

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/623

- Applicant** : Mr. CHEUNG Hin Yeung represented by Mr. LAU Chee Sing
- Site** : Lot 975 S.A RP in D.D. 7, Wai Tau, Tai Po, New Territories
- Site Area** : About 81m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
- Zonings** : “Village Type Development” (“V”) (about 53.3m² or 65.8%)
“Agriculture” (“AGR”) (about 27.7m² or 34.2%)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

1.1 The applicant, who is an indigenous villager of Wai Tau Tsuen as confirmed by the Indigenous Inhabitant Representative¹, seeks planning permission to build an NTEH (Small House) on the application site (the Site) falling within an area zoned “V” (about 53.3m² or 65.8%) and “AGR” (about 27.7m² or 34.2%) on the OZP (**Plans A-1 and A-2a**). According to the Notes of the OZP, ‘House (NTEH only)’ is always permitted within “V” zone while such use within “AGR” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed Small House are as follows:

Total Floor Area	:	142.59m ²
Number of Storeys	:	3
Building Height	:	8.23m
Roofed Over Area	:	47.53m ²

1.3 According to the applicant, the uncovered area is proposed for garden use. The layout of the proposed Small House and the proposed sewerage connection are shown in **Drawings A-1 and A-2**.

¹ 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.

- 1.4 The Site is the subject of a previous application (No. A/NE-KLH/599) for Small House development submitted by the same applicant, which was rejected on review by the Board on 25.2.2022. Details of the previous application are set out in paragraph 5.1 below.
- 1.5 In support of the application, the applicant has submitted the Application Form with attachments received on 11.5.2023 (**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** and are summarized below:

- (a) the applicant is an indigenous villager and has applied to DLO/TP for development of a Small House several years ago;
- (b) the applicant has no other land for Small House development; and
- (c) there are existing village houses adjoining 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. The latest set of Interim Criteria promulgated on 7.9.2007 is at **Appendix II**.

5. Previous Application

- 5.1 The Site forms part of a previous planning application (No. A/NE-KLH/599) for the same use submitted by the same applicant, which was rejected by the Rural and New Town Planning Committee (the Committee) and the Board on review on 24.9.2021 and 25.2.2022 respectively. The s.16 application was rejected by the Committee mainly for reasons of being not in line with the planning intention of “AGR” zone; not able to be connected to the existing or planned sewerage system; and land was still available within “V” zone of the concerned village at the time of consideration. The s.17 review application was rejected by the Board for similar reasons as mentioned above, except for the one related to sewerage connection which had subsequently been addressed.
- 5.2 As compared to the previous application, the site area has been reduced from 165m² to 81m².

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

6. Similar Applications

- 6.1 There are five similar applications for NTEH 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 them, three applications were approved and two were rejected.
- 6.2 Applications No. A/NE-KLH/389 and 427 were approved by the Committee in 2009 and 2011 respectively before the formal adoption of a more cautious approach in considering Small House applications since August 2015 mainly on the grounds of being generally in line with the Interim Criteria in that more than 50% of the proposed Small House footprint was located within the “V” zone; the proposed development would be able to be connected to the planned sewerage system; and there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration. Application No. A/NE-KLH/571 was approved on 16.8.2019 mainly on sympathetic consideration for being the subject of a previously approved application and the Small House grant application was under processing by LandsD.
- 6.3 Application No. A/NE-KLH/302 was rejected by the Committee on 13.12.2002 mainly on consideration that the application site was located mostly outside the village ‘environs’ (‘VE’) and “V” zone, while Application No. A/NE-KLH/405 was rejected by the Committee on 11.6.2010 mainly for reason of not being able to be connected to the planned sewerage system in the area.
- 6.4 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-2a**.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4)

- 7.1 The Site is:
- (a) vacant and partly covered with overgrown grass;
 - (b) located at the northwestern fringe of Wai Tau Tsuen but entirely outside the ‘VE’;
 - (c) located within upper indirect water gathering grounds (WGG); and
 - (d) accessible via a local footpath.
- 7.2 The surrounding areas are predominantly rural in character comprising village houses, farmlands, vegetated areas and tree clusters. The existing village cluster of Wai Tau Tsuen is found to the immediate southeast 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 at **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 proposed Small House - The Site	72% 65.8%	28% 34.2%	- About 34.2% of the Site and about 28% of the proposed Small House footprint fall within “AGR” zone.
2.	Within ‘VE’? - Footprint of the proposed Small House - The Site		100% 100%	- The Site and footprint of the proposed Small House fall entirely outside the ‘VE’ of Wai Tau Village.
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 7.85 ha (equivalent to 314 Small House sites). The number of outstanding Small House applications is 9 ² while the 10-year Small House demand forecast is 305. <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of concerned village: about 2.71ha (equivalent to about 108 Small House sites) (Plan A-2b).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		

² Among the 9 outstanding Small House applications, 8 fall within “V” zone. The remaining one falls outside the “V” zone and is not covered by valid planning permission.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
4.	Compatible with the planning intention of “AGR” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application as agricultural activities are active in the vicinity, and agricultural infrastructures such as footpath and water source are also available. The Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The Site is located in an area of settled valleys landscape character comprising small houses, temporary structures, farmlands, vegetated area and clusters of tree groups.
6.	Within water gathering grounds?	✓		- Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application provided that the applicant would connect the proposed Small House to the existing public sewer and take adequate protective measures to ensure that no pollution or siltation occurs to the WGG.
7.	Sewerage impact?		✓	- Director of Environmental 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?		✓	

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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. The applicant is reminded to observe the “New Territories Exempted Houses – A Guide to Fire Safety Requirements” published by LandsD.
10.	Traffic impact?	✓		- Commissioner for Transport (C for T) advises that Small House development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development 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 application only involving development of one Small House can be tolerated on traffic grounds.
11.	Drainage impact?		✓	- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advises that an approval condition requiring 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 landscape planning perspective as significant adverse impact on the landscape character and existing landscape resources within the Site arising from the proposed use is not anticipated.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
13.	Geotechnical impact?		✓	
14.	Local objections conveyed by DO?		✓	- District Officer (Tai Po) (DO(TP)) has no comments on the application.

9.2 Comments from the following government departments have been incorporated in paragraph 9.1 above. Other detailed comments and recommended advisory clauses are provided at **Appendices V** and **VI** respectively.

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

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 Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
- (c) Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comments Received During Statutory Publication Period

On 19.5.2023, the application was published for public inspection. During the statutory public inspection period, two public comments (**Appendix VII**) were received from individuals objecting to the application mainly for reasons that land is still available within the “V” zone; and there is no proper access to the Site.

11. Planning Considerations and Assessment

11.1 The application is for a proposed Small House development on the Site which falls within an area zoned “V” and “AGR” on the OZP. Although the proposed development is always permitted within “V” zone, it 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 perspective, 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 (**Appendix II**), while the Site and the proposed Small House footprint fall entirely outside the 'VE' of Wai Tau Tsuen, more than 50% of the proposed Small House footprint falls within "V" zone. According to DLO/TP of LandsD's records, the total number of outstanding Small House applications for Wai Tau Tsuen is 9 while the 10-year Small House demand forecast is 305. Based on the latest estimate by PlanD, about 2.71 ha of land (or equivalent to about 108 Small House sites) is available within the "V" zone of the concerned village (**Plan A-2b**). While land available within the "V" zone is insufficient to fully meet the total future Small House demand of 314 Small Houses, it is capable of meeting the outstanding 9 Small House applications. It should be noted that the Board has formally adopted a more cautious approach in considering 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 located at the northwestern fringe of Wai Tau Tsuen, and is vacant and partly covered with overgrown grass. The surrounding areas are predominantly rural in character comprising village houses, farmlands, vegetated areas and tree clusters. CTP/UD&L of PlanD has no objection to the application as significant adverse landscape impact on the surrounding areas 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 existing public sewers. DEP and CE/C of WSD has no 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. CE/MN of DSD recommends an approval condition requiring the submission and implementation of drainage proposal. Other concerned government departments including D of FS, CHE/NTE of HyD, H(GEO) of CEDD and DO(TP) of HAD have no objection to or no adverse comment on the application.
- 11.5 The Site forms part of a previous planning application (No. A/NE-KLH/599) submitted by the same applicant which was rejected by the Committee and the Board on review on 24.9.2021 and 25.2.2022 respectively for reasons which are set out in paragraph 5.1 above. As compared to the previous application, the site area has been reduced from 165m² to 81m². Considerations of the previously rejected application are still applicable to the current one.

- 11.6 There are five similar applications within the same “AGR” zone in the vicinity of the Site. Regarding the three approved similar applications, Applications No. A/NE-KLH/389 and 427 were approved before the Board’s formal adoption of the more cautious approach in considering Small House applications. For Application No. A/NE-KLH/571, it was approved mainly on sympathetic consideration for being the subject of a previously approved application. The planning circumstances for approval of these applications were not applicable to the current 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 assessments 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 “Agriculture” 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 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 23.6.2027, 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 a 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 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(s) to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application Form received on 11.5.2023
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Previous application
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant government departments
Appendix VI	Recommended advisory clauses
Appendix VII	Public comments
Drawing A-1	Proposed layout plan
Drawing A-2	Proposed sewerage connection plan
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 for Small House development
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
JUNE 2023**