

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-MUP/173

- Applicant** : Mr. TANG Kok Shang represented by Mr. PANG Hing Yeun
- Site** : Lot 569 S.A in D.D. 46, Loi Tung Village, Sha Tau Kok, New Territories
- Site Area** : About 195.5m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Man Uk Pin Outline Zoning Plan (OZP) No. S/NE-MUP/11
- Zonings** : (i) "Agriculture" ("AGR") (about 90.5m² or 46% of the Site)
(ii) "Green Belt" ("GB") (about 102.4m² or 52.6% of the Site)
(iii) "Village Type Development" ("V")¹ (about 2.6m² or 1.4% of the Site)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claimed himself as an indigenous villager of Loi Tung Village in Sha Tau Kok Heung², seeks planning permission to build a NTEH (Small House) on the application site (the Site) which falls within "AGR" and "GB" zones on the OZP (**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)' is a Column 2 use in "AGR" and "GB" zones requiring 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 About 2.6m² (1.4%) of the Site falls within the "V" zone, which is considered as minor boundary adjustment and not included in the planning assessment.

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

- 1.3 The applicant indicates that the uncovered area of the Site would be used as a circulation area of the proposed Small House. Layout of the proposed Small House (including a septic tank) is shown on **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the application form with attachments (**Appendix I**) and Supplementary Information (SI) (**Appendix Ia**) which were received on 25.10.2022 and 1.11.2022 respectively.

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 Site is the only land owned by the applicant for Small House development;
- (b) it is difficult to acquire suitable land for Small House development in Loi Tung Village;
- (c) the applicant is an indigenous villager and is entitled to a Small House grant under the Small House policy;
- (d) the Site falls within the village 'environs' ('VE') of Loi Tung Village and the proposed use is not incompatible with the surrounding environment and land use; and
- (e) the proposed development is small in scale, and environmental impacts on the surrounding areas are not anticipated.

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, which was promulgated on 7.9.2007, is at **Appendix II**.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 10 for 'Application for Development within "GB" Zone under Section 16 of the Town Planning Ordinance' (TPB PG-No.10) are relevant to this application. The relevant assessment criteria are summarized as follows:

- (a) there is a general presumption against development (other than redevelopment) in a "GB" zone;
- (b) an application for new development in "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds; and

- (c) the design and layout of any proposed development should be compatible with the surrounding areas. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment. Tree preservation and landscaping proposals should be provided.

6. Previous Application

The Site is not subject to any previous application.

7. Similar Applications

- 7.1 There are 12 similar applications for Small House development within/partly within the “V”, “AGR” and “GB” zones in the close vicinity of the Site in the Man Uk Pin area since the first promulgation of the Interim Criteria on 24.11.2000.
- 7.2 Before the formal adoption of a more cautious approach by the Board, four applications (No. A/NE-MUP/39, 73, 74 and 76) were approved by the Committee between January 2002 and November 2012 mainly on consideration that the applications complied with the Interim Criteria in that the sites fell entirely within the ‘VE’ and there was a general shortage of land within the “V” zone in meeting the Small House demand at the time of consideration; and the proposed Small Houses would not have significant adverse traffic, environmental and drainage impacts on the surrounding areas.
- 7.3 After the formal adoption of a more cautious approach by the Board, applications (No. A/NE-MUP/125, 126, 144, 145 and 159) were approved by the Committee between January 2017 and July 2021 mainly for reasons of being the subject of previous approved cases / on sympathetic consideration that the sites were sandwiched between the boundary of the “V” zone and ‘VE’ of Loi Tung Village and bounded by existing and new Small Houses at different stages of development; and further proliferation of Small House development outside both the “V” zone and the ‘VE’ was unlikely.
- 7.4 Three applications (No. A/NE-MUP/141, 142 and 160) were rejected by the Committee between May 2019 and October 2021 after the formal adoption of a more cautious approach by the Board mainly on consideration that the proposed developments did not comply with the Interim Criteria in that land was still available within the “V” zone for Small House development; and the proposed developments did not comply with TPB PG-No.10 in that the proposed development would cause adverse landscape impact on the surrounding areas.
- 7.5 Details of these applications are summarized at **Appendix III**.

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

8.1 The Site is:

- (a) partly paved and partly covered by wild grass; and
- (b) accessible via a local footpath.

8.2 The surrounding areas have the following characteristics:

- (a) predominantly rural in character comprising existing Small Houses and active/fallow agricultural land with a mature secondary woodland to the east within the “GB” zone;
- (b) to the immediate north are village houses within the village proper of Loi Tung Village (**Plan A-2a**); and
- (c) to the immediate west are approved Small House developments.

9. Planning Intentions

- 9.1 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.
- 9.2 The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

10. Comments from Relevant Government Departments

10.1 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? - The Site - Footprint of the proposed Small House	- -	100% 100%	- The Site and footprint of the proposed Small House fall zoned partly “AGR” and partly “GB”.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%	- -	- DLO/N, LandsD advises that the footprint of the proposed Small House falls entirely within the ‘VE’ of Loi Tung.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus		✓	<u>Land Required</u> - Land required to meet the Small House demand in Loi Tung Village: about 12.53 ha (equivalent to 501 Small House sites). The outstanding

	Criteria	Yes	No	Remarks
	10-year Small House demand)?			<p>Small House applications for Loi Tung Village is 25³ while the 10-year Small House demand forecast for Loi Tung Village is 476.</p> <p><u>Land Available</u></p> <ul style="list-style-type: none"> - Land available to meet the Small House demand within the “V” zone of Loi Tung Village: about 1.56 ha (equivalent to 62 Small House sites) (Plan A-2b).
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		
4.	Compatible with the planning intention of “AGR” and “GB” zones?		✓	<ul style="list-style-type: none"> - Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is vacant. 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. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view; and - There is a general presumption against development within the “GB” zone.
5.	Compatible with surrounding area/development?	✓		<ul style="list-style-type: none"> - The Site is located in an area of rural inland plain landscape character comprising village houses, vegetated areas, clusters of tree groups and woodlands within the “GB” zone.
6.	Within Water Gathering Grounds (WGGs)?		✓	<ul style="list-style-type: none"> - Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.
7.	Encroachment onto planned road networks and public works		✓	

³ Among the 25 outstanding Small House applications, 19 of them fall within the “V” zone and six straddle or outside the “V” zone. For those 6 applications straddling or being outside the “V” zone, three of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	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 'NTEH – A Guide to Fire Safety Requirements' published by LandsD.
9.	Traffic impact?	✓		- Commissioner for Transport (C for T) advises that Small House development should be confined within the “V” zone as far as possible. Notwithstanding the above, the application involving the construction of one Small House can 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 drainage proposal is required.
11.	Sewage impact?		✓	- Director of Environmental Protection (DEP) advises that in view of 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) concerned that approval of the application may further alter the landscape character and degrade the landscape quality of the “GB” zone.
13.	Local objection conveyed by DO?		✓	- District Officer (North), Home Affairs Department (DO(N), HAD) advises that the Chairman of the Sha Tau Kok District Rural Committee, the incumbent North District Councillor of N16 Constituency, the Indigenous Inhabitant Representative and the Resident Representative of Loi Tung had no comment on the application.

10.2 Comments from the following government departments have been incorporated in paragraph 9.1 above. Detailed comments from government departments are at **Appendix IV**.

- (a) DLO/N, LandsD;
- (b) C for T;
- (c) DEP;
- (d) CTP/UD&L, PlanD;
- (e) CE/MN, DSD;
- (f) D of FS;
- (g) DAFC;
- (h) DO(N), HAD; and
- (i) CE/C, WSD.

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

On 4.11.2022, the application was published for public inspection. During the statutory public inspection period, five public comments, with one indicating no comment and four objecting to the application, were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Kadoorie Farm and Botanic Garden, World Wide Fund for Nature Hong Kong, and two individuals object to the application mainly on the grounds that the proposed development is not in line with the planning intentions of the “AGR” and “GB” zones; does not comply with TPB PG-No. 10 as the proposed development would cause adverse landscape impact on the surrounding area; land is still available within the “V” zone for Small House development; approval of the proposed Small House development would set an undesirable precedent for similar applications in the area, encouraging encroachment of Small House developments onto farmland and “GB” zone; the proposed development would cause adverse traffic and environmental impacts; it is a “destroy first, develop later” case; and the proposed development would increase fire risks, threaten the quality of life of nearby residents, and degrade the environment of the surrounding areas.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed Small House development at the Site zoned partly “AGR” and partly “GB” on the OZP. The proposed development is considered not in line with the planning intention of the “AGR” zone which is intended 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. The proposed development is also not in line with the planning intention of the “GB” zone which is for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within “GB” zone. DAFC does not support the application from the agricultural development point of view as the Site possesses potential for agricultural rehabilitation. The applicant has not provided strong justifications in the submission for a departure from the planning intentions of the “AGR” and “GB” zones.
- 12.2 The Site is located in an area of rural inland plains landscape character comprising village houses, vegetated areas, clusters of tree groups and woodlands within the “GB” zone (**Plans A-2a and A-3**). CTP/UD&L is concerned that the proposed development,

if approved, may further alter the landscape character and degrade the landscape quality of the "GB" zone. The proposed development will affect the existing natural landscape and the applicant fails to demonstrate that the proposed development will not have adverse landscape impact on the surrounding area. As such, the application does not comply with TPB PG-No. 10 in that the proposed development would affect the existing natural landscape on the surrounding environment.

- 12.3 C for T has reservation on the application and considers that Small House development should be confined within the "V" zone as far as possible but given that the proposed development involves only one Small House, the application could be tolerated from traffic engineering perspective. Other relevant government departments, including DEP, CE/MN of DSD, D of FS and CE/C, WSD, have no adverse comment on/no objection to the application.
- 12.4 Regarding the Interim Criteria, according to DLO/N of LandsD, the number of outstanding Small House for Loi Tung is 25 while the 10-year Small House demand forecast is 476. Based on PlanD's latest estimate, about 1.56 ha (equivalent to 62 Small House sites) is available within the "V" zone concerned. While the amount of land available within the "V" zones of the Loi Tung is insufficient to fully meet the future Small House demand, it is sufficient to accommodate the outstanding Small House applications (**Plan A-2b**). It should be noted that the Board has adopted a more cautious approach in approving applications for Small House developments in recent years. 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 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 infrastructure and services.
- 12.5 There is no previous application at the Site. There are 12 similar applications for Small House developments in the vicinity of the Site. Of them, nine applications were approved by the Committee between January 2002 and July 2021 mainly on consideration that there was general shortage of land within the "V" zone in meeting the Small House demand at the time of consideration; the applications were subjects of previous approvals; and the Sites were bounded by existing and new Small Houses at different stages of development (**Plan A-2a**). The remaining three applications (No. A/NE-MUP/141, 142 and 160) were rejected by the Committee between May 2019 and October 2021 after the formal adoption of a more cautious approach by the Board mainly on the considerations that land was still available within the "V" zone for Small House development; and the proposed developments did not comply with the TPB PG-No.10 in that the proposed development would cause adverse landscape impact on the surrounding areas. The planning circumstances of the current application are similar to those of the three rejected applications.
- 12.6 Regarding the public comments in paragraph 11, the government departments' comments and planning assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, 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;
- (b) the proposed development is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong justification in the submission for a departure from the planning intention;
- (c) the proposed development does not comply with the Town Planning Board Guidelines No. 10 for Application for Development within “GB” zone under section 16 of the Town Planning Ordinance and the Interim Criteria for consideration of Application for NTEH/Small House in New Territories in that the proposed development would affect the existing natural landscape on the surrounding environment; and
- (d) land is still available within the “V” zone of Loi Tung Village 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.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 23.12.2026, 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 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 VI**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 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.

15. Attachments

Appendix I	Application Form with attachments received on 25.10.2022
Appendix Ia	SI received on 1.11.2022
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Similar Applications
Appendix IV	Detailed Comments from Relevant Government Departments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Proposed 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 Loi Tung Village for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2022**