

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/748

Applicant : Mr. CHUNG Ka Shun

Site : Lot 1115 S.C RP in D.D. 19, Lam Tsuen San Tsuen, Tai Po

Site Area : About 137.4m²

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 Tin Liu Ha¹ 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” zone² is a Column 2 use requiring planning permission from the Town Planning Board (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 The uncovered area of the Site is proposed to be used as garden. Layout of the proposed Small House and the proposed sewerage connection are shown on **Drawing A-1**.

1.4 The Site is the subject of two previous applications (No. A/NE-LT/334 and 496) for the same use (**Plans A-1** and **A-2a**). Application No. A/NE-LT/496 was rejected by the Committee on 17.1.2014. Details of previous applications are set out in paragraph 5 below. Compared with the last previous application,

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.

² A very minor portion of the Site (about 2m² or 1.5%) falls within “Village Type Development” (“V”) zone, which can be considered as minor boundary adjustment.

the footprint and development parameters of the proposed Small House are generally the same under the current application.

- 1.5 In support of the application, the applicant has submitted the application form with attachment received on 13.12.2022 (**Appendix I**).

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 at **Appendix I** are summarized as follows:

- (a) the Site falls within the village ‘environs’ (‘VE’) of a recognized village; and
- (b) it is difficult to purchase land which is fully within the “V” zone.

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

The applicant is the sole “current land owners”. 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 Applications

- 5.1 The Site is the subject of two previous applications for the same use. Application No. A/NE-LT/334 was submitted by a different applicant as the current application and was approved with conditions by the Committee in 2005 mainly on the grounds that the application was in line with the Interim Criteria in that the Site was located within the ‘VE’; there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at that time; and the proposed development was able to be connected to the planned sewerage system in the area. The planning permission subsequently lapsed on 15.4.2009.
- 5.2 Application No. A/NE-LT/496 was submitted by the same applicant as the current application. It was rejected by the Committee on 17.1.2014 on the grounds of being not in line with the planning intention of the “AGR” zone, not complying with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in the concerned “V” zone at the time of consideration, and land was still available within the concerned “V” zone for Small House development. Details of previous applications are set out in paragraph 5 below.
- 5.3 Details of the above previous applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2a**.

6. Similar Applications

- 6.1 There have been 16 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 six were approved/ partially approved and ten were rejected.
- 6.2 For the six approved applications (No. A/NE-LT/355, 408, 452, 456, 459, and 475), they were approved/ partially approved³ with conditions by the Committee between 2006 and 2013 mainly on one or more of the following grounds that the proposed developments were generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Sympathetic consideration was given by the Committee for application no. A/NE-LT/408 for reason that the site had obtained previous planning permission.
- 6.3 For the ten rejected applications (No. A/NE-LT/509, 552, 563, 566, 567, 612, 613, 638, 639 and 665), they were rejected by the Committee/the Board on review between 2014 and 2019 mainly on one or more of the following grounds that the proposed developments were not in line with the planning intention of “AGR” zone; the proposed developments did not comply with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in “V” zone at the time of consideration; land was still available within the “V” zone of Lam Tsuen San Tsuen; the applicants failed to demonstrate that the proposed developments located within water gathering grounds (WGG) would not cause adverse impact on the water quality in the area; and the proposed developments would cause adverse landscape impact on the surrounding areas.
- 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 to A-4)

- 7.1 The Site is:
- (a) a piece of flat land and occupied with a temporary structure and some fruit trees;
 - (b) located at the southeastern fringe of Lam Tsuen San Tsuen;
 - (c) entirely within the ‘VE’ of San Tsuen Lo Wai and Lam Tsuen San Tsuen;
 - (d) accessible via a footpath; and

³ Application No. A/NE-LT/459 involved two proposed Small Houses (Plan A-2a). House No. 1 was approved in 2012 on sympathetic consideration in that the majority of the proposed Small House footprint fell within the “V” zone (about 83%), whereas House No. 2 with less than 50% of its footprint falling within the “V” zone was rejected as it did not warrant the same sympathetic consideration.

(e) located within the upper indirect WGG.

7.2 The surrounding areas are predominantly rural in character comprising village houses, farmlands, vegetated areas and tree groups. The village cluster of Lam Tsuen San Tsuen is situated to the northwest of the Site.

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	- 2%	100% 98%	- The proposed Small House footprint falls entirely within the “AGR” zone with a minor portion (about 2%) of the Site falling within the “V” 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 San Tsuen Lo Wai and Lam Tsuen San Tsuen.
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 San Tsuen Lo Wai and Lam Tsuen San Tsuen: about 3.33 ha (equivalent to 133 Small House sites). The outstanding Small House applications are 34 ⁴ while the 10-

⁴ Among the 34 outstanding Small House applications, 28 of them fall within the “V” zones and 6 straddle or fall outside the “V” zones. For those 6 applications straddling or being outside the “V” zone, none of them have obtained valid planning approvals 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?	✓		<p>year Small House demand forecast for the same villages is 99.</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 2.01 ha (or equivalent to 80 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	<ul style="list-style-type: none"> - 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, farmlands, vegetated areas and tree groups.
6.	Within WGG?	✓		<ul style="list-style-type: none"> - 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 reserve adequate land for the sewer connection work. - 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.
7.	Sewerage Impact	✓		
8.	Encroachment onto planned road networks and public works boundaries?		✓	

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
9.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application.
10.	Traffic impact?	✓		- 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 one Small House can be tolerated on traffic grounds.
11.	Drainage impact?	✓		- 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?	✓		- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) advises that some fruit trees and trees of common species in fair condition will be in conflict with the proposed Small House. Potential impact on the existing trees cannot be reasonably ascertained without tree information and proposed mitigation measures.
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 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; and
- (h) CE/C, WSD.

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

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

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

The application was published for public inspection. During the statutory public inspection period, two individuals object to the application mainly on the grounds that the proposed development is overcrowded, which will cause traffic congestion problems and adverse impacts on environment, fire hazard, security, ecology and quality of life; and land is still available within the “V” zone of Lam Tsuen San Tsuen.

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 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 southern fringe of the village cluster of Lam Tsuen San Tsuen, is a piece of flat land occupied with a temporary structure and some fruit trees. The proposed development is not incompatible with the surrounding areas which are predominantly rural in character with a mix of village houses, farmlands, vegetated areas and tree groups. The village cluster of Lam Tsuen San Tsuen is situated to the northwest of the Site (**Plans A-2a and A-3**). However, CTP/UD&L of PlanD advises that some fruit trees and trees of common species in fair condition will be in conflict with the proposed Small House. Potential impact on the existing trees cannot be reasonably

ascertained without tree information and proposed mitigation measures.

- 11.3 Regarding the Interim Criteria (**Appendix II**), according to the DLO/TP, LandsD, the number of outstanding Small House applications for San Tsuen Lo Wai and Lam Tsuen San Tsuen is 34 while the 10-year Small House demand forecast for the same villages is 99. Based on PlanD's latest estimates, about 2.01 ha of land (equivalent to 80 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 to connect the proposed Small House to the existing public sewerage system at Lam Tsuen San Tsuen, which is located near the Sites (**Plan A-2a**). DEP and CE/C of WSD have no objection to the application provided that the applicant will 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, and D of FS have no objection to or adverse comment on the application.
- 11.5 The Site is the subject of two previous applications (No. A/NE-LT/334 and 496) for the same use. Application No. A/NE-LT/334 which was submitted by a different applicant was approved with conditions by the Committee in 2005, but subsequently lapsed on 15.4.2009. According to the Interim Criteria (d) (**Appendix II**), application with previous planning permission lapsed will be considered on its own merits. Given that the current application is submitted by a different applicant and land is still available within "V" zone of San Tsuen Lo Wai and Lam Tsuen San Tsuen for Small House development, sympathetic consideration may not be given to the application. The last previous application (No. A/NE-LT/496) was rejected by the Committee on 17.1.2014 on the grounds of being not in line with the planning intention of the "AGR" zone, not complying with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in the concerned "V" zone at the time of consideration, and land was still available within the concerned "V" zone for Small House development. The planning circumstances for rejecting the latest previous application are applicable to the current application.
- 11.6 As shown on **Plan A-2a**, there are 16 similar applications for Small House development in close proximity to the Sites. Six of which (No. A/NE-LT/355, 408, 452, 456, 459 and 475) were approved/ partially approved with conditions before the Board's formal adoption of a more cautious approach in approving applications for Small House development. The planning circumstances of the approved similar applications are not applicable to the

current application.

- 11.7 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10, government departments' comments and the 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, 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; and
- (b) land is still available within the "Village Type Development" ("V") zone of San Tsuen Lo Wai and Lam Tsuen San Tsuen 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 3.2.2027, 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 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 and attachment received on 13.12.2022
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 applications
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 with sewerage connection proposal 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 photos

**PLANNING DEPARTMENT
FEBRUARY 2023**