

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

**APPLICATION NO. A/NE-LK/151**

<b><u>Applicant</u></b>	:	Mr. MO Kwai Hong represented by Glister Engineering Consultants Company
<b><u>Site</u></b>	:	Lots 1523 S.C and 1523 RP (Part) in D.D. 39, Ma Tseuk Leng, Sha Tau Kok, New Territories
<b><u>Site Area</u></b>	:	About 182.8m <sup>2</sup>
<b><u>Lease</u></b>	:	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	:	Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11
<b><u>Zoning</u></b>	:	(i) “Agriculture” (“AGR”) (about 97% of the Site) (ii) “Village Type Development” (“V”) (about 3% of the Site) <sup>1</sup>
<b><u>Application</u></b>	:	Proposed House (New Territories Exempted House (NTEH) – Small House)

**1. The Proposal**

1.1 The applicant, who is an indigenous villager of Ma Tseuk Leng Village<sup>2</sup>, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ma Tseuk Leng Village (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the OZP. According to the Notes of the OZP, ‘House (NTEH only) in the “AGR” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) 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 Layout of the proposed Small House (including septic tank) is shown in **Drawing A-1**. The applicant indicates that the uncovered area of the Site would be used as a garden area and space for septic tank and sewer for the proposed Small House.

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<sup>1</sup> A narrow strip of the Site of about 5.8m<sup>2</sup> (i.e. about 3% of the total site area) falls within an area zoned as “V” on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11, which could be regarded as minor boundary adjustment and will not be included in the planning assessment of the proposed Small House.

<sup>2</sup> As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant is an indigenous villager of Ma Tseuk Leng Village. His eligibility for Small House grant has been ascertained.

- 1.4 The Site is the subject of three previous applications (No. A/NE-LK/78, 80 and 112) submitted by the same applicant for the same use (**Plans A-1 and A-2a**). Application No. A/NE-LK/78 was rejected by the Rural and New Town Planning Committee (the Committee) on 1.3.2013. Applications No. A/NE-LK/80 and 112 were approved by the Committee on 6.9.2013 and 6.4.2018 respectively. The planning permission for the last application lapsed on 7.4.2022. Details of the previous applications are set out in paragraph 5.1 below.
- 1.5 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**), which were received on 13.6.2023.

## **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 summarized as follows:

- (a) the applicant, being an indigenous villager, is entitled to build a Small House under the current Small House Policy;
- (b) the Site falls within the village ‘environs’ (‘VE’) of Ma Tseuk Leng Village. The proposed Small House development is compatible with the surrounding environment and land uses; and
- (c) the Site is the subject of two previous applications No. A/NE-LK/80 and 112, which were approved by the Committee; and
- (d) the proposed Small House and the septic tank are located more than 3m away from the nearby stream. Hence, potential adverse impact on the stream is not anticipated.

## **3. Compliance with the “Owner’s Consent/Notification” Requirements**

According to the record of the Land Registry, the Site involves a total of two “current land owners”. The applicant is the “current land owner” of Lot 1523 S.C. Consent has been obtained from the “current land owner” of Lot 1523 RP. 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, which was promulgated on 7.9.2007, is at **Appendix II**.

## **5. Previous Application**

- 5.1 The Site is the subject of three previous applications (No. A/NE-LK/78, 80 and 112) submitted by the same applicant for the same use. Application No. A/NE-LK/78 was rejected by the Committee on 1.3.2013 mainly on the ground that the proposed development was not in line with the planning intention of “AGR” zone and the proposed development may cause adverse impact on the natural stream in its immediate vicinity.

Application No. A/NE-LK/80, with the proposed septic tank located further away from the natural stream, was approved by the Committee on 6.9.2013 mainly on the grounds that the application generally complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell within the 'VE' and there was a general shortage of land within the "V" zone at the time of consideration; and the proposed Small House development was not expected to have significant adverse impacts on the surrounding area. Application No. A/NE-LK/112 was approved by the Committee on 6.4.2018 mainly on sympathetic consideration that the Site was the subject of a previously approved application submitted by the same applicant for the same use. Compared with the last application, the site area of the current application has been reduced by about 90.2m<sup>2</sup>, other major development parameters including the layout of the proposed Small House are generally the same as the previous one.

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

## 6. Similar Applications

- 6.1 There have been nine similar applications for Small House development in the vicinity of the Site within / partly within the same "AGR" zone since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among the six approved applications, three applications (No. A/NE-LK/77, 83 and 84) were approved by the Committee between March 2013 and May 2014 (i.e. before the formal adoption of a more cautious approach by the Board since August 2015<sup>3</sup>) mainly on the grounds that more than 50% of the proposed Small House footprints fell within the 'VE'; there was a general shortage of land within the "V" zone in meeting the Small House demand at the time of consideration; and the proposed Small House developments were not incompatible with the surrounding rural landscape character and would unlikely generate significant adverse impacts on the surrounding areas.
- 6.3 Three applications (No. A/NE-LK/111, 138 and 139) were approved by the Committee between March 2018 and September 2021 (i.e. after the formal adoption of a more cautious approach by the Board since August 2015) mainly on the ground that the Sites were the subject of previous approved applications submitted by the same applicants for the same uses.
- 6.4 Three applications (No. A/NE-LK/93, 121 and 122) were rejected by the Committee between October 2014 and November 2019 mainly on the grounds that the proposed developments were not in line with the planning intention of the "AGR" zone; and land was still available within the "V" zone of Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster; and the proposed developments did not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories and Town Planning Board Guidelines No. 10 on 'Application for Development within "GB" Zone under Section 16 of the Town Planning Ordinance'.
- 6.5 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **A-2a**.

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<sup>3</sup> Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting shall be put on the number of outstanding Small House applications provided by LandsD.

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

7.1 The Site is:

- (a) vacant and covered with grass;
- (b) in close vicinity to a natural to semi-natural stream course to northeast (**Plan A-2a**);  
and
- (c) not served by any vehicular access.

7.2 The surrounding areas are predominantly settled valley landscape character comprising village houses, vegetated areas, farmlands and tree clusters.

## 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 summarised 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?  - The Site  - Footprint of the proposed Small House	3%  –	97%  100%	- The Site is largely zoned “AGR”. The footprint of the proposed Small House falls entirely within “AGR” zone.
2.	Within ‘VE’?  - The Site  - Footprint of the proposed Small House	86%  100%	14%  –	- District Lands Officer/North, Lands Department (DLO/N, LandsD) advises that majority of the Site and the entire footprint of the proposed Small House falls within the ‘VE’ of Ma Tseuk Leng.

	<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 application plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet Small House demand in Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster <sup>4</sup> : about 18.1 ha <sup>5</sup> (equivalent to 726 Small House sites). The number of outstanding Small House applications for Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster is 33 <sup>6</sup> while the 10-year Small House demand forecast for the same village is 693.
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		<u>Land Available</u> - Land available to meet the Small House demand within the “V” zone of Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster: about 1.7 ha <sup>7</sup> (equivalent to 67 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 from agricultural point of view 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 and plant nurseries, etc.  - Moreover, he has reservation on the application from nature conservation point of view as the proposed development including site formation works may cause potential adverse impact on the natural to semi-natural stream to the northeast of the Site.
5.	Compatible with surrounding area/ development?	✓		- The proposed development is not incompatible with the surrounding areas characterized by village houses, vegetated areas, farmlands and tree clusters.

<sup>4</sup> As advised by DLO/N, LandsD, the Site falls within the coverage of Ma Tseuk Leng Village under Small House grant application.

<sup>5</sup> The land required to meet Small House demand in Ma Tseuk Leng & San Uk Ha is about 8.5 ha (equivalent to 341 Small Houses sites) while that of Shek Kiu Tau is about 9.6 ha (equivalent to 385 Small House sites).

<sup>6</sup> Among the 33 outstanding Small House applications, 14 of them fall within the “V” zone and 19 straddle or outside the “V” zone. For those 19 applications straddling or being outside the “V” zone, four of them have obtained valid planning approval from the Board.

<sup>7</sup> Ma Tseuk Leng and San Uk Ha share the same ‘VE’ while Shek Kiu Tau has its own ‘VE’ without overlapping with one another. As the three villages are located within the same “V” zone, the total number of outstanding Small House applications for Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster (i.e. 33) is adopted for assessment against the land availability within the “V” zone (i.e. 1.7 ha or equivalent to 67 Small Houses sites).

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
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 in-principle objection to the application. The applicant is reminded to observe 'NTEH – A Guide to Fire Safety Requirements' published by LandsD.
9.	Traffic impact?	✓		<p>- Commissioner for Transport (C for T) has reservation on the application and 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 resulting cumulative adverse traffic impact could be substantial.</p> <p>- Notwithstanding the above, the application only involves construction of one Small House. She considers that the application could be tolerated.</p>
10.	Drainage impact?		✓	<p>- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of a drainage proposal is required.</p> <p>- The Site is in the vicinity of an existing stream course. The applicant is required to place all the proposed works 3m away from the top bank of the stream course. All the proposed works in the vicinity of the stream course should not create any adverse drainage impacts both during and after construction. Proposed flooding mitigation measures if necessary shall be provided.</p>

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
11.	Sewage impact?		✓	- Director of Environmental Protection (DEP) advises that in view of the small scale 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. Significant adverse landscape impact arising from the development is not anticipated.
13.	Local objection conveyed by DO?		✓	- District Officer (North), Home Affairs Department (DO(N), HAD) advises that he has consulted the locals. The Resident Representative (RR) of Ma Tseuk Leng Sheung and other consultees, including the Chairman of Sha Tau Kok District Rural Committee, the incumbent North District Councilor of N16 Constituency and the Indigenous Inhabitant Representative (IIR) of Ma Tseuk Leng Sheung, have no comment on the application.

9.2 Comments from the following government departments have been incorporated in paragraph 9.1 above. Detailed comments from government departments are at **Appendix V**.

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

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

On 20.6.2023, the application was published for public inspection. During the statutory public inspection period, one public comment was received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application (**Appendix VI**).

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

11.1 The application is for a proposed Small House on the Site zoned “AGR” zone 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 to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural development point of view 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 also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses and plant nurseries, etc.

- 11.2 The Site is situated in an area of settled valleys landscape character comprising village houses, vegetated areas, farmlands and tree clusters. The proposed Small House development is not incompatible with the surrounding areas. CTP/UD&L of PlanD has no objection to the application as significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. From natural conservation point of view, DAFC has reservation on the application as the proposed development including site formation works may cause potential adverse impact on the natural to semi-natural stream to the northeast of the Site. Nevertheless, as septic tank and sewer are proposed away from the stream, DEP opines that the proposed septic tank and soakaway system could be an interim measure for sewerage disposal by following the requirements of the ProPECC PN 5/93, in particular the requirement for percolation test and clearance distance from streams. C for T considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development involves construction of one Small House only, the application could be tolerated. Other relevant government departments, including CEDD, CE/C of WSD, CE/MN of DSD and D of FS, have no adverse comment on / no objection to the application.
- 11.3 Regarding the Interim Criteria, according to DLO/N of LandsD, the number of outstanding Small House applications for Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster is 33 while the 10-year Small House demand forecast is 693. Based on PlanD’s latest estimate, about 1.7 ha (equivalent to 67 Small House sites) is available within the “V” zone concerned. While the amount of land available within the “V” zone of Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is sufficient to accommodate the outstanding 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. 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 as provided by LandsD. As such, it is considered more appropriate to concentrate the proposed Small House developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. Nevertheless, it is noted that the Site is the subject of two previously approved planning applications (No. A/NE-LK/80 and 112) submitted by the same applicant for Small House development. In this regard, sympathetic consideration may be given to the application.
- 11.4 There were nine similar applications for Small House developments in the vicinity of the Site. Amongst them, three were approved by the Committee between March 2018 and September 2021 after the Board’s formal adoption of a more cautious approach mainly on the ground that the Sites were the subject of previous approved applications submitted by the same applicants for the same use. The planning circumstances of the current application are similar to these approved ones.



## **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, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 11.8.2027, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted commences 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 VII**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection are suggested for Members' reference:
- 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.

## **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 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.
- 13.3 Alternatively, 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. Attachments**

<b>Appendix I</b>	Application Form with attachments received on 13.6.2023
<b>Appendix II</b>	Relevant Interim Criteria for Consideration of Application for NTEH/ Small House in New Territories
<b>Appendix III</b>	Previous Application
<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>	Layout Plan
<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 the “V” zone of Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau for Small House Development
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT**  
**AUGUST 2023**