

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/529

- Applicant** : Mr. PANG Jonathan Kwok Wai represented by Mr. PANG Hing Yeun
- Site** : Lot 582 in D.D. 100, Tsiu Keng, Sheung Shui, New Territories
- Site Area** : 377.5m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/18 at the time of submission of the application
- Draft Kwu Tung South OZP No. S/NE-KTS/19 currently in force [the zoning and development restrictions of the application site remain unchanged]
- Zoning** : “Agriculture” (“AGR”) (about 87%)
“Village Type Development”(“V”) (about 13%)
- Application** : Proposed House (New Territories Exempted House (NTEH) — Small House)

1. The Proposal

- 1.1 The applicant, who claims to be an indigenous villager¹ of Tsiu Keng Pang Uk, seeks planning permission to build a house (NTEH - Small House) on the application site (the Site) in Tsiu Keng Lo Wai², Sheung Shui. The Site falls within an area partly zoned “AGR” (about 87%) and partly zoned “V” (about 13%) on the draft Kwu Tung South OZP No. S/NE-KTS/19 (**Plans A-1 and A-2a**). According to the Notes of the OZP, the proposed ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH)’ in the “AGR” zone requires planning permission from the Town Planning Board (the Board) while it is always permitted in the “V” zone. The Site is currently vacant and covered with weeds

¹ As advised by the District Lands Officer/North, Lands Department (DLO/N, LandsD), the eligibility of the applicant for Small House concessionary grant has yet to be ascertained.

² Tsiu Keng comprises 4 areas in that Tsiu Keng Lo Wai, Tsiu Keng San Wai and Tsiu Keng Pang Uk are covered by one “V” zone and Chan Uk Po is covered by another “V” zone.

(Plan A-4).

- 1.2 The Site was granted with planning permission in 2014 under application No. A/NE-KTS/366 for a proposed House (NTEH – Small House) submitted by another applicant. The planning permission lapsed on 10.5.2022. Compared with the previous application, major development parameters and the Small House footprint are generally the same while the site area under the current application is slightly larger.
- 1.3 The proposed Small House has a covered area of 65.03m², 3 storeys (8.23m) and a total gross floor area of 195.09m². Layout of the proposed Small House development (showing the location of the proposed septic tank) is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with plans received on 4.5.2023 **(Appendix I)**
 - (b) Further Information (FI) received on 20.6.2023 **(Appendix Ia)**

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**. They are summarised as follows:

- (a) The applicant is an indigenous villager of Tsiu Keng Pang Uk and he is eligible for construction of a Small House according to the Small House Policy.
- (b) The Site falls within the village ‘environs’ (‘VE’) of Tsiu Keng and partly within the “V” zone.
- (c) The proposed development is considered compatible with the surrounding land uses as village houses are found in the vicinity of the Site.
- (d) The proposed development would not cause any environmental impact to the surrounding areas. No tree felling is required.
- (e) The Site is the subject of a previously approved application No. A/NE-KTS/366. The Site has been left derelict for many years and is covered by weeds.
- (f) Similar Small House applications No. A/NE-KTS/162, 292, 349, 448³ and 473 in the vicinity of the Site (**Plans A-1**) were approved.

³ Application No. A/NE-KTS/448 was rejected upon review by the Board in 2017.

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. **Background**

The Site is not subject to any active enforcement action.

5. **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, which was promulgated on 7.9.2007, is at **Appendix II**.

6. **Previous Application**

The Site is the subject of a previous application (No. A/NE-KTS/366) for a proposed House (NTEH – Small House) submitted by another applicant and was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 9.5.2014. In 2018, the validity of the planning permission was extended for 4 years until 2022. The planning permission lapsed on 10.5.2022. Compared with the previous application, major development parameters and the Small House footprint are generally the same while having a larger site area (+6.757m² / +1.8%) under the current application. Details of the previous application is summarised at **Appendix III** and its location is shown on **Plan A-2a**.

7. **Similar Applications**

7.1 There are 56 similar applications for NTEH (Small House) within/partly within the “AGR” zone in the vicinity of the “V” zone of Tsiu Keng Lo Wai, Tsiu Keng San Wai and Tsiu Keng Pang Uk since the first promulgation of the Interim Criteria on 24.11.2000. Details of the similar applications are summarised at **Appendix IV** and their locations are shown on **Plans A-1 and A-2b**.

Approved Applications

7.2 There are 25 approved applications involving 16 sites (**Plan A-1**). 21 applications were approved between 2001 and 2015 mainly on the considerations of complying with the Interim Criteria that there was a general shortage of land in meeting the Small House demand within the “V” zone; not incompatible with the surrounding environment; and similar approved applications. Since the Board adopted a more cautious approach in August 2015, 4 applications have been approved, of which, 2 applications No. A/NE-KTS/421 and 473 are with previous planning permissions and

are located close to the village cluster. The remaining 2 applications No. A/NE-KTS/420 and 422 were approved considering that although there was sufficient land to meet the outstanding Small House grant applications, the two sites are located close to Tsiu Keng Road, the Small House footprint fell entirely within the 'VE' of Tsiu Keng Village and they are close to a cluster of approved Small Houses or an infill site enclosed by existing Small Houses.

Rejected Applications

- 7.3 The 31 rejected applications involve 12 sites and most of them are located away from the existing village cluster and/or access road (**Plan A-1**). They were rejected by the Committee or by the Board on review between 2013 and 2021 mainly on the grounds of being not in line with the planning intention of the "AGR" zone and land still available within the "V" zones of Tsiu Keng Village. Among them, 7 applications No. A/NE-KTS/408 to 411, 414, 448 and 497 were rejected after the Board has formally adopted a more cautious approach in August 2015. These application sites are all without previous planning permissions and not located close to existing village cluster or a cluster of approved Small Houses.

8. The Site and Its Surrounding Areas (Plan A-2a and aerial photo on Plan A-3 and site photos on Plan A-4)

8.1 The Site is:

- (a) entirely within the 'VE' of Tsiu Keng Village which comprises Tsiu Keng Lo Wai, Tsiu Keng San Wai and Tsiu Keng Pang Uk;
- (b) located about 50m to the north of Tsiu Keng San Wai village cluster;
- (c) a piece of vacant fallow agricultural land covered by wild grass; and
- (d) to the south of Tsiu Keng Road.

8.2 The surrounding areas have the following characteristics:

- (a) to the immediate east, south and west are fallow agricultural land. To the immediate north are fallow agricultural land and open storage yard;
- (b) to the further west are open storage yard, workshop, domestic structures and vacant land;
- (c) to the further south are domestic structures within the "V" zone of Tsiu Keng San Wai; and
- (d) to the further north is Tsiu Keng Lo Wai.

9. 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.

10. Comments from Relevant Government Departments

10.1 The application has been assessed against the assessment criteria set out in the Interim Criteria (**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? - Footprint of the proposed Small House - Site	- 13%	100% 87%	- The Site falls mostly within an area zoned “AGR” while the footprint of the proposed Small House falls entirely within the “AGR” zone.
2.	Within ‘VE’? - Footprint of the proposed Small House - The Site	100% 100%	- -	- District Lands Officer/North, Lands Department (DLO/N, LandsD) advises that the Site and footprint of the proposed Small House fall entirely within the ‘VE’ of Tsiu Keng.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	- Land required to meet Small House demand in Tsiu Keng Village: about 11ha (equivalent to about 439 Small House sites). The outstanding Small House applications for Tsiu Keng Village are 39 ⁴ while the 10-year Small House demand forecast for the village is about 400.

⁴ Among the 39 outstanding Small House applications, 14 of them fall within the “V” zones, and 25 straddle or outside the “V” zones including the subject application site and 4 sites with valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Sufficient land in “V” zone to meet outstanding Small House applications? (Plan A-2b)	✓		- Land available to meet the Small House demand within the two “V” zones of the village concerned: about 2.6 ha (equivalent to about 103 Small House sites).
4.	Compatible with the planning intention of “AGR” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as open field cultivation, greenhouses, plant nurseries, etc.
5.	Compatible with surrounding area/ development?	✓		- The proposed development is not incompatible with the surrounding areas predominated by fallow agricultural land, storages and village houses.
6.	Within Water Gathering Grounds (WGGs)?		✓	- Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no objection in principle to the application provided that the proposed house would not encroach on any EVA or planned EVA. Detailed fire safety requirements will be formulated upon receipt of formal application referred by the LandsD.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
9.	Traffic impact?	✓		- Commissioner for Transport (C for T) has reservation on the application due to setting undesirable precedent resulting in cumulative adverse traffic impact, but considers that the application only involving one Small House can be tolerated.
10.	Drainage impact?		✓	- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application from public drainage viewpoint and advises that approval condition requiring submission and implementation of drainage proposal be imposed should the application be approved.
11.	Sewerage impact?		✓	- Director of Environmental Protection (DEP) advises that in view of the small-scale nature of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping 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. - The Site is vacant, with self-seeded grasses and vegetation. No landscape resources of high sensitivity are observed within the Site. The proposed development is considered not incompatible with the landscape setting in the proximity. Significant adverse landscape impact within the Site arising from the proposed development is not anticipated.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
13.	Local objections conveyed by District Officer (North)?		✓	- District Officer (North), Home Affair Department (DO(N), HAD) advises that the incumbent North District Council (NDC) of the subject constituency, the Chairman of the Sheung Shui District Rural Committee (SSDRC) and the Resident Representative (RR) of Tsiu Keng have no comment.

10.2 Comments from the following government departments have been incorporated in paragraph 10.1 above. Their other detailed comments, if any, are at **Appendix V**.

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

10.3 The following government departments have no 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); and
- (c) Commissioner of Police (C of P).

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

On 12.5.2023, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 2.6.2023, 4 public comments were received. 3 comments received respectively from Kadoorie Farm and Botanic Garden Corporation, the Tso/Tong manager of Tsiu Keng San Wai Village (蕉徑新圍村駱信公堂司理) and an individual object to the application mainly for reasons that similar applications were rejected by the Board; the Site is not accessible by existing road; the applicant did not inform the Tso/Tong manager of the village; and no sufficient justifications to approve incursion into “AGR” zone when there is available land within the “V” zone. The remaining comment from an individual indicates no comment.

12. Planning Considerations and Assessments

- 12.1 The application is for a Small House which is partly within the “AGR” zone (87%) and partly within the “V” zone (13%), while the footprint of the proposed Small House falls wholly within the “AGR” zone. 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 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 planning justification in the submission for a departure from the planning intention.
- 12.2 The Site is situated in an area of rural landscape character predominated by village houses and fallow agricultural land. The proposed development is not incompatible with surrounding environment. CTP/UD&L of PlanD has no objection to the application as significant adverse landscape impact arising from the proposed development is not anticipated. While C for T has concern on cumulative adverse traffic impact caused by future similar developments, given that the application involving one Small House only, she considers that the application could be tolerated. Other relevant government departments consulted, including DEP, CE/C of WSD, CE/MN of DSD and D of FS, have no adverse comment on or no objection to the application.
- 12.3 Regarding the Interim Criteria, 100% of the footprint of the proposed Small House falls within the ‘VE’ of Tsiu Keng (**Plan A-1**). According to DLO/N of LandsD, the total number of outstanding Small House applications for Tsiu Keng Village is 39, while the 10-year Small House demand forecast for the Village is about 400. Based on the latest estimate by PlanD, about 2.6 ha (or equivalent to about 103 Small House sites of land) is available within the two “V” zones of Tsiu Keng Village (**Plan A-2b**). There is sufficient land available within the “V” zones to meet the outstanding Small House applications though it cannot fully meet the 10-year Small House demand. It should be noted that the Board has formally adopted a more cautious approach in approving applications for Small House development since 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. 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.
- 12.4 The Site is the subject of a previously approved planning application (No. A/NE-KTS/366) for a Small House submitted by a different applicant as the current application. The application was approved in 2014 before the Board’s formal adoption of a more cautious approach mainly on the grounds that the application generally complied with the Interim Criteria in that the footprint of the proposed Small House fell wholly within the ‘VE’ and there was a general shortage of land

within the “V” zones at the time of consideration. Given the current application is submitted by a different applicant, land is still available within the “V” zones of Tsiu Keng Village for Small House development and there is no formed village cluster near the Site, sympathetic consideration may not be given to the application.

- 12.5 There are 56 similar applications for proposed Small House development which fell entirely/partly within the same “AGR” zone in the vicinity of Tsiu Keng Village (**Plan A-1**), as stated in paragraph 7. Since adoption of a more cautious approach by the Board in August 2015, 4 applications with previous planning permission and/or located within a cluster of approved Small House applications were approved, and 7 applications were rejected as stated in paragraphs 7.2 and 7.3 respectively. The planning circumstances of the current application are different from the approved applications, while the considerations for the rejected applications are generally similar to those of the subject application.
- 12.6 Regarding the public comments objecting to the application as detailed in paragraph 11 above, government departments’ comments and planning assessments above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, 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 and 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 Tsiu Keng 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 infrastructures and services.
- 13.2 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 approval conditions 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**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.

15. Attachments

Appendix I	Application Form with plans received on 4.5.2023
Appendix Ia	FI received on 20.6.2023
Appendix II	Relevant 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
Appendices VI	Public Comments
Appendix VII	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available for Small House Development within the “V” Zones of Tsiu Keng Village
Plan A-3	Aerial Photo
Plan A-4	Site Photos