

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/602

<u>Applicant</u>	Mr. CHEUNG Dak Kin represented by Mr. HUI Kwan Yee
<u>Site</u>	Lot 1065 S.A in D.D. 7 and Adjoining Government Land, Wai Tau, Tai Po, New Territories
<u>Site Area</u>	About 96 m ²
<u>Plan</u>	Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant¹ seeks planning permission to build a NTEH (Small House) on the application site (the Site) (**Plans A-1 and A-2a**) zoned “AGR” on the OZP. According to the Notes of the OZP, ‘House (NTEH only)’ 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:
- | | | |
|-------------------|---|-----------------------|
| Total Floor Area | : | 195.09 m ² |
| Number of Storeys | : | 3 |
| Building Height | : | 8.23 m |
| Roofed Over Area | : | 65.03 m ² |
- 1.3 The Site is accessible to vehicles via a local track. No proposed use is specified for the uncovered area of the Site. Layout of the proposed Small House and a sewerage connection proposal are shown on **Drawings A-1 and A-2**.
- 1.4 The Site is the subject of two previous applications (No. A/NE-KLH/453 and 501) for Small House development submitted by a different applicant. Both were rejected by the Rural and New Town Planning Committee (the Committee)

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

on 19.7.2013 and by the Board on review on 2.9.2016 respectively. Compared with these previous applications, there is no change in major development parameters and footprint of the proposed Small House under current application.

- 1.5 In support of the application, the applicant has submitted an application form with attachment on 16.11.2021 (**Appendix I**).

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 summarised as follows:

- (a) the Site is currently vacant;
- (b) the applicant has no other land for Small House development; 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” of the Site. 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 (WGGs), should be able to be connected to the existing/planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remains unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

5. Previous Applications

- 5.1 The Site is the subject of two previous applications (No. A/NE-KLH/453 and 501) for Small House development submitted by a different applicant. Application No. A/NE-KLH/453 was rejected by the Committee on 19.7.2013 mainly for adverse landscape impact. Application No. A/NE-KLH/501 was rejected on review by the Board on 2.9.2016 for adverse landscape impact and also no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration.
- 5.2 Compared with these previous applications, there is no change in major development parameters and footprint of the proposed Small House under current application.

- 5.3 Details of the previous applications are summarised at **Appendix III** and the location is shown on **Plans A-1** and **A-2a**.

6. Similar Applications

- 6.1 There are four similar applications for NTEH developments within the same “AGR” zone of the Site since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-1**). Three of them (Applications No. A/NE-KLH/349, 381 and 545), each for eight NTEHs, involved the same site. Application No. A/NE-KLH/349 was rejected by the Board on review on 17.8.2007 mainly on the grounds of being unable to be connected to the existing or planned public sewerage system, failing to address the landscape impact and setting undesirable precedent. Applications No. A/NE-KLH/381 and 545 were approved with conditions by the Committee on 22.5.2009 and 4.5.2018 respectively mainly on considerations that the proposed houses are able to be connected to the future public sewers; no adverse impacts on the surrounding area with proposed mitigation measures; and the subject lots had building entitlement.
- 6.2 The remaining Application (No. A/NE-KLH/587) for nine NTEH developments was rejected by the Committee on 1.9.2020 mainly on the grounds of being not able to be connected to the existing or planned public sewerage system; and adverse landscape, geotechnical and water quality impacts.
- 6.3 Details of the similar applications are summarised at **Appendix IV**.

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) a piece of vacant land, and mostly hard paved; and
 - (b) abutting a local track leading to Tai Wo Service Road West to the east.
- 7.2 The surrounding areas are predominantly rural in character occupied by village houses, temporary domestic structures and tree groups (**Plans A-2a** and **A-3**). Wai Tau Tsuen village proper is located on the other side of the local track to the north and a woodland is situated to the immediate west of the Site.

8. Planning Intention

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.

9. Comments from Relevant Government Departments

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

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the Small House	- -	100% 100%	- The Site and the proposed Small House footprint fall entirely within the “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the Small House	100% 100%	- -	- The Site and the proposed Small House footprint fall entirely within ‘VE’ of Wai Tau Tsuen. - DLO/TP, LandsD 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?		✓	- DAFC does not support the application, as the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/development?	✓		- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) considers that the proposed development is not entirely incompatible with its surrounding environment.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
6.	Within WGGs?	✓		- Both Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) and Director of Environmental Protection (DEP) have no objection to the application provided that the applicant should connect the proposed Small House to the existing public sewer at his own cost and reserve adequate land for the sewer connection work.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?	✓		- Commissioner for Transport (C for T) considers that the application only involving construction of a Small House can be tolerated on traffic grounds.
10.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advises that an approval condition on submission and implementation of a drainage proposal is required.
11.	Landscape impact?	✓		- CTP/UD&L, PlanD advises that the proposed development will affect the tree root zone of two large trees in close proximity to the Site. As no tree treatment, tree preservation and mitigation measures are provided, potential impact on these trees is

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				anticipated. Moreover, consideration should be given on whether approval of the application would encourage more village house developments into the “AGR” zone, resulting in irreversible alteration of the landscape character of the “AGR” zone.
12.	Geotechnical impact?		✓	
13.	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 V**.

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

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

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

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

On 23.11.2021, the application was published for public inspection. During the statutory public inspection period, four public comments were received from individuals, objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; causing adverse traffic, fire safety, hygiene issues, geotechnical, ecological, landscape and environmental and fung shui impacts.

11. Planning Considerations and Assessments

- 11.1 This application is for a proposed Small House development at the Site zoned “AGR” on the OZP. 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 also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation.
- 11.2 The Site and the footprint of the proposed Small House fall entirely within the ‘VE’ of Wai Tau Tsuen. DLO/TP of 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 PlanD, 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 is currently vacant and mostly hard paved. The proposed development is considered not entirely incompatible with the surrounding area which is predominantly rural in character with cluster of village houses to the north and east (**Plan A-2a**). However, CTP/UD&L, PlanD advises that the proposed development will affect the tree root zone of two large trees including a *Celtis sinensis* (朴樹) and a 10m high *Litchi chinensis* (荔枝) in close proximity to the western Site boundary (**Plans A-2a and 3**). Potential adverse landscape impact on these trees is anticipated.
- 11.4 The Site is located within the WGG. The applicant has proposed to connect the proposed Small House to the existing public sewerage system (**Plan A-2a**). In this regard, both DEP and CE/C of WSD have no objection to the application. CE/MN of DSD advises that an approval condition of submission and implementation of drainage proposal is required. C for T considers that such type of Small House development should be confined within “V” zone as far as possible but considers that the proposed development involving only one Small House only can be tolerated unless it is rejected on other grounds. Other concerned government departments including D of FS, CHE/NTE of HyD, PM/N of CEDD and H(GEO) of CEDD have no objection to nor adverse comment on the application.
- 11.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Wai Tau Tsuen (**Plan A-1**) and the proposed development would be able to be connected to the existing public sewerage system. However, the proposed development does not comply with the Interim Criteria in that it would cause adverse landscape impact on the surrounding areas and there is no general shortage of land in meeting the Small House demand. While land available within the “V” zone (about 2.73ha or equivalent to about 109 Small House sites) is insufficient to fully meet the future 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 orderly development pattern, efficient use of land and provision of infrastructures and services.

- 11.6 The Site is subject of two previous applications (No. A/NE-KLH/453 and 501) for Small House development, which were both rejected. Application No. A/NE-KLH/453 was rejected by the Committee on 19.7.2013 mainly for adverse landscape impact and Application No. A/NE-KLH/501 was rejected on review by the Board on 2.9.2016 for adverse landscape impact and no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration. The considerations for rejection of these latest previous applications are applicable to the current case.
- 11.7 As shown on **Plan A-2a**, there are three similar applications for NTEH developments in close proximity to the Site, all involving the same site with one cases rejected and two cases approved. Application No. A/NE-KLH/349 was rejected by the Board on review on 17.8.2007 mainly for being not able to be connected to the existing or planned public sewerage system, adverse landscape impact and setting undesirable precedent. Applications No. A/NE-KLH/381 and 545 were approved with conditions by the Committee on 22.5.2009 and 4.5.2018 respectively mainly on considerations that the proposed houses are able to be connected to the future public sewers; no adverse impacts on the surrounding area with proposed mitigation measures; and the subject lots had building entitlement. The circumstances for approval of these two applications are largely not applicable to the current case.
- 11.8 Regarding the public comments objecting to the application as detailed in paragraph 10 above, comments of government departments and the planning assessments above are relevant.

12. **Planning Department’s Views**

- 12.1 Based on the assessment 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 proposed development would cause adverse landscape impact on the surrounding 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 14.1.2026, 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 VII**.

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 16.11.2021
Appendix II	Relevant Interim Criteria for Assessing Planning Applications for NTEH/Small House in New Territories
Appendix III	Previous applications
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant government departments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses
Drawing A-1	Site plan submitted by the applicant
Drawing A-2	Layout plan submitted by the applicant
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available within “V” zone of Wai Tau Tsuen Village for Small House development
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
JANUARY 2022**