

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/621

<u>Applicant</u>	Mr. CHAN King-chuen
<u>Site</u>	Lot 94 S.G ss.8 R.P, 94 S.G ss.9 and 324 S.B R.P in D.D. 9, Yuen Leng, Tai Po, New Territories
<u>Site Area</u>	About 104.9m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
<u>Zonings</u>	“Agriculture” (“AGR”) (about 51.5% of the Site) and “Village Type Development”(“V”) (about 48.5% of the Site)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, an indigenous villager of Kau Lung Hang¹ 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 partly zoned “AGR” and partly zoned “V” on the OZP (**Plan A-1**). According to the Notes of the OZP, while ‘House (NTEH only)’ is always permitted within “V” zone, such use 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 ²
Number of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²

1.3 According to the applicant’s submission, the Site is accessible via a local track. The uncovered area is proposed for circulation area. The applicant also proposes to connect the proposed development to the existing public sewerage system. The proposed layout of Small House and sewerage connection proposal submitted by the applicant are shown in **Drawings A-1** and **A-2** respectively.

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

- 1.4 In support of the application, the applicant submitted an Application form with attachment on 30.3.2023 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix I** as summarized as follows:

- (a) the Site falls within the Water Gathering Grounds (WGGs). The proposed development will be able to connect to the existing public sewerage system and would not cause adverse impact on water quality;
- (b) the actual land available for Small House development is far less than the estimate as some areas within “V” may not be suitable for development. For example, left-over area between existing village houses, private garden, existing pedestrian and vehicular access, private parking spaces and scattered land, land in irregular shape and difficult topography;
- (c) it is difficult to acquire Tso/Tong land for Small House as unanimous consents have to be sought from all Tso/Tong members; and
- (d) many village houses were built to the northwest of the Site. Also, there are similar applications (No. A/NE-KLH/351, 352, 357, 401, 533 and 540) shown on **Plan A-2b**) in the surrounding areas which were approved by the Board in the past years.

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. The latest set of Interim Criteria promulgated on 7.9.2007 is at **Appendix II**.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

- 6.1 There are 19 similar applications for Small House development in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Among which, 15 cases were approved and four cases were rejected.

- 6.2 Among the approved cases, application No. A/NE-KLH/259 was approved on 2.2.2001 before criterion (i)² of the Interim Criteria came into effect on 23.8.2002. Eight applications (No. A/NE-KLH/347, 372, 397, 400, 442, 471, 472 and 473) covering five sites were approved between 2006 and 2015 before the formal adoption of a more cautious approach by the Board in approving applications for Small House development since August 2015. These applications were approved mainly on consideration of being 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.
- 6.3 Since then, there were six applications approved between 2016 and 2018, five of which (No. A/NE-KLH/523, 542, 553, 554 and 555) were approved mainly on sympathetic consideration as they were the subject of previously approved applications. The remaining one (No. A/NE-KLH/519) was approved by the Committee mainly on sympathetic consideration as approved similar applications adjoined to the eastern site boundary and several similar applications were approved to the west of the “V” zone of Kau Lung Hang San Wai.
- 6.4 For the four rejected applications (No. A/NE-KLH/521, 537, 538 and 577), they were rejected by the Committee or the Board on review between 2017 and 2019 mainly on the grounds of being not in line with planning intention of “AGR” zone and land was still available within “V” zone for Small House development at time of consideration. Application No. A/NE-KLH/577 was also rejected for reason that the applicant failed to demonstrate that the proposed Small House would be able to be connected to public sewerage system.
- 6.5 For similar applications mentioned by the applicant, they are located far away from the Site (**Plan A-2b**). Applications No. A/NE-KLH/351, 352, 357 and 401 were approved before the formal adoption of cautious approach mainly on consideration that more than 50% of the Small House footprint was within ‘VE’ and there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration. For Applications No. A/NE-KLH/533 and 540, they were approved in 2017 on sympathetic consideration that more than 90% of the Small House footprint fell within the “V” zone and the application site was immediately surrounded by existing village houses and approved Small House applications respectively.
- 6.6 Details of the similar applications are summarized at **Appendix III** and locations are shown on **Plans A-2a** and **A-2b**.

² Criterion (i) requires that application site, if located within WGGs, should be able to be connected to the existing/planned sewerage system in the area.

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) largely paved and a small portion is covered with shrubs and vegetation;
- (b) located within the ‘VE’ of Kau Lung Hang and Yuen Leng Villages;
- (c) located within the upper indirect WGG; and
- (d) accessible via a local track.

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

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - Footprint of the Small House - Application site	62.5% 48.5%	37.5% 51.5%	- About 51.5% of the Site and about 37.5% of the proposed Small House footprint fall within “AGR” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	99% 80%	1% 20%	- According to DLO/TP, LandsD, more than 50% of the Site and the proposed Small House footprint fall within ‘VE’ of Kau Lung Hang and Yeun Leng Villages.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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 Kau Lung Hang and Yuen Leng Villages: about 21.9 ha (equivalent to 876 Small House sites). The outstanding Small House applications are 98 ³ while the 10-year Small House demand forecast is 778. <u>Land Available</u> - Land available to meet Small House demand within the “V” zones of the villages concerned: about 6.04 ha (equivalent to about 241 Small House sites) (Plan A-2c).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		
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 in that 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, temporary structures, active/fallow agricultural land and vacant land.
6.	Within WGG?	✓		- Chief Engineer/Construction, WSD (CE/C, WSD) has no objection to the application provided that the proposed Small House would be connected to the public sewerage system at his own cost.
7.	Sewerage impact?	✓		- Director of Environmental

³ Among the 98 outstanding Small House applications, 74 of them fall within the “V” zone and 24 straddle or fall outside the “V” zone of which 15 are subject of previously approved applications.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				Protection (DEP) has no in-principle objection to the application provided that the applicant will provide adequate sewer connection for disposal of sewage from the proposed development to the existing public sewer at his own costs and reserve adequate land for the sewer connection work.
8.	Encroachment onto planned road networks 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) advises that Small House development should be confined with the “V” zone as far as possible. Although additional traffic generated by the proposed developments is not expected to be significant, such type of developments outside the “V” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The cumulative adverse traffic impact could be substantial. Notwithstanding the above, the applications only involving development of one Small House at each of the Sites can be tolerated on traffic grounds.
11.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advises that there is existing public drains available for connection in the area. An approval condition on the submission and

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				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 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;
- (b) Project Manager/North, Civil Engineering and Development Department; and
- (c) District Officer/Tai Po, Home Affairs Department.

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

The application was published for public inspection. During the statutory public inspection period, one public comment was received from an individual raising objection to the application mainly on grounds that there is adequate land within the “V” zone of Kau Lung Hang and the Site is not the subject of any previous planning approval.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House at the Site falling within area partly zoned “AGR” and partly zoned “V” on the OZP. Although the proposed development is always permitted within the “V” zone, it 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.
- 11.2 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the ‘VE’ of Kau Lung Hang and Yuen Leng Villages (**Plan A-2a**). According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Kau Lung Hang and Yuen Leng Villages is 98 while the 10-year Small House demand forecast for the same villages is 778. Based on the latest estimate by PlanD, about 6.04 ha of land (or equivalent to about 241 Small House sites) is available within the “V” zones of the concerned villages (**Plan A-2b**). While land available within the “V” zones is insufficient to fully meet the total future Small House demand of 876 Small Houses in these villages, it is capable of meeting the outstanding 98 Small House applications. It should be noted that the Board has formally adopted a more cautious approach in approving applications for Small House development since August 2015. Among 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.
- 11.3 The Site is largely hard paved with a small portion covered with vegetation. The proposed Small House is considered not incompatible with the surrounding areas which is predominantly rural in character comprising village houses, temporary structures, active/fallow agricultural land and vacant land. CTP/UD&L of PlanD has no objection to the application as adverse impact on existing landscape resources arising from the proposed development is not anticipated.
- 11.4 The Site falls within the upper indirect WGG, and the applicant proposes to connect the proposed Small House to the existing public sewer (**Plan A-2a**). DEP and CE/C of WSD have no objection to the application provided that the applicant will connect the proposed Small House to the public sewer at his own cost and adequate space within the Site will be reserved for connection. CE/MN of DSD recommends an approval condition requiring the submission and implementation of drainage proposal. Other government departments consulted including D of FS and PM/N of CEDD have no objection to/ no adverse comment on the application.

- 11.5 Regarding the approved similar applications mentioned by the applicant, Applications No. A/NE-KLH/351, 352, 357 and 401 were approved before the Board's formal adoption of the cautious approach. For Applications No. A/NE-KLH/533 and 540, they were approved on sympathetic consideration as majority of the Small House footprint fell within the "V" zone and the application site was immediately surrounded by existing village houses and approved Small House applications respectively. Since the Board's formal adoption of cautious approach, six similar applications (No. A/NE-KLH/523, 542, 553, 554 and 555) were approved mainly on consideration as set out in paragraph 6.2 while four similar applications (No. A/NE-KLH/521, 537, 538 and 577) were rejected. The rejected applications were mainly for reasons of being not in line with planning intention of "AGR" zone and land was still available within "V" zones for Small House development at time of consideration. The planning circumstances for rejecting these similar application are applicable to the current one.
- 11.6 Regarding the public comment objecting to the application as detailed in paragraph 10 above, 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 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 Kau Lung Hang and Yuen Leng 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 19.5.2027, 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 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 30.3.2023
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 comment
Appendix VI	Recommended advisory clauses
Drawing A-1	Layout plan
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 for Small House development within “V” zone
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MAY 2023**