

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. On 23.8.2002, criterion (i) which requires that the application site, if located within water gathering grounds (WGG), should be able to be connected to the existing/planned sewerage system in the area was incorporated. The latest Interim Criteria with criterion (i) remains unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

5. Previous Application

There is no previous application on the Site.

6. Similar Applications

- 6.1 There are six similar applications in the vicinity of the Site within the same “AGR” zone (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. Among them, one application No. A/NE-KLH/248 was approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Since then, three cases were approved and two were rejected.
- 6.2 The three approved cases (Nos. A/NE-KLH/389, 427 and 571) were approved in 2009, 2011 and 2019 respectively, mainly on the grounds of being generally in line with the Interim Criteria in that more than 50% of the proposed Small House footprint was located within the “V” zone; the proposed development would be able to be connected to the planned sewerage system; and there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of

consideration or the site was the subject of a previously approved case from the same applicant.

- 6.3 The two rejected applications (No. A/NE-KLH/302 & 405) were rejected by the Committee in 2002 and 2010 respectively mainly because the application site was located mostly outside the 'VE' and the "V" zone or it was not able to be connected to the planned sewerage system in the area.
- 6.4 Details of the similar applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2a**.

7. The Site and Its Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3 and A-4)

- 7.1 The Site is:
- (a) partly fenced off, flat, vacant and covered with groundcovers;
 - (b) located at the northern fringe of Wai Tau Tsuen but entirely outside the 'VE'; and
 - (c) accessible via a local footpath.
- 7.2 The surrounding areas are predominantly rural in character comprising village houses and farmlands. The existing village cluster of Wai Tau Tsuen is found to the immediate south of the Site (**Plan A-2a**).

8. Planning Intentions

- 8.1 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.
- 8.2 The planning intention of the "V" zone is to designate both existing recognized 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.

9. Comments from Relevant Government Departments

9.1 The application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - Application site - Footprint of the Small House	34% 56%	66% 44%	- The remaining portion of the Site and Small House footprint fall within the “AGR” zone.
2.	Within ‘VE’? - Application site - Footprint of the Small House	- -	100% 100%	- The Site and the footprint of the proposed Small House fall outside any “VE”. As more than 50% of the proposed footprint falls within “V” zone, District Lands Officer/Tai Po, LandsD (DLO/TP) has no objection to the application.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet Small House demand in Wai Tau Tsuen: about 7.8 ha (equivalent to 312 Small House sites). The outstanding Small House applications are 17 while the 10-year Small House demand forecast is 295.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<u>Land Available</u> - Land available to meet Small House demand within the “V” zone of Wai Tau Tsuen: about 2.73 ha (equivalent to about 109 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application as the Site possesses potential for agricultural rehabilitation.
5.	Compatible with	✓		- The proposed Small House is not

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	surrounding area/ development?			incompatible with the surrounding areas which are predominantly rural in character comprising village houses and farmlands.
6.	Within WGG?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) does not support the application as the wastewater generated from the proposed Small House may have potential to cause water pollution to the WGG.
7.	Sewerage impact?	✓		- The Director of Environmental Protection (DEP) advises that there is existing public sewer in the area with sufficient capacity to accommodate discharge from the proposed development. He does not support the application unless the proposed house will be connected to the public sewer.
8.	Encroachment onto planned road networks and public works boundaries?		✓	
9.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
10.	Traffic impact?	✓		- The Commissioner for Transport (C for T) considers that the application only involving development of a Small House can be tolerated on traffic grounds.
11.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD)

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				advises that an approval condition on the submission and implementation of drainage proposal is required.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) advises that adverse landscape impact arising from the proposed development is not anticipated.
13.	Geotechnical impact?		✓	
14.	Local objections conveyed by DO?		✓	

9.2 Comments from the following government departments have been incorporated in paragraph 9.1 above. Other detailed comments are at **Appendix IV**.

- (a) DLO/TP, LandsD;
- (b) DAFC;
- (c) C for T;
- (d) DEP;
- (e) CE/MN, DSD;
- (f) CE/C, WSD;
- (g) CTP/UD&L, PlanD; and
- (h) D of FS.

9.3 The following government departments have no objection to/no comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H/GEO, CEDD);
- (c) Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) District Officer(Tai Po), Home Affairs Department (DO(TP), HAD).

10. Public Comments Received During Statutory Publication Period (Appendix V)

On 13.8.2021, the application was published for public inspection. During the statutory public inspection period, three public comments were received from individuals raising objections to the application for reasons of adverse impacts on traffic, environment, drainage and villagers' safety and living quality; and no shortage of land in meeting the demand of Small House development.

11. Planning Considerations and Assessments

- 11.1 This application is for a proposed Small House development in an area zoned mainly "AGR" (about 66%) and partly "V" (about 34%) on the OZP. The proposed development is not in line with the planning intention of "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as footpath and water source are available; and the Site possesses potential for agricultural rehabilitation. There is no strong justification in the submission for a departure from the planning intention.
- 11.2 The Site and the footprint of the proposed Small House fall entirely outside the 'VE' of Wai Tau Tsuen (**Plan A-1**). As more than 50% of the proposed footprint falls within "V" zone, DLO/TP, LandsD has no objection to the application. According to the DLO/TP, LandsD's records, the total number of outstanding Small House applications for Wai Tau Tsuen is 17 while the 10-year Small House demand forecast is 295. Based on the latest estimate by Planning Department, about 2.73 ha of land (or equivalent to about 109 Small House sites) is available within the "V" zone of Wai Tau Tsuen (**Plan A-2b**).
- 11.3 The Site, located at the northern fringe of Wai Tau Tsuen (**Plan A-2a**), is partly fenced off, flat and covered with groundcovers (**Plan A-4**). The surrounding areas are predominantly rural in character comprising village houses and farmlands (**Plans A-2a** and **A-3**). CTP/UD&L of PlanD advises that significant landscape impact arising from the proposed development is not anticipated and the proposed development is not entirely incompatible with the surrounding environment.
- 11.4 The Site falls within the WGG. DEP advises that there is existing public sewer in the vicinity of the Site, which is available for connection and has sufficient capacity to accommodate sewage discharge from the proposed development. However, the applicant proposes the use of septic tank and soakaway for foul water disposal. As such, DEP does not support the application. CE/C of WSD also does not support the application as the adoption of septic tank for foul water disposal will have potential to cause water pollution to the WGG, and there is no information in the submission to

demonstrate that the proposed development would have no adverse impacts on the water quality of the surrounding areas. Other relevant Government departments including C for T, CE/CM of DSD and D of FS have no objection to nor adverse comment on the application.

- 11.5 Regarding the Interim Criteria (**Appendix II**), the applicant fails to demonstrate that the proposed development located within the WGG would be able to be connected to the existing/planned sewerage system and would not cause adverse impact on the water quality in the area. Besides, although land available within the “V” zone (about 2.73 ha or equivalent to about 109 Small House sites) is insufficient to fully meet the Small House demand, it is capable to meet the 17 outstanding Small House applications (**Plan A-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. In this regard, 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 infrastructures and services.
- 11.6 As shown on **Plan A-2a**, there are five similar applications for Small House development in close proximity to the Site, with three cases approved and two cases rejected. The three approved cases (Nos. A/NE-KLH/389, 427 and 571) were approved in 2009, 2011 and 2019 respectively, mainly on the grounds of being generally in line with the Interim Criteria in that more than 50% of the proposed Small House footprint was located within the “V” zone; the proposed development would be able to be connected to the planned sewerage system; and there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration or the site was the subject of a previously approved case from the same applicant. The circumstances for approval of these applications were largely not applicable to the current case.
- 11.7 The two rejected applications (No. A/NE-KLH/302 & 405) were rejected by the Committee in 2002 and 2010 respectively mainly because the application site was located mostly outside the ‘VE’ and the “V” zone or it was not able to be connected to the planned sewerage system in the area. The circumstances for rejecting these cases are also applicable to the current one.
- 11.8 Regarding the public comments raising objection to the application as mentioned in paragraph 10, Government departments’ comments and the planning assessments in above paragraphs are relevant.

12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, Planning Department does not support the 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. It is also intended 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;
- (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/ Small House in New Territories in that the applicant fails to demonstrate that the proposed development located within the WGG would be able to be connected to the existing or planned sewerage system and would not cause adverse impact on the water quality in the area; and
- (c) land is still available within the “Village Type Development” (“V”) zone of Wai Tau Tsuen which is primarily intended for Small House development. 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.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 24.9.2025, 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 submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VI**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application form and attachments received on 4.8.2021
Appendix II	Interim Criteria for Consideration of application for NTEH/Small House in New Territories
Appendix III	Similar applications
Appendix IV	Detailed comments from relevant Government departments
Appendix V	Public comments
Appendix VI	Recommended advisory clauses
Drawing A-1	Layout plan submitted by the applicant
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within “V” zone
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
SEPTEMBER 2021**