

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/713

Applicant : Mr. CHUNG Mei Wah represented by Mr. HUI Kwan Yee

Site : Government Land in D.D. 19, Chung Uk Tsuen, Lam Tsuen, Tai Po

Site Area : About 65.03m²

Land Status : Government Land

Lease : Block Government Lease (demised for agricultural use)

Plan : Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11

Zonings : “Agriculture” (“AGR”) (about 56%)
Area shown as ‘Road’ (about 44%)

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

1. The Proposal

1.1 The applicant, an indigenous villager of Chung Uk Tsuen¹ as confirmed by the Indigenous Inhabitant Representative, seeks planning permission to build a NTEH (Small House) on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in the “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board). Moreover, according to the covering Notes of the OZP, in any area shown as ‘Road’, all uses or developments except those specified require permission from the Board.

1.2 Details of the proposed Small House development are as follows:

Total floor area	:	195.09m ²
No. of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²

1.3 Layout of the proposed Small House including the septic tank is shown on **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 In support of the application, the applicant has submitted the following documents:
- (a) application form with attachments received on (Appendix I)
5.1.2022
 - (b) further information (FI) received on 4.5.2022 (Appendix Ia)
 - (c) FI received on 23.8.2022 (Appendix Ib)
- 1.5 On 4.3.2022 and 24.6.2022, the Rural and New Town Planning Committee (the Committee) agreed to the applicant's requests to defer making a decision on the application for two months.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application stated in Part 8 of the application form and FI submissions at **Appendices Ia** and **Ib** are summarized as follows:

- (a) the applicant is an indigenous villager of Chung Uk Tsuen who is eligible to apply for a Small House under the prevailing Small House policy;
- (b) the Site is a piece of vacant agricultural land which has been abandoned for about 60 years;
- (c) the applicant does not possess any private land for Small House development. He and his family would like to improve their living environment by submitting a Small House application;
- (d) the applicant proposes to revise the Small House footprint to avoid impact on an existing tree *Michelia x alba* (白蘭) located at the southern boundary of the Site and will undertake minor tree pruning; and
- (e) as the manhole for sewerage connection is located across the Lam Kam Road with heavy traffic, the applicant proposes to use septic tank as an interim measure for sewerage connection until the completion of future public sewerage system by the Government.

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

As the Site involves government land only, the “owner’s consent/notification” requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) is not applicable to the application.

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 have been nine similar applications for Small House development in the vicinity of the Site within/straddling the same “AGR” zone and area shown as ‘Road’ since the first promulgation of the Interim Criteria, of which three were approved and six were rejected.
- 6.2 Application No. A/NE-LT/333 was approved in 2005 by the Board on review under sympathetic consideration for being the subject of a previous application approved in 1997 before promulgation of the Interim Criteria. Application No. A/NE-LT/386 was approved with conditions by the Committee in 2008 mainly for being in line with the Interim Criteria in that more than 50% of the Small House footprint was within the village ‘environs’ (‘VE’); there was a general shortage of land within the “Village Type Development” (“V”) zone to meet the demand for Small House development at the time of consideration; and being able to be connected with the planned public sewerage system. The planning permission of application No. A/NE-LT/386 lapsed in 2012 and subsequent application (No. A/NE-LT/580) submitted by the same applicant with minor changes in site boundary was approved in 2016.
- 6.3 The remaining six applications (No. A/NE-LT/385, 525, 527, 592, 621 and 631) were rejected by the Committee/the Board between 2008 and 2018 mainly for being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that land was still available within the concerned “V” zones for Small House development; the applicant failed to demonstrate that the proposed developments located within water gathering grounds (WGG) would not cause adverse water quality or landscape impacts on the surrounding areas; and setting of undesirable precedent. Application No. A/NE-LT/385 was rejected also on the ground that the proposed development fell within an area shown as ‘Road’ might affect the future widening of Lam Kam Road.
- 6.4 Details of the above similar applications are summarized at **Appendix III** and their locations are shown on **Plan A-2a**.

7. The Site and Its Surrounding Area (Plans A-1, A-2a and photos on Plans A-3 and A-4)

- 7.1 The Site is:
 - (a) currently vacant, partly covered with grass and partly paved;
 - (b) located entirely within the ‘VE’ of Chung Uk Tsuen;
 - (c) accessible via a footpath leading to Lam Kam Road; and

(d) located within the upper indirect WGG.

7.2 The surrounding areas are predominantly rural in character comprising village houses, vegetated areas and tree groups. Lam Kam Road is located to the northwest of the Site. Some Small Houses are found about 10m to the east inside the “V” zone of Chung Uk Tsuen.

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	- -	100% 100%	- The Site and the proposed Small House footprint fall mainly within the “AGR” zone and an area shown as ‘Road’.
2.	Within ‘VE’? - Footprint of the Small House - Application site	100% 100%	- -	- The Site and the proposed Small House footprint fall entirely within the ‘VE’ of Chung Uk Tsuen. - DLO/TP, LandsD has no objection to the application.
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 Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai: about 10.48 ha (equivalent to 419 Small House sites). The outstanding Small House

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<p>applications are 22² while the 10-year Small House demand forecast for the same villages is 397.</p> <p><u>Land Available</u></p> <ul style="list-style-type: none"> - Land available to meet Small House demand within the “V” zone of the villages concerned: about 2.86 ha (or equivalent to 114 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	<ul style="list-style-type: none"> - The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from the agricultural development point of view as the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/development?	✓		<ul style="list-style-type: none"> - The surrounding areas are predominantly rural in character comprising village houses, tree groups and agricultural land.
6.	Within WGG?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application as septic tank system is proposed as foul water disposal and the wastewater generated from the proposed Small House will have the potential to cause water pollution to WGG. - The Director of Environmental Protection (DEP) does not support the application as the applicant does not demonstrate that the proposed Small House is able to connect to the public sewerage system in the area and decides to use septic tank as a mean of sewerage disposal.
7.	Sewerage Impact	✓		

² Among the 22 outstanding Small House applications, 18 of them fall within the “V” zones and 4 straddle or outside the “V” zones. For those 4 applications straddling or being outside the “V” zone, none of them has obtained any valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
8.	Encroachment onto planned road networks and public works boundaries?		✓	- There is currently no road widening programme for the concerned section of Lam Kam Road.
9.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
10.	Traffic impact?	✓		- The Commissioner for Transport (C for T) considers that Small House applications should be confined within the “V” zone as far as possible. Notwithstanding, he considers that the application only involving development of a Small House can be tolerated on traffic grounds.
11.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no adverse comment on the application from public drainage viewpoint. - Approval condition on the submission and implementation of drainage proposal for the Site is required.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no comment on the application from the landscape planning perspective as the applicant has revised the Small House footprint to preserve an existing tree <i>Michelia x alba</i> (白蘭).
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) C for T;
- (c) DEP;
- (d) CTP/UD&L, PlanD;
- (e) CE/MN, DSD;
- (f) DAFC;
- (g) D of FS; and
- (h) CE/C, WSD.

9.3 The following government departments have no objection to/no adverse comment on the application:

- (a) District Officer (Tai Po), Home Affairs Department (DO(TP), HAD); and
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD).

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

On 14.1.2022, the application was published for public inspection. During the statutory public inspection period, two public comments were received from individuals objecting to the application mainly on the grounds that the proposed development will cause adverse traffic, environmental and ecological impacts; affect villagers' safety and living quality; increasing risk of fire hazard; and land being still available within the "V" zones of Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai for Small House development.

11. Planning Considerations and Assessments

11.1 The application is for a proposed Small House development at the Site mainly zoned "AGR" and partly shown as 'Road' 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 also 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 there are active agricultural activities in the vicinity; agricultural infrastructure such as road access and water source is available; and the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the current submission for a departure from the planning intention.

11.2 The Site, located at the southeastern fringe of Chung Uk Tsuen across Lam Kam Road, is currently vacant and partly covered with grass and partly paved. The proposed development is not incompatible with the surrounding areas which is predominantly rural in character with a mix of village houses, vegetated areas and tree groups (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no comment on the application from landscape planning perspective as the

applicant has revised the Small House footprint to preserve an existing tree *Michelia x alba* (白蘭) and clarified that the existing level of the concerned tree would not be affected by the proposed development.

- 11.3 Regarding the Interim Criteria (**Appendix II**), according to the DLO/TP, LandsD, the number of outstanding Small House applications for Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai is 22 while the 10-year Small House demand forecast for the same villages is 397. Based on PlanD's latest estimate, about 2.86 ha of land (equivalent to 114 Small House sites) is available within the "V" zones concerned. 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, the Board has put more weighting on the number of outstanding Small House applications as provided by LandsD. 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 falls within the upper indirect WGG and the applicant has proposed the use of septic tank system to treat wastewater. Both DEP and CE/C of WSD do not support the application as the proposed development does not comply with the Interim Criteria in that the proposed Small House within WGG is not able to be connected to the public sewer for sewerage disposal. Other relevant government departments including DO(TP) of HAD, D of FS, C for T, CE/MN of DSD and CHE/NTE of HyD have no objection to or adverse comments on the application.
- 11.5 As shown on **Plan A-2a**, there are nine similar applications for Small House development covering eight sites in close proximity to the Site. Of which, three were approved and six were rejected. For the approved applications, two were approved before the Board's formal adoption of a more cautious approach in 2015. The subsequent application was approved in 2016 mainly on consideration of being the subject of a previously approved application, which were not applicable to the subject application. For the rejected applications, the planning circumstances of the current application are similar in that land was still available within "V" zone for Small House development and the proposed development would not connect to the existing sewerage system causing adverse water quality impact on the surrounding areas.
- 11.6 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10, government departments' comments and the planning assessments and considerations 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, 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;
- (b) the proposed development does not comply with the Interim Criteria for consideration of application for NTEH/Small House in New Territories in that the applicant fails to demonstrate that the proposed development located within water gathering grounds would be able to be connected to the existing sewerage system and would not cause adverse impact on the water quality in the area; and
- (c) land is still available within the “Village Type Development” (“V”) zones of Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zones for more 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 14.10.2026, 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 conditions 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, 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 and attachment received on 5.1.2022
Appendix Ia	FI received on 4.5.2022
Appendix Ib	FI received on 23.8.2022
Appendix II	Relevant revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
Appendix III	Similar applications
Appendix IV	Detailed comments from relevant government departments
Appendix V	Public comments
Appendix VI	Recommended advisory clauses
Drawings A-1 and A-2	Site plans 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” zones
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
OCTOBER 2022**