

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/821

- Applicant** : Mr. LEE Lok Hang represented by Ching Wan Engineering Consultants Company
- Site** : Lot 1644 S.A in D.D. 76, Kan Tau Tsuen, Fanling, New Territories
- Site Area** : 161.51m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/19
- Zonings** : (i) “Agriculture” (“AGR”) (about 99.6% of the Site)
(ii) “Village Type Development” (“V”) (about 0.4% of the Site)¹
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claimed himself as indigenous villager of Lau Shui Heung of Fanling Heung², seeks planning permission to build a proposed NTEH (Small House) on the application site (the Site) in Kan Tau Tsuen, Fanling (**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)’ is a Column 2 use within the “AGR” zone which 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

The applicant indicates that the uncovered area of the Site would be used as garden. The layout of the proposed Small House (including septic tank) are shown in **Drawing A-1**.

¹ About 0.7m² (i.e. 0.4%) of the Site falls within the “V” zone, which is considered as minor boundary adjustment and not included in the planning assessments.

² As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant’s eligibility for Small House concessionary grants has yet to be ascertained.

- 1.3 The Site is the subject of a previously approved application No. A/NE-LYT/629 submitted by a different applicant for the same use. Details of the previous application are set out in paragraph 5.1 below. Compared with the previous application, the major development parameters and layout of the Small House are generally the same as the current one.
- 1.4 In support of the application, the applicant has submitted an Application Form with attachment and Supplementary Information (SI) received on 13.12.2023 and 18.12.2023 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at **Appendix I** and summarized as follows:

- (a) the Site is the subject of a previously approved application No. A/NE-LYT/629;
- (b) the Site falls within the village ‘environs’ (‘VE’) and the applicant is an indigenous villager who is entitled to Small House grant in accordance with the Small House Policy; and
- (c) the proposed Small House is compatible with the surrounding areas.

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

The applicant is the sole “current land owner” of respective lot of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Assessment Criteria

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (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 a previous application No. A/NE-LYT/629 submitted by a different applicant for the same use (**Plan A-2a**). The application was approved by the Rural and New Town Planning Committee (the Committee) on 23.6.2017 mainly on sympathetic consideration of being in line with the Interim Criteria in that more than 50% of the footprints of proposed Small House fell within the ‘VE’ of Kan Tau Tsuen; the site was in close proximity to the existing village proper of Kan Tau Tsuen; and there were approved Small House applications nearby. The planning permission lapsed on 24.6.2021.
- 5.2 Details of the previous application are summarized at **Appendix III** and its location is shown on **Plan A-2a**.

6. Similar Applications

- 6.1 There have been 39 similar applications for Small House development within/partly within the same “AGR” zone in the vicinity of the Sites in the Lung Yeuk Tau and Kwan Tei South area since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among them, 20 applications were approved by the Committee between July 2002 and January 2015 before the Board’s formal adoption of a more cautious approach since August 2015³. 19 applications were approved by the Committee between December 2015 and October 2023 after the Board’s formal adaption of a more cautious approach mainly on sympathetic consideration that the sites were the subject of previous approvals and/ or there were Small House applications approved in the vicinity at different stages of development nearby which formed new village clusters in the locality.
- 6.3 Details of the 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 A-2b, A-3 and A-4)

- 7.1 The Site is:
 - (a) currently vacant and occasionally occupied by private vehicles;
 - (b) located to the immediate southeast of the “V” zone and village proper of Kan Tau Tsuen; and
 - (c) connected via a track to Sha Tai Kok Road – Ma Mei Ha.
- 7.2 The surrounding areas are in a rural landscape character dominated by village houses, farmlands, vegetated areas and tree clusters. To the west and northwest is the village proper of Kan Tau Tsuen. To the further southeast is existing village houses and Tan Shan River.

8. Planning Intention

The planning intention of the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South area is intended 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 summarized in the following table:

³ Among others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting should be put on the number of outstanding Small House applications provided by LandsD.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	0.4% -	99.6% 100%	The Site falls mostly within “AGR” zone with minor portion within “V” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	71.7% 78.7%	28.3% 21.3%	DLO/N advises that the majority of the footprint of proposed Small House falls within the ‘VE’ of Kan Tau Tsuen.
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 Kan Tau Tsuen: about 4.4 ha (equivalent to 176 Small House sites). The outstanding Small House applications for Kan Tau Tsuen village cluster are 46 ⁴ while the 10-year Small House demand forecast for the same village cluster is 130.
	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 Kan Tau Tsuen village cluster: about 1.78 ha (equivalent to 71 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 perspective 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, plant nurseries, etc.

⁴ Among the 46 outstanding Small House applications, 14 of them fall within the “V” zone and 32 straddle or outside the “V” zone. For those 32 applications straddling or being outside the “V” zone, 15 of them have obtained valid planning approvals from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
5.	Compatible with surrounding areas/development?	✓		The proposed Small House is not incompatible with the surrounding areas dominated by village houses, farmland, vegetated areas and tree clusters (Plan A-2a).
6.	Within Water Gathering Ground?		✓	
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 Houses – A Guide to Fire Safety Requirements' published by LandsD.
9.	Traffic impact?	✓		Commissioner for Transport (C for T) advises that Small House developments 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 future. The cumulative adverse traffic impact could be substantial. Notwithstanding the above, the application only involves development of one Small House could be tolerated on traffic grounds.
10.	Drainage impact?		✓	Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application.
11.	Sewerage impact?		✓	Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application is unlikely to cause major pollution.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
12.	Landscape 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 impact on existing landscape resources within the Site and the landscape character arising from the proposed use is not anticipated.
13.	Local objections conveyed by DO?	✓		District Officer (North), Home Affairs Department (DO(N), HAD) advises that he has consulted the locals. The Chairman, 1 st Vice-Chairman and Vice-Chairman of Fanling District Rural Committee, the Chairman of Lung Shan Area Committee, the Resident Representative of Kan Tau Tsuen object to the application mainly on the grounds that the applicant is not indigenous villager of Kan Tau Tsuen and the proposed development would cause traffic and drainage impacts on the surrounding areas. The Indigenous Inhabitant Representative of Kan Tau Tsuen has not replied.

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

- (a) DLO/N, LandsD;
- (b) CE/MN, DSD;
- (c) DEP;
- (d) DAFC;
- (e) CTP/UD&L, PlanD;
- (f) D of FS;
- (g) C for T;
- (h) DO(N), HAD;
- (i) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD).

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C,WSD); and
- (b) Project Manager (New Territories East), Civil Engineering and Development Department (PM(NTE), CEDD).

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

On 22.12.2023, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received. While the Chairman of Sheung Shui District Rural Committee indicates no comment on the application, the remaining three public comments from the Chairman, First Vice-Chairman, Vice-Chairman of Fanling District Rural Committee raise objection to the application mainly on the grounds that the applicant is not an indigenous villager and the proposed development would cause traffic and drainage impacts on the surroundings.

11. Planning Considerations and Assessment

- 11.1 The application is for a proposed Small House at the Site mostly zoned “AGR” on the OZP. The proposed development is not in line with the planning intention of the “AGR” zone as set out in paragraph 8 above. DAFC does not support the application from agricultural perspective 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. DAFC advises that the Site can be used for agricultural activities such as open-field cultivation, greenhouses, 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 area of rural landscape predominated by village houses, farmland, vegetated areas and tree clusters. The proposed Small House is not incompatible with the surrounding areas. As significant adverse impact on existing landscape resources within the Site and the landscape character arising from the proposed development is not anticipated, CTP/UD&L, PlanD has no objection to the application from landscape planning perspective. C for T considers that Small House developments should be confined within the “V” zone as far as possible but given that application involves construction of one Small House only, the application could be tolerated from traffic impact perspective. Other relevant government departments consulted, including DEP, CE/C of WSD, CE/MN of DSD and D of FS, have no objection to or no adverse comment on the application.
- 11.3 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Kan Tau Tsuen (**Plan A-2a**). DLO/N of LandsD advises that the number of outstanding Small House applications for Kan Tau Tsuen village cluster is 46 while the 10-year Small House demand forecast is 130. Based on PlanD’s latest estimate, about 1.78 ha (equivalent to 71 Small House sites) is available within the “V” zone concerned (**Plan A-2b**). While the amount of land available within the “V” zone of Kan Tau Tsuen 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. Among 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 provided by LandsD. As such, 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 infrastructures and services. Although the Site is the subject of a previously approved application No. A/NE-LYT/629 for the same use, it was submitted by a different applicant and has

already lapsed in 2021.

- 11.4 There are 39 similar applications for Small House developments in the vicinity of the Site (**Plan A-2a**), of which 19 were approved by the Committee between December 2015 and October 2023 after the Board's formal adaption of a more cautious approach mainly on sympathetic consideration that the sites were the subject of previous approvals and/or there were Small House applications approved in the vicinity at different stages of development nearby which formed a new village clusters in the locality. The planning circumstances of the current application is different to those approved applications as there are vacant areas surrounding the Site and therefore may not be regarded as an infill site among existing NTEHs/Small Houses. Sympathetic consideration is not applicable to the subject application.
- 11.5 Regarding the local comments conveyed by DO(N) of HAD and public comments on the application as detailed in paragraphs 9.1 and 10 respectively, 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 local comments conveyed by DO(N) of HAD and public comments as detailed in paragraphs 9.1 and 10 respectively, 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 in the Lung Yeuk Tau and Kwan Tei South area 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 Kan Tau 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 infrastructures and services.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 26.1.2028, 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 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 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 attachment and SI received on 13.12.2023 and 18.12.2023
Appendix II	Relevant Interim Criteria for Assessing Planning Applications for NTEH/Small House Development in New Territories
Appendix III	Previous Application
Appendix IV	Similar s.16 Applications for Proposed House (NTEH - Small House) in the vicinity of the Site within / partly within the same “AGR” Zone on the Lung Yeuk Tau & Kwan Tei South OZP
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Proposed Small House 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 Kan Tau Tsuen for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JANUARY 2024**