

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

**APPLICATION NO. A/NE-KLH/613**

<b><u>Applicant</u></b>	Mr. CHEUNG Dak Kin represented by Mr. Pang Hing Yeun
<b><u>Site</u></b>	Lot 1065 S.A in D.D. 7 and Adjoining Government Land, Wai Tau, Tai Po, New Territories
<b><u>Site Area</u></b>	About 89.4 m <sup>2</sup> (including government land of 8.5 m <sup>2</sup> )
<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<sup>1</sup> 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 <sup>2</sup>
Number of Storeys	:	3
Building Height	:	8.23 m
Roofed Over Area	:	65.03 m <sup>2</sup>

1.3 The Site is accessible via a local track leading to Tai Wo Service Road West. 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 **Drawing A-1**.

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

- 1.4 The Site is the subject of three previous applications (No. A/NE-KLH/453, 501 and 602) for Small House development. Details of the previous applications as set out in paragraph 5 below.
- 1.5 In support of the application, the applicant has submitted an application form with attachment on 16.11.2022 (**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**. They can be summarised as follows:

- (a) the applicant is an indigenous villagers of Wai Tau Tsuen and has the right to build a Small House;
- (b) as the Site falls entirely within 'VE' of Wai Tau Tsuen, planning permission for Small House development may be approved within conditions;
- (c) the Site has been hard-paved and vacant for a long time. In the past decades, it has not been used for agricultural activities and is no longer suitable for farming. There is no potential for agricultural rehabilitation;
- (d) the applicant has no other land for Small House development;
- (e) there are some Small Houses built and similar planning applications approved in the vicinity of the Site. The proposed development is compatible with the surrounding areas;
- (f) there are an existing vehicular access and public transport serving the Site, thus no parking space is required;
- (g) since the proposed Small House development is approximately 4m away from the existing *Celtis sinensis* (朴樹) and *Litchi chinensis* (荔枝), potential impact on the trees is not anticipated;
- (h) there will have no sewerage impact as the Small House would be connected to public sewerage system and no septic tank is proposed; and
- (i) according to the Planning Department's estimate under the previous application, land available within Wai Tau Tsuen was about 2.5 ha. However, based on the applicant's site inspection, the estimated land available for Small House development should be about 1.4ha as some land is covered and occupied by temporary domestic structures, car parking and access road, private garden which are not suitable for Small House development. Besides, the above-mentioned available land is all private land owned by third party. It is difficult for the applicant to purchase suitable land for building Small House within the village.

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 were amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. 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 three previous applications (No. A/NE-KLH/453, 501 and 602) for Small House development, of which A/NE-KLH/602 was submitted by the same applicant of the current application. All of them were rejected by the Rural and New Town Planning Committee (the Committee) on 19.7.2013 and by the Board on review on 2.9.2016 and 13.5.2022 respectively mainly for reasons of adverse landscape impact; no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; and/or not in line with the planning intention of the “AGR” zone.
- 5.2 Compared with the last application, 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 three similar applications for NTEH developments in close proximity to the Site, all involving the same site with one case rejected and two cases approved (**Plan A-2**). 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 were able to be connected to the future public sewers; no adverse impacts on the surrounding area with proposed mitigation measures; and the subject site had building entitlement.
- 6.2 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) upper indirect WGG;
- (b) a piece of vacant land, and mostly hard paved; and
- (c) abutting a local track leading to Tai Wo Service Road West to the east.

7.2 The surrounding areas are predominantly rural in character comprising village houses, temporary domestic structures and tree groups (Plans A-2a and A-3). The village proper of Wai Tau is located on the other side of the local track to the east and dense vegetation is found 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.

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
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 <sup>2</sup> 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 2.83 ha (equivalent to about 113 Small House sites) ( <b>Plan A-2b</b> ).
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.
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 would connect the proposed Small House to the existing public sewer at his own cost and reserve adequate land for the sewer connection works.

<sup>2</sup> Among the 17 outstanding Small House application, 15 of them fall within the “V” zone and 2 straddle or outside the “V” zone.

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
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 proposed type of development should be confined within “V” zone as far as possible. Notwithstanding 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 there are two large trees in the vicinity of the Site. As the tree root zone of the said trees is in close proximity to the Site, there is concern that the trees will be affected by the proposed Small House. Since no tree treatment, tree preservation and mitigation measures are provided, potential impact on these trees is anticipated. Moreover, Wai Tau Tsuen Fung Shui woodland is located adjoining the northwest of the Site. There is concern that approval of the application may further alter the landscape character and degrade the landscape quality of the “AGR”

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
				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)**

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 impacts on traffic, fire safety, hygiene, geotechnical, ecological, landscape and environmental and fung shui aspects; and affecting the road safety during construction of sewerage connection.

## **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 Regarding the Interim Criteria, the Site and the footprint of proposed Small House fall entirely within the 'VE' of Wai Tau Tsuen. According to 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 2.83 ha of land (or equivalent to about 113 Small House sites) is available within the "V" zone of Wai Tau Tsuen. While land available within the "V" zone is insufficient to fully meet the future Small House demand, it is capable of meeting the 17 outstanding Small House applications. It should be noted that the Board has formally adopted a more cautious approach in approving applications for Small House development in August 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. 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.
- 11.3 The Site is currently vacant and mostly hard paved. The proposed development is considered not entirely incompatible with the surrounding areas which are predominantly rural in character comprising village houses, temporary domestic structures and tree groups. However, CTP/UD&L, PlanD expresses concern that the two existing large trees (i.e. *Celtis sinensis* (朴樹) and a 10m high *Litchi chinensis* (荔枝)) in close proximity to the western boundary of the Site will be affected by the proposed development (**Plans A-2a and 3**). Since there are no tree treatment and mitigation measures provided in the submission, potential adverse landscape impact is anticipated.
- 11.4 The Site is located within the upper indirect 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. Other concerned government departments including C for T, and D of FS have no objection to nor adverse comment on the application.
- 11.5 The applicant's claims that land available within the "V" zone of Wai Tau Tsuen as estimated by PlanD under the previous application which is suitable for Small House developments should only be 14,000m<sup>2</sup> as most of the available land is covered or occupied by domestic structures, car parking, access road and private garden. 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 access 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. For land being occupied by private gardens of local villagers or other temporary uses (e.g. car parking), they will be included as a source of land supply. Regarding the difficulty in acquiring suitable land



within “V” zone, it should be noted that land ownership is not a material consideration as it could be subject to change and land parcel could be subdivided to suit development needs.

- 11.6 The Site is subject of three previous applications (No. A/NE-KLH/453, 501 and 602) which were all rejected based on the grounds set out in paragraph 5.1. There is no major change in planning circumstances since the rejection of the last previous planning application.
- 11.7 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 above, 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 areas; 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 14.10.2026, 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 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**

<b>Appendix I</b>	Application form and attachments received on 15.8.2022
<b>Appendix II</b>	Relevant Interim Criteria for Assessing Planning Applications for NTEH/Small House in New Territories
<b>Appendix III</b>	Previous applications
<b>Appendix IV</b>	Similar applications
<b>Appendix V</b>	Detailed comments from relevant government departments
<b>Appendix VI</b>	Public comments
<b>Appendix VII</b>	Recommended advisory clauses
<b>Drawing A-1</b>	Site plan submitted by the applicant
<b>Drawing A-2</b>	Land available estimation by the applicant
<b>Plan A-1</b>	Location plan
<b>Plan A-2a</b>	Site plan
<b>Plan A-2b</b>	Estimated amount of land available within “V” zone of Wai Tau Tsuen for Small House development
<b>Plan A-3</b>	Aerial photo
<b>Plan A-4</b>	Site photos

**PLANNING DEPARTMENT  
OCTOBER 2022**