

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-LT/735

- Applicants** : Mr. CHAN Ka Kin represented by Mr. HUI Kwan Yee
- Sites** : Lots 702 S.A ss.3 and 704 S.A ss.3 in D.D. 19, She Shan Tsuen, Lam Tsuen, Tai Po
- Site Areas** : About 100m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, indigenous villager of She Shan Tsuen¹ of Tai Po Heung as confirmed by his respective Indigenous Inhabitant Representative, seeks planning permission to build a NTEH (Small House) at 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).

1.2 Details of the proposed Small House development is 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 and the proposed sewerage connection are shown on **Drawing A-1**.

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 an application form with attachment on 19.7.2022 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are stated in Part 8 of the application form as summarized below:

- (a) the Site is vacant agricultural land;
- (b) the applicant has no alternative site for the proposed Small House development; and
- (c) there are similar Small House developments in the vicinity of the Site.

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. 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

The Site is the subject of a previous application (No. A/NE-LT/636) submitted by a different applicant for Small House development, which was rejected by the Rural and New Town Planning Committee (the Committee) on 3.8.2018 on the grounds of being not in line with the planning intention of “AGR” zone; not comply with the Interim Criteria; and that land was still available within the “Village Type Development” (“V”) zone for Small House development. Details of the above 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 11 similar applications for Small House development in the vicinity of the Site within the same “AGR” zone since the first promulgation of the Interim Criteria, of which 8 were approved and 3 were rejected.
- 6.2 Applications No. A/NE-LT/379, 380, 391 and 484 were approved with conditions by the Committee between 2008 and 2013 mainly on the grounds of being in line with the Interim Criteria in that more than 50% of the respective Small House footprint was within the village ‘environs’ (‘VE’); there was a general shortage of land within the “V” zone to meet the demand for Small

House development at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Notwithstanding that the Board's adoption of a more cautious approach in approving applications for Small House development since August 2015, 4 applications (No. A/NE-LT/575, 576, 577 and 698) were approved with conditions by the Committee in 2016 and 2021 mainly on sympathetic consideration as the sites were the subject of previously approved applications (No. A/NE-LT/379, 380 and 391).

6.3 For the remaining 3 rejected applications (No. A/NE-LT/492, 725 and 726), application No. A/NE-LT/492 was rejected by the Board upon review in 2014 mainly on the grounds of being not in line with the planning intention of "AGR" zone and the proposed development would have adverse landscape impact on the surrounding areas. Applications No. A/NE-LT/725 and 726 were rejected in 2022 mainly on the grounds of being not in line with the planning intention of "AGR" zone and land was still available within the "V" zone of She Shan Tsuen which is primarily intended for Small House development.

6.4 Details of the above 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, A-2a and photos on Plans A-3 and A-4)

7.1 The Site is:

- (a) vacant, covered with wild grass and generally flat;
- (b) located at the northern fringe of She Shan Tsuen; and
- (c) within the She Shan Tsuen Site of Archaeological Interest.

7.2 The surrounding areas are predominantly rural in character comprising village houses, farmlands and tree groups. Woodlands within the "Site of Special Scientific Interest" ("SSSI") and "Conservation Area" ("CA") zones are found to the further east and south of the Site. The village cluster of She Shan Tsuen is situated about 30m to the southeast.

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 entirely within the “AGR” zone.
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 She Shan 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 She Shan Tsuen: about 1.68 ha (equivalent to 67 Small House sites). The outstanding Small House applications are 17 ² while the 10-year Small House demand forecast for the same village is 50.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the village concerned: about 1.53 ha (equivalent to 61 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural development point of view as the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding areas/ development?	✓		- The surrounding areas are predominantly rural in character comprising village houses, farmland and tree groups.
6.	Within Water Gathering Ground (WGG)?	✓		- The Director of Environmental Protection (DEP) has no objection to the application provided that the applicant will provide adequate sewer connection for disposal of sewage from the Small House to the existing public sewer at his own costs and
7.	Sewerage impact?	✓		

² Among the 17 outstanding Small House applications, 8 of them fall within the “V” zone and 9 straddle or outside the “V” zone. For those 9 applications straddling or outside the “V” zone, one of them has obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>reserve adequate land for the sewer connection work.</p> <ul style="list-style-type: none"> - The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application as the Small House is proposed to be connected to the existing public sewerage system and connection is feasible.
8.	Encroachment onto planned road networks and public works boundaries?		✓	
9.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	<ul style="list-style-type: none"> - The Director of Fire Services (D of FS) has no in-principle objection to the application.
10.	Traffic impact?	✓		<ul style="list-style-type: none"> - The Commissioner for Transport (C for T) considers that such type of Small House development should be confined within the ‘V’ zone as far as possible. - Notwithstanding the above, the application only involves development of 1 Small House can be tolerated on traffic grounds.
11.	Drainage impact?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint. - Approval condition on the submission and implementation of drainage proposal for the Site is required.
12.	Landscape impact?	✓		<ul style="list-style-type: none"> - The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations to the application from the landscape planning perspective as there is concern that approval of the application would further alter the landscape character of the area.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
13.	Geotechnical impact?		✓	
14.	Archaeological impact?		✓	- The Executive Secretary of Antiquities and Monuments Office, Development Bureau (ES(AMO), DEVB) has no objection to the application.
15.	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 V**.

- (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;
- (h) CE/C, WSD; and
- (i) ES(AMO), DEVB.

9.3 The following government departments have no comment on the application:

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

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

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 traffic congestion problems and adverse impact on environment, fire hazard, security ecology and quality of life; not in line with the planning intention of “AGR” zone; and land being still available within the “V” zone of She Shan Tsuen for Small House development.

11. **Planning Considerations and Assessments**

11.1 The application is for a proposed Small House development at 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 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 to the north of She Shan Tsuen, is currently vacant, covered with grass and generally flat. The proposed development is not incompatible with the surrounding areas which are predominantly rural in character with village houses, farmlands and tree groups (**Plans A-2a** and **A-3**). Notwithstanding this, CTP/UD&L of PlanD has some reservations to the application from landscape planning perspective as there is concern that approval of the application would further alter the landscape character of the area, especially the woodlands within “SSSI” and “CA” zones to the further east and south.
- 11.3 Regarding the Interim Criteria (**Appendix II**), according to DLO/TP of LandsD, the number of outstanding Small House for She Shan Tsuen is 17 while the 10-year Small House demand forecast is 50. Based on PlanD’s latest estimates, about 1.53 ha of land (equivalent to 61 Small House sites) is available within the “V” zone 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 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, 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 to connect the proposed Small House to the existing public sewerage system at She Shan Tsuen, which is located near the Site (**Plan A-2a**). DEP and CE/C of WSD have no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at his own cost and adequate space within the Site will be reserved for connection. CE/MN of DSD has no in-principle objection to the application on condition that the applicant should submit and implement drainage proposal for the Site. Other relevant government departments including C for T, CHE/NTE of HyD, D of FS and ES(AMO) of DEVB have no objection to or adverse comment on the application.
- 11.5 The Site is the subject of a previous application submitted by a different applicant and was rejected by the Committee in 2018 on the grounds of being not in line with the planning intention of “AGR” zone; not comply with the Interim Criteria; and that land was still available within the “V” zone for Small House development. The planning circumstances for rejecting the previous application is applicable to the current application.
- 11.6 As shown on **Plan A-2a**, there are 11 similar applications covering 7 sites at close proximity to the Site. Of which, 8 were approved and 3 were rejected. For the approved applications, 4 were approved before the Board’s adoption of a more cautious approach in 2015. The subsequently 4 applications approved between 2016 and 2021 were mainly on sympathetic consideration, which were

not applicable to the subject application. For the 3 rejected applications, the planning circumstances of the current application are similar to Applications No. A/NE-LT/725 and 726 in that land being still available within “V” zone for Small House development.

- 11.7 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10 above, 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” (“AGR”) 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 She Shan 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 9.9.2026, 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 condition 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 VII**.

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 condition 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 with attachment received on 19.7.2022
Appendix II	Relevant revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
Appendix III	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	Location plan and sewerage connection plan 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" zone
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
SEPTEMBER 2022**

