

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/152

Applicant : Mr. CHEUNG Kwok Kin represented by Mr. PANG Hing Yeun

Site : Lot 1367 in D.D. 39, Ma Tseuk Leng, Sha Tau Kok, New Territories

Site Area : About 194.8m²

Lease : Block Government Lease (demised for agricultural use)

Plan : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11

Zoning : “Agriculture” (“AGR”)

Application : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

1.1 The applicant, who claims himself to be an indigenous villager of Ma Tseuk Leng Village¹, is seeking planning permission to build an 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 approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. 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 ²
Number of Storeys	: 3
Building Height	: 8.23m
Roofed Over Area	: 65.03m ²

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 circulation area.

1.4 The Site is the subject of two previous applications (No. A/NE-LK/134 and 144) submitted by the same applicant for the same use (**Plans A-1 and A-2a**). They were rejected by the

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claims himself to be an indigenous villager of Ma Tseuk Leng Village. His eligibility for Small House grant is yet to be ascertained.

Rural and New Town Planning Committee (the Committee) on 18.12.2020 and 24.6.2022 respectively. Details of the previous applications are set out in paragraph 5.1 below.

- 1.5 In support of the application, the applicant has submitted an Application Form with attachments (**Appendix I**), which were received on 19.6.2023.

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 is an indigenous villager and the Site is the only land owned by him for Small House development;
- (b) the Site falls within the village ‘environs’ (‘VE’) of Ma Tseuk Leng Village. The proposed development only involves the construction of one Small House only, it is considered compatible with the surrounding environment and land uses;
- (c) the Site is surrounded by existing village houses and similar approved applications in the vicinity;
- (d) the land in the concerned “V” zone is not sufficient to meet the Small House demand from these three villages; and
- (e) majority of the relevant departments have no adverse comments on the previous applications and there are sufficient agricultural lands for rehabilitation in the vicinity.

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

The applicant is the sole “current land owner” of the lot. 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 two previous applications (No. A/NE-LK/134 and 144) submitted by the same applicant for the same use. These previous applications were rejected by the Committee on 18.12.2020 and 24.6.2022 respectively mainly on the grounds that the proposed development was not in line with the planning intention of “AGR” zone and land was still available within the “V” zone of Ma Tseuk Leng & San Uk Ha and She Kiu Tau for Small House development. Compared with the previous applications, the major development parameters and the layout of the proposed Small House are generally the same as the current one.

- 5.2 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 have been 27 similar applications for Small House development within/partly within the “AGR” zone in the vicinity of the Site in the Luk Keng and Wo Hang area since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among these similar cases, 19 were considered before the formal adoption of a more cautious approach² by the Board since August 2015. 17 were approved mainly on the ground that the applications generally complied with the Interim Criteria. Two applications (No. A/NE-LK/92 and 93) straddling the “AGR” and “Green Belt” (“GB”) zones were rejected mainly on the grounds that the proposed developments were not in line with the planning intention of the “AGR” zone; 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 and Town Planning Board Guidelines No. 10 on 'Application for Development within "GB" Zone under Section 16 of the Town Planning Ordinance'.
- 6.3 After the formal adoption of the more cautious approach by the Board, eight applications were considered. Three applications (No. A/NE-LK/109, 149 and 150) were approved by the Committee between November 2017 and June 2023 mainly on the grounds that the proposed developments were the subject of previously approved applications submitted by the same applicants. The remaining five applications (No. A/NE-LK/114 to 117 and 122) were rejected by the Committee or by the Board on review between November 2018 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.
- 6.4 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **A-2a**.

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

- 7.1 The Site is:
- (a) vacant, fenced off and covered with vegetation;
 - (b) located in close proximity to the village cluster of Ma Tseuk Leng San Uk Ha village; and
 - (c) accessible via local village access leading from Sha Tau Kok Road – Wo Hang.
- 7.2 The surrounding areas are settled valley landscape character comprising village houses, vegetated areas, farmlands, ponds, tree clusters and woodlands.

² 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.

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:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	– –	100% 100%	- The Site and footprint of proposed Small House fall entirely within “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%	– –	- District Lands Officer/North, Lands Department (DLO/N, LandsD) advises that the Site and the entire footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Tseuk Leng.
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 ³ : about 18.1 ha ⁴ (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 ⁵ 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:

³ As advised by DLO/N, LandsD, the Site falls within the coverage of Ma Tseuk Leng Village under Small House grant application.

⁴ The land required to meet Small House demand in Ma Tseuk Leng & San Uk Ha Villages 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).

⁵ 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.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				about 1.7 ha ⁶ (equivalent to 67 Small House sites) (Plan A-2b).
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.
5.	Compatible with surrounding area/ development?	✓		- The proposed development is not incompatible with the surrounding areas predominated by village houses, farmlands, ponds, tree group cluster and woodland.
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 ‘New Territories Exempted House – A Guide to Fire Safety Requirements’ published by LandsD.
9.	Traffic impact?	✓		- 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.

⁶ 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. about 1.7 ha or equivalent to 67 Small Houses sites).

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				- Notwithstanding the above, the application only involves construction of one Small House. He considers that the application could be tolerated.
10.	Drainage impact?		✓	- 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.
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 Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Ma Tseuk Leng Village object to the application mainly on the grounds that the Site does not fall within the “V” zone and there are no supporting facilities for drainage and sewerage. - the Chairman of Sha Tau Kok District Rural Committee and the incumbent North District Councilor of N16 Constituency 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 27.6.2023, the application was published for public inspection. During the statutory public inspection period, two public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. An individual raises concern about the application mainly on the ground that there is no justification on the submission for building a Small House on the “AGR” zone. Detailed comments from public inspection are at **Appendix VI**.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House on 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 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. 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. There is no strong planning justification in the current submission for a departure from the planning intention.
- 11.2 The Site is situated in an areas of settled valley landscape character comprising village houses, farmlands, tree clusters and woodlands. 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. 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, DEP, 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 covering the concerned villages. While the amount of land available within the “V” zone (**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.

- 11.4 The Site is the subject of two previously rejected applications (No. A/NE-LK/134 and 144) for the same use submitted by the same applicant as detailed in paragraph 5.1 above. There has been no major changes in planning circumstances since the last application No. A/NE-LK/144 was rejected.
- 11.5 There were 27 similar applications for Small House developments in the vicinity of the Site. Amongst them, eight applications were considered after the Board's formal adoption of a more cautious approach. Three applications (No. A/NE-LK/109, 149 and 150) were approved by the Committee between November 2017 and June 2023 mainly on the ground that the Sites were the subject of previously approved applications submitted by the same applicants. Five applications (No. A/NE-LK/114 to 117 and 122) were rejected 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. The planning circumstances of the current application are similar to the rejected applications.
- 11.6 Regarding the public comments mentioned in paragraph 10 above, the government departments' comments and 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, 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 Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster 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 orderly development pattern, efficient use of land and provision of infrastructures and services.
- 12.2 Alternatively, 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**.

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), if any, to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application Form with attachments received on 19.6.2023
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
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the “V” zone of Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau for Small House Development
Plan A-3	Aerial Photo
Plan A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2023**