

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-KLH/611**

<b><u>Applicant</u></b>	Mr. Chan Wah Kwong represented by Rocky Fung Surveying Company
<b><u>Site</u></b>	Lot 857 RP in D.D. 9, Tai Wo Village, Tai Po, New Territories
<b><u>Site Area</u></b>	About 149.4m <sup>2</sup>
<b><u>Lease</u></b>	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
<b><u>Zoning</u></b>	“Agriculture” (“AGR”)
<b><u>Application</u></b>	Proposed House (New Territories Exempted House (NTEH) - Small House)

**1. The Proposal**

- 1.1 The applicant, an indigenous villager of Tai Wo Village<sup>1</sup> as confirmed by the Indigenous Inhabitant Representative (IIR), seeks planning permission to build an NTEH (Small House) on the application site (the Site) falling within an area zoned “AGR” on the OZP (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ within “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  | : | 195.09m <sup>2</sup> |
| Number of storeys | : | 3                    |
| Building height   | : | 8.23m                |
| Roofed over area  | : | 65.03m <sup>2</sup>  |
- 1.3 The uncovered area of the Site is proposed for garden use. The Site is accessible via a local track.
- 1.4 The applicant has proposed connection of the Site with existing public sewerage system. The proposed layout of Small House and sewerage connection plan are shown in **Drawings A-1** and **A-2** respectively.

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<sup>1</sup> The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the applicant’s eligibility of Small House grant has yet to be ascertained.

- 1.5 The Site is subject of five previous applications (No. A/NE-KLH/275, 445, 543, 570 and 595) for Small House development, and four of them were submitted by the current applicant. Details of these applications are set out in paragraph 5.
- 1.6 In support of the application, the applicant submitted the following documents:
- (a) Application form with attachments received on 27.6.2022 **(Appendix I)**
  - (b) Further information (FI) received on 18.8.2022 **(Appendix Ia)**

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in FI at **Appendix Ia** which is summarized as follows:

- (a) the applicant is an indigenous villager of Tai Wo Village and the Site falls within the village 'environs' ('VE') of Tai Wo Village. The Site is the subject of a previous application (No. A/NE-KLH/275) which was approved with conditions by the Committee. The applicant has tried to purchase land within the "V" zone but in vain. With an understanding that housing development was allowed at the Site, the current applicant bought the lot in 2010 for Small House development;
- (b) the applicant's previous application in 2013 (No. A/NE-KLH/445) was objected by Drainage Services Department (DSD) for a reason of having no public sewers available for connection nearby. DSD's concern has been resolved in the later application (No. A/NE-KLH/543) with the applicant's submission of a sewerage connection proposal with consents obtained from the relevant land owners for laying the sewer across their lots. All relevant Government departments had no objection to the application. It was not reasonable for the Board to reject the application; and
- (c) there are similar applications in the surrounding areas which were approved by the Board in the past years. There has been no agricultural activities for many years at the Site and many existing Small Houses are found nearby the Site. The Site is small with no water source, and hence no potential for agricultural rehabilitation. Under Application No. A/NE-KLH/570, Agricultural, Fisheries and Conservation Department (AFCD) had no objection to the application in that the potential for agricultural rehabilitation at the Site was low. All relevant government departments had no objection to the application. This application was subsequently rejected and the Board considered that land was still available within the "V" zone for Small House development. Such claim was incorrect as most of the available land is used for access roads/private gardens or owned by Tso Tong, with very little Government land. The land actually available could only accommodate about 50 Small Houses, which could not meet the total demand of about 257 Small Houses as advised by the relevant IIRs.

### 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. The latest Interim Criteria is at **Appendix II**.

### 5. **Previous Applications**

- 5.1 The Site is the subject of five previous applications (No. A/NE-KLH/275, 445, 543, 570 and 595) for Small House development. Application No. A/NE-KLH/275 submitted by a different applicant was approved with conditions by the Committee on 21.9.2001 before criterion (i)<sup>2</sup> of the Interim Criteria came into effect mainly on the grounds that the Site fell entirely within the ‘VE’ and there was a general shortage of land in meeting the Small House demand at the time of consideration.
- 5.2 Applications No. A/NE-KLH/445, 543, 570 and 595 were submitted by the same applicant of the current application. Application No. A/NE-KLH/445 was rejected by the Board on review on 22.2.2013 mainly for the reason of not complying with the Interim Criteria in that the proposed Small House located within the Water Gathering Grounds (WGG) would not be able to be connected to the planned sewerage system in the area. Since the adoption of a more cautious approach by the Board in approving applications for Small House development in 2015 (i.e. 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 remaining three applications No. A/NE-KLH/543, 570 and 595 were rejected by the Board on review on 14.12.2018 and 20.12.2019, and by the Committee on 12.3.2021 respectively mainly on the grounds of being not in line with the planning intention of “AGR” zone and land still being available within the “V” zone. Compared with the last previous application (No. A/NE-KLH/595), there is no change to the footprint and major development parameters of the proposed Small House under the current application.
- 5.3 Details of the previous applications are summarized at **Appendix III** and the location is shown on **Plans A-1 and A-2a**.

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<sup>2</sup> Criterion (i) requires that the application site, if located within water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated.

## 6. Similar Applications

- 6.1 There are 32 similar applications for Small House development within the same “AGR” zone in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Among which, 16 cases were approved and 16 cases were rejected.
- 6.2 Among the approved cases, six applications (No. A/NE-KLH/271, 272, 273, 277, 279 and 281) were approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002. The remaining 10 (No. A/NE-KLH/328, 341, 345, 346, 391, 392, 402, 409, 438 and 491) were approved between 2003 and 2015 before the adoption of a more cautious approach by the Board in approving applications for Small House development in recent years, i.e. 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. These applications were generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the village ‘environs’ (‘VE’); there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; the proposed development was able to be connected to the planned sewerage system; and/or the application site was the subject of a previously approved case. After the Board’s adoption of a more cautious approach, there is no similar application approved within the same “AGR” zone in the vicinity of the Site.
- 6.3 For the rejected applications, 12 (No. A/NE-KLH/299, 303, 321, 360, 362, 374, 380, 444, 455, 478, 479 and 484) were considered before the Board’s adoption of a more cautious approach, and most of them were rejected mainly on the grounds of the proposed development located within WGG not being able to be connected to the existing/planned sewerage system in the area. Another two applications (No. A/NE-KLH/526 and 548) were rejected in 2017 and 2018, after the Board’s adoption of a more cautious approach, mainly on two grounds i.e. being unable to be connected with the planned sewerage system and land being still available within the “V” zones for Small House development. For the remaining 2 applications (No. A/NE-KLH/593 and 594), they were rejected mainly for a reason that land was still available within “V” zone for Small House development.
- 6.4 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **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) hard paved, partly fenced off and being used for parking of vehicles;
  - (b) bounded by a footpath and a local track on either side; and

(c) accessible by vehicles via a local track.

7.2 The surrounding areas are predominantly rural in character occupied by village houses, temporary domestic structures, vacant land and active/fallow agricultural land.

## 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:

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
1.	Within “V” zone? - Footprint of the Small House - Application site		100% 100%	- Both the Site and the proposed Small House footprint fall entirely within “AGR” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	100% 100%		- Both the Site and the proposed Small House footprint fall entirely within ‘VE’ of Tai Wo.  - District Lands Officer/Tai Po, Lands Department (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)?		✓	<b><u>Land Required</u></b> - Land required to meet Small House demand in Yuen Leng, Kau Lung Hang San Wai and Lo Wai and Tai Wo: about 26.09 ha (equivalent to 1,043 Small House sites). The outstanding Small House applications are 149 <sup>3</sup> while the 10-year Small House demand forecast is

<sup>3</sup> Among the 149 outstanding Small House application, 82 of them fall within the “V” zone and 67 straddle or outside the “V” zone.

	<u><b>Criteria</b></u>	<u><b>Yes</b></u>	<u><b>No</b></u>	<u><b>Remarks</b></u>
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		894. <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the villages concerned: about 8.63 ha (equivalent to about 343 Small House sites) ( <b>Plan A-2b</b> ).
4.	Compatible with the planning intention of “AGR” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application as the Site possesses potential for agricultural rehabilitation that there are active agricultural activities in the vicinity and agricultural infrastructure such as road access and water source is available.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character comprising village houses and active/fallow agricultural land.
6.	Within WGG?	✓		- Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application provided that the proposed Small House would be connected to the public sewer at his own cost.
7.	Sewerage impact?	✓		- Director of Environmental Protection (DEP) has no objection to the application on conditions that (i) the proposed house will be connected to the public sewer; (ii) adequate land space within the Site will be reserved for such connection; (iii) written consent can be obtained from relevant lot owners and/or LandsD for laying and maintaining sewage pipes; and (iv) cost of sewer connection and maintenance will be borne by applicant.
8.	Encroachment onto planned road networks		✓	

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	and public works boundaries?			
9.	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.
10.	Traffic impact?	✓		- Commissioner for Transport (C for T) in general has reservation on the application but considers that the application only involving development of a Small House can be tolerated on traffic grounds.
11.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advises that there is no existing DSD maintained public drains available for connection in the area. Approval condition on the submission and implementation of drainage proposal is required.
12.	Landscape impact?		✓	- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning perspective as adverse impact on existing landscape resources 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 V**.

- (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) DFS.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Chief Engineer/Harbour Area Treatment Scheme, DSD;
- (c) Project Manager/North, Civil Engineering and Development Department;
- (d) District Officer/Tai Po, Home Affairs Department.

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

The application was published for public inspection. During the statutory public inspection period, two public comments were received from MTR Corporation Limited (MTRCL) and an individual. The individual raises objection to the application mainly on grounds that previous applications were rejected and there should be a restriction to limit the applicant to repeatedly submit planning applications. MTRCL provides views on the application that the proposed development could be sensitive to air-borne noise generated from the East Rail and suggests the applicant to conduct railway noise impact assessment.

## **11. Planning Considerations and Assessments**

- 11.1 The application is for a proposed Small House on the Site zoned “AGR” 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 as 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 ‘VE’ of Tai Wo and the proposed development located within WGG would be able to be connected to public sewerage system. According to the DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Yuen Leng, Kau Lung Hang and Tai Wo Villages is 149 while the 10-year Small House demand forecast for the same villages is 894. Based on the latest estimate by PlanD, about 8.63 ha of land (or equivalent to about 343 Small House sites) is available within the “V” zones of the concerned villages. Since there is an overlapping between the ‘VE’ of Tai Wo and the ‘VE’ of Yuen Leng and Kau Lung Hang Lo Wai and San Wai, the land availability for Small House development in this application is assessed by combining the “V” zones of all these villages to avoid double counting. In this regard, while land available within the “V” zones is insufficient to fully meet the



total future Small House demand of 1,043 Small Houses in these villages, such available land is capable to meet the outstanding 149 Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in 2015. 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. As such, 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.

- 11.3 The Site, located at the southern fringe of Yuen Leng, is hard paved. The proposed Small House development is not incompatible with the surrounding area which is predominantly rural in character with active/fallow agricultural land and village houses. CTP/UD&L of PlanD has no objection to the application from the landscape planning perspective as the Site is currently hard paved with no significant landscape resource observed, and adverse impact on existing landscape resources arising from the proposed development is not anticipated.
- 11.4 The Site falls within the upper indirect WGG. The applicant proposes to connect the proposed Small House to the existing public sewer at Tai Wo Service Road East, which is about 100m to the west of the Site. DEP, CE/MN of DSD and CE/C of WSD have no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at their own cost, and adequate space within the Site will be reserved for connection. Other Government departments consulted including D of FS, CHE/NTE of HyD, H(GEO) of CEDD and DO/TP of HAD have no objection to/ no adverse comment on the application.
- 11.5 Regarding to the applicant’s claim that land available within the “V” zone of Yuen Leng as estimated by PlanD under the previous application No. A/NE-KLH/570 could only accommodate 50 Small Houses as most of the available land are owned by Tso Tong or used as access roads or private gardens, and hence it could not meet the 10-year Small House demand of Yuen Leng Village (i.e. 257 Small Houses)<sup>4</sup> as provided by the IIRs, it should be noted that PlanD, in estimating land available for Small House development in the “V” zone, has adopted a consistent approach and would make use of the latest available information. In general, land occupied by road, existing and approved village houses, steep slope, major tree cluster and stream buffer will be deducted from the area available for Small House development. Land ownership is not a material consideration as it could be subject to change and land parcel could be subdivided to suit development needs. For land currently being occupied by private gardens of local villagers or other temporary uses, they will be included as a source of land supply.
- 11.6 The Site is the subject of five previous applications. Application No. A/NE-KLH/275 submitted by a different applicant was approved in 2001 before

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<sup>4</sup> The 10-year Small House demand figure of 257 was quoted by the applicant in his submission whereas the recent figure of 244 was provided by the IIRs as at 7.2.2022 via DLO/TP under the current application.

criteria (i) of the Interim Criteria came into effect on 23.8.2022. The remaining four applications (No. A/NE-KLH/445, 543, 570 and 595) which were submitted by the same applicant of the current application were rejected on review by the Board or by the Committee. In particular, the last three previous applications (No A/NE-KLH/543, 570 and 595) were rejected mainly on the grounds of being not in line with the planning intention of “AGR” zone and land still being available within the “V” zone. Compared with the last previous application (No. A/NE-KLH/595), there is no change to the footprint and major development parameters of the proposed Small House under the current application.

- 11.7 As shown on **Plan A-2a**, there are 32 similar applications located within the same “AGR” zone and in the vicinity of the Site. Among which, 16 cases were approved and 16 cases were rejected. For the 16 approved applications (No. A/NE-KLH/271, 272, 273, 277, 279, 281, 328, 341, 345, 346, 391, 392, 402, 409, 438 and 491), they were approved before adoption of a more cautious approach and mainly on the grounds of being in line with the Interim Criteria as there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration. Since the adoption of a more cautious approach by the Board, no similar application was approved within the same “AGR” zone in the vicinity of the Site. For the rejected applications, 12 applications (No. A/NE-KLH/299, 303, 321, 360, 362, 374, 380, 444, 455, 478, 479 and 484) were considered before the adoption of a more cautious approach, and they were rejected mainly on the grounds of the proposed development located within WGG not being able to be connected to the existing/planned sewerage system in the area. The remaining 4 applications (No. A/NE-KLH/526, 548, 593 and 594) were rejected after the adoption of a more cautious approach and mainly for a reason that land was still available within “V” zone for Small House development. The planning circumstances for rejecting the last two similar applications (No. A/NE-KLH/593 and 594) are applicable to the current application.
- 11.8 Regarding the public comments raising concerns on the application on the grounds as detailed in paragraph 10 above, Government departments’ comments and the planning assessments in above paragraphs are relevant. Regarding MTRCL’s comments on the Site being subject to railway noise impact, DEP indicates that with noise barrier erected along the East Rail, no insurmountable railway noise impact at the Site is anticipated.

## **12. Planning Department’s Views**

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10 above, the 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 “V” zone of Yuen Leng, Kau Lung Hang and Tai Wo 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 26.8.2026, 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

- 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 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 27.6.2022
Appendix Ia	Further information received on 18.8.2022
Appendix II	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  
Appendix VII

Public comments  
Recommended advisory clauses

Drawings A-1  
and A-2

Layout plan and 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 for Small House  
development within “V” zone

Plan A-3

Aerial photo

Plan A-4

Site photos

**PLANNING DEPARTMENT  
AUGUST 2022**