

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/604

- Applicant** : Mr. MAN Chun Kiu represented by Mr. YEUNG Siu Fung
- Site** : Lots 32 S.A ss.1 and 32 S.B in D.D. 7, Tai Hang, Tai Po, New Territories
- Site Area** : About 116.2 m²
- Plan** : Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
- Zonings** : “Village Type Development” (“V”) (about 74%)
“Agriculture” (“AGR”) (about 26%)
- Application** : 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 “V” and “AGR” on the OZP. According to the Notes of the OZP, whilst ‘House (NTEH only)’ 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).
- 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. 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/557 and 596) for Small House development submitted by the same applicant, which

¹ According to District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD), the applicant claims himself as an indigenous villager of Tai Hang Village. However, his eligibility of Small House grant has yet to be ascertained.

were rejected by the Board on review on 8.11.2019 and by the Rural and New Town Planning Committee (the Committee) on 23.7.2021 respectively. Compared with the latest previous application, the site area under current application is reduced from about 156 m² to about 116.2 m², the proposed Small House footprint is changed with about 83% falling within the “V” zone (previously about 75%) and sewerage connection instead of septic tank is proposed for sewage disposal.

- 1.5 In support of the application, the applicant has submitted an application form with attachment on 4.1.2022 (**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**, as summarized below:

- (a) the applicant has applied for the same use twice before but failed; and
- (b) for the current application, the applicant will acquire a portion of the adjacent lot so that a proposed development predominantly within the “V” zone could be achieved.

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

The applicant is one of the “current land owners”. He has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by obtaining the consent of the other 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 (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/557 and 596) for Small House development submitted by the same applicant. Application No. A/NE-KLH/557 was rejected by the Board on review on 8.11.2019 mainly for reasons of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell outside the “V” zone and the ‘VE’ of Tai Hang; and there is no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration. Application No. A/NE-KLH/596 was rejected by the Committee on 23.7.2021 mainly for reasons of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that there is no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; and the applicant failed to demonstrate that the proposed development would be able to be connected to the existing/planned sewerage system in the area.
- 5.2 Compared with the latest previous application, the site area under current application is reduced from about 156 m² to about 116.2 m², the proposed Small House footprint is changed with about 83% falling within the “V” zone (previously about 75%) and sewerage connection instead of septic tank is proposed for sewage disposal.
- 5.3 Details of the previous applications are summarized at **Appendix III** and the location is shown on **Plans A-1** and **A-2a**.

6. Similar Applications

- 6.1 There are 13 similar applications for Small House development within the same “AGR” zone of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Among them, four applications were approved and nine were rejected.
- 6.2 Among the rejected cases, seven covering six sites (No. A/NE-KLH/316, 323, 428, 454, 498, 567, 590) were rejected by the Committee between 2003 and 2020, mainly on the ground that there was no general shortage of land to meet the Small House demand at the time of consideration. Five of them (i.e. except Applications No. A/NE-KLH/428 and 498) were also rejected for reason that the application site was not able to be connected to the existing/planned sewerage system in the area or the applicant failed to demonstrate the proposed development would not cause adverse impact on the water quality in the area.
- 6.3 The remaining two rejected cases (Applications No. A/NE-KLH/309 and 326) covered the same site of two subsequently approved cases (Applications No. A/NE-KLH/331 and 452), and were rejected by the Committee in 2003 and 2004 respectively mainly because there was no general shortage of land to meet future Small House demand at the time of consideration. Application No. A/NE-KLH/331 was approved in 2005 mainly for being complied with the Interim Criteria in that more than 50% of the proposed Small House footprint

fell within “V” zone and there was a general shortage of land in meeting the Small House demand at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Application No. A/NE-KLH/452 was approved in 2013 on sympathetic consideration as the application site was the subject of previous approval despite there was sufficient land available within the “V” zone in meeting the future Small House demand at the time of consideration.

6.4 For the remaining two cases, Application No. A/NE-KLH/386 was approved in 2009 for reasons similar to those for approving Application No. A/NE-KLH/331 as mentioned in paragraph 6.3 above. For Application No. A/NE-KLH/451, although there was sufficient land available within the “V” zone in meeting the future Small House demand at the time of consideration, it was approved in 2013 on sympathetic consideration that the proposed Small House footprint fell entirely within the “V” zone and the proposed Small House could be connected to the planned sewerage system in the area.

6.5 Details of the similar applications are summarized at **Appendix IV** 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) vacant and mainly paved with asphalt sand;
- (b) located at the northern fringe of Tai Hang Village but outside the ‘VE’ of it; and
- (c) accessible by vehicles via a local track.

7.2 The surrounding areas are predominantly rural in character comprising village houses, temporary structures, vegetated areas and clusters of tree groups. The existing village cluster is found about 30m to the south of the Site (**Plan A-2a**).

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 summarized 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 proposed Small House	74% 83%	26% 17%	The remaining portion of the Site and the proposed Small House footprint falls within the “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	- -	100% 100%	- The Site and the footprint of the proposed Small House fall outside any ‘VE’ (Plan A-1). - As more than 50% of the proposed Small House footprint falls within “V” zone, 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 Tai Hang Village: about 6.23 ha (equivalent to 249 Small House sites). The outstanding Small House applications are 24 ² while the 10-year Small House demand forecast is 225.
	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 Tai Hang Village: about 7.91 ha (equivalent to about 316 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural point of view as the Site possess potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		The proposed development is not entirely incompatible with its surrounding environment, which is predominantly rural in character

² All of the outstanding Small House applications are within “V” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				comprising Small Houses, temporary structures, vegetated areas and clusters of tree groups.
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 take adequate protective measures to ensure that no pollution or siltation occurs to the water gathering grounds.
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 Small House development should be confined within the “V” zone but as this application involves the development of only one Small House, the proposal 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 the submission and implementation of drainage proposal is required.
11.	Landscape impact?		✓	Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) advises that no significant landscape resource is observed.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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) C for T;
- (c) DEP;
- (d) CE/MN, DSD;
- (e) CE/C, WSD;
- (f) D of FS;
- (g) DAFC; and
- (h) CTP/UD&L, PlanD.

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 the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (c) Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD); and
- (d) District Officer (Tai Po), Home Affairs Department (DO(TP), HAD).

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

On 11.1.2022, the application was published for public inspection. During the statutory public inspection period, two public comments were received from individuals. They object to the application for reasons that the circumstances for rejecting the previous application No. A/NE-KLH/557 remain applicable; and the proposed development would cause adverse traffic, fire safety, ecological, landscape and environmental impacts.

11. Planning Considerations and Assessments

11.1 This application is for a proposed Small House development in an area zoned mainly “V” (about 74%) and partly “AGR” (about 26%) 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 there are active agricultural activities in the vicinity; agricultural infrastructure such as water source and road access 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 Regarding the Interim Criteria, more than 50% of the proposed Small House footprint falls within the “V” zone of Tai Hang but it falls entirely outside any ‘VE’. According to the DLO/TP of LandsD’s records, the total number of outstanding Small House applications for Tai Hang Village is 24 while the 10-year Small House demand forecast is 225. Based on the latest estimate by Planning Department, about 7.91 ha of land (equivalent to about 316 Small House sites) is available within the “V” zone of Tai Hang Village (**Plan A-2b**). In this regard, there is sufficient land within the “V” zone to fully meet the Small House demand of 249 houses. As there is no general shortage of land in meeting the demand for Small House development in the “V” zone, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 11.3 The Site is currently vacant and mainly paved with asphalt sand. The proposed development is considered not entirely incompatible with the surrounding areas which are predominantly rural in character comprising village houses, temporary structures, vegetated areas and clusters of tree groups (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no objection to the application from landscape planning perspective as significant adverse impact on sensitive landscape resources arising from the proposed development is not 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 Small House development should be confined within the “V” zone as far as possible but considers that the application only involving the development of only one Small House can be tolerated. Other concerned government departments including D of FS, CHE/NTE of HyD, PM(N) and H(GEO) of CEDD have no objection to nor adverse comment on the application.
- 11.5 The Site is the subject of two previous applications (No. A/NE-KLH/557 and 596) for Small House development submitted by the same applicant. Application No. A/NE-KLH/557 was rejected by the Board on review on 8.11.2019 mainly for the reasons of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell outside the “V” zone and the ‘VE’ of Tai Hang; and there is no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration. Application No. A/NE-KLH/596 was rejected by the Committee on 23.7.2021 mainly for the reasons of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria

in that there is no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; and the applicant failed to demonstrate that the proposed development would be able to be connected to the existing/planned sewerage system in the area. Compared with the latest previous application, the site area under current application is reduced from about 156 m² to about 116.2 m², the proposed Small House footprint is changed with about 83% falling within the “V” zone (previously about 75%) and sewerage connection instead of septic tank is proposed for sewage disposal. While the concern on sewerage connection is addressed, the other grounds for rejection of these previous applications are still largely applicable to the current one.

- 11.6 There are 13 similar applications for Small House development within the same “AGR” zone. Out of which, two applications (No. A/NE-KLH/331 and 386) were approved by the Committee in 2005 and 2009 respectively for reasons that more than 50% of the Small House footprint fell within the “V” zone and there was a general shortage of land in meeting the Small House demand at the time of consideration. The other two applications were approved in 2013 on sympathetic consideration that the proposed Small House footprint fell entirely within the “V” zone (Application No. A/NE-KLH/451) or the application site was the subject of a previously approved case (Application No. A/NE-KLH/452).
- 11.7 The nine rejected applications (No. A/NE-KLH/309, 316, 323, 326, 428, 454, 498, 567 and 590) were rejected by the Committee between 2003 and 2020 mainly on the grounds that there was no general shortage of land in the “V” zone to meet the Small House demand at the time of consideration and/or the application sites were not able to be connected to the existing or planned sewerage system in the area. The current application is similar to these rejected cases with having no general shortage of land in the “V” zone to meet the Small House demand.
- 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 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; and

- (b) land is still available within the “Village Type Development” (“V”) zone of Tai Hang Village 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 4.3.2026, 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 condition of approval and advisory clauses are also suggested for Members’ reference:

Approval Condition

The submission and implementation of 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 **Appendix VII**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the 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 condition(s) and advisory clause to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application form with attachments received on 4.1.2022
Appendix II	Relevant Interim Criteria for Consideration of Application 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	Layout plan submitted by the applicant

Drawing A-2	Sewerage connection proposal 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 Tai Hang Village for Small House development
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
MARCH 2022**