

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/771

- Applicant** : Mr. YAU Andrew Den Bon represented by DeSPACE (International) Limited
- Site** : Lots 1498A S.B and 1502 S.C in D.D. 76, Hung Leng, New Territories
- Site Area** : 198.7m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Planning (OZP) No. S/NE/TKL/14
- Zonings** : (i) “Agriculture” (“AGR”) (about 54% of the Site)
(ii) “Village Type Development” (“V”) (about 46% of the Site)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

1.1 The applicant, who claims himself as an indigenous villager of Hung Leng Village¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Hung Leng (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” (about 54%) and “V” (about 46%) on the OZP. According to the Notes of the OZP, ‘House (NTEH only)’ is a Column 1 use always permitted within the “V” zone, while ‘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 within the “AGR” zone requiring planning permission from the Town Planning Board (the Board). The Site is currently vacant (**Plans A-3 and A-4**).

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

1.3 Layout of the proposed Small House (including septic tank) is shown in **Drawing A-1**. The applicant indicates that the uncovered area of the Site will be used as an amenity

¹ As advised by District Lands Officer/North, Lands Department (DLO/N of LandsD), the eligibility of the applicant of the application for Small House concessionary grant is yet to be ascertained.

area. The Site is accessible via a local track leading to Sha Tau Kok Road - Ma Mei Ha (**Plan A-1**).

- 1.4 In support of the application, the applicant submitted an Application Form with attachment received on 7.8.2024 (**Appendix I**).

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 summarised as follows:

- (a) the applicant is an indigenous villager of Hung Leng who has a genuine need and traditional right to build a Small House for his own use;
- (b) a minor portion of the footprint of the proposed Small House (about 9.5%)² encroaches onto the adjoining “AGR” zone as a result of maintaining a reasonable setback from the lot boundary and adopting a similar building form to achieve orderly village development pattern. The majority of the proposed Small House footprint remains in the “V” zone;
- (c) the Site is immediately surrounded by other Small Houses on its north, south and west. As the “V” zone of Hung Leng is already saturated, the Site is deemed to be a logical and spontaneous expansion of the “V” zone;
- (d) there are similar planning applications in “AGR” zones approved on the same OZP. Approval of the application would not set an undesirable precedent for other similar applications within the “AGR” zone;
- (e) the proposed Small House development is not incompatible with the surrounding environment. Adverse traffic, environmental and landscape impacts are not anticipated; and
- (f) the applicant submitted a Small House grant application in 2015 to the DLO/N of LandsD. Only until 2024 the applicant was reminded by DLO/N of LandsD that planning permission is required to continue their processing of the Small House grant application. Sympathetic consideration should be given as the applicant has suffered monetary and time cost due to the long processing time of the Small House grant.

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 the 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

² The applicant claims that about 90.5% of the footprint of the proposed Small House falls within the “V” zone and only 9.5% encroaches onto “AGR” zone. Based on Planning Department’s calculation, about 82.4% and 17.6% of the footprint falls within “V” and “AGR” zones respectively.

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

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Applications

- 6.1 There were two similar applications falling partly within the same “V” and/or “AGR” zones in the vicinity of the Site in the Ping Che and Ta Kwu Ling area since the first promulgation of the Interim Criteria on 24.11.2000. Application No. A/NE-TKL/313 for proposed house (NTEH – Small House) was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 19.12.2008³ mainly on the considerations that the application generally complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell within the “V” zone and there was a general shortage of land within the “V” zone of the same village in meeting the future Small House demand at the time of consideration; the proposed NTEH development was not incompatible with the surrounding environment; and adverse environmental, traffic and drainage impacts were not expected.
- 6.2 Application No. A/NE-TKL/314 for proposed replacement of existing domestic buildings by a NTEH was approved with conditions by the Committee on 9.1.2009 mainly on the considerations that LandsD confirmed that the owner had the right to rebuild a house at the Site; the proposed NTEH development was not incompatible with the surrounding environment; and adverse environmental, traffic and drainage impacts were not expected. The Interim Criteria was not applicable to the application and it is considered that the application is subject to different planning circumstances than the current one.
- 6.3 Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

7. The Site and its Surrounding Areas (Plans A-2a to A-4)

- 7.1 The Site is:
 - (a) vacant, partly paved and partly covered with grass; and
 - (b) accessible via a local track leading to Sha Tau Kok Road - Ma Mei Ha.
- 7.2 The surrounding areas are rural in character comprising mainly village houses, parking of vehicles, warehouses and active/fallow agricultural land. The cluster of village houses within the “V” zone of Hung Leng is located to the immediate west of the Site.

³ The application was considered by the Committee before the formal adoption of a more cautious approach in considering Small House application by the Board since August 2015. Among others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting shall be put on the number of outstanding Small House applications provided by LandsD.

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 at **Appendix II**. The assessment is summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - Footprint of the proposed Small House - The Site	82% 46%	18% 54%	- 18% of the footprint of the proposed Small House falls within “AGR” zone. - 54% of the Site falls within “AGR” zone.
2.	Within ‘VE’? - Footprint of the proposed Small House - The Site	- -	100% 100%	DLO/N of LandsD advises that the Site and the footprint of the proposed Small House fall outside the village ‘environ’ (‘VE’) of Hung Leng.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)? Sufficient land in “V” zone to meet outstanding Small House applications?	 ✓	✓	<u>Land Required</u> - Land required for meeting Small House demand in Hung Leng: about 1.68 ha (equivalent to 67 Small House sites). The outstanding Small House applications of Hung Leng are 7 ⁴ while the 10-year Small House demand forecast for the same village is 60. <u>Land Available</u> - Land available to meet the Small House demand within the “V” zone of Hung Leng: about 1.56 ha (equivalent to 62 Small House sites) (Plan A-2b).

⁴ Among the 7 outstanding Small House applications, 6 fall within the “V” zone, and 1 straddles the “V” zone, i.e. the current planning application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
4.	Compatible with the planning intention of “AGR” zone?		✓	Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural perspective. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. The Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		The proposed Small House development is not incompatible with the surrounding area which comprises mainly village houses, parking of vehicles, warehouses and active/fallow agricultural land (Plans A-2a, A-3 and A-4).
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Environmental and sewerage impacts?		✓	Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
8.	Encroachment onto planned road networks and public works boundaries?		✓	
9.	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.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
10.	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 the future. The cumulative adverse traffic impact could be substantial. Notwithstanding the above, the application only involves development of one Small House and could be tolerated.
11.	Drainage impact?		✓	Chief Engineer/Mainland North, Drainage Services Department (CE/MN of DSD) has no objection to the application.
12.	Landscaping impact?		✓	Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L of PlanD) has no objection to the application from landscape planning perspective and advises that significant adverse impact on existing landscape resources within the Site arising from the proposed development is not anticipated.
13.	Local objections conveyed by District Officer?		✓	

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 IV**.

- (a) DLO/N of LandsD;
- (b) C for T;
- (c) DEP;
- (d) CTP/UD&L of PlanD;
- (e) CE/MN of DSD;
- (f) DAFC;
- (g) D of FS; and
- (h) District Officer (North), Home Affairs Department.

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;
- (b) Project Manager (North), Civil Engineering and Development Department; and
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C of WSD).

10. Public Comments Received During Statutory Publication Period

On 16.8.2024, the application was published for public inspection. During the statutory public inspection period, five public comments were received (**Appendix VI**). Four comments from a member of the North District Council, the Chairperson of the Lung Shan Area Committee, the Indigenous Inhabitant Representative and the Resident Representative of Hung Leng indicating no comment on the application. An individual objects to the application mainly on the ground that there is available land for Small House development in the “V” zone of Hung Leng.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House development at the Site partly zoned “AGR” (about 54%) and party zoned “V” (about 46%) on the OZP. Although the proposed development is always permitted within “V” zone, it 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. DAFC does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation. There is no strong planning justification provided in the application for a departure from the planning intention of the “AGR” zone.
- 11.2 The Site, located to the east of Hung Leng, is vacant, partly paved and partly covered with grass. The proposed Small House is considered not incompatible with the surrounding areas which are rural in character comprising mainly village houses, parking of vehicles, warehouses and active/fallow agricultural land. CTP/UD&L of PlanD has no objection to the application from landscape planning perspective and advises that significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. C for T considers that Small House developments should be confined within the “V” zone as far as possible but given that the application involves one Small House only, the application could be tolerated from traffic impact perspective. Other relevant government departments consulted, including DEP, CE/MN of DSD, CE/C of WSD and D of FS, have no objection to or no adverse comment on the application.
- 11.3 Regarding the Interim Criteria, more than 50% of the footprint of the proposed Small House falls within the “V” zone. According to DLO/N of LandsD, the number of outstanding Small House applications for Hung Leng is 7 while the 10-year Small House demand forecast is 60. Based on PlanD’s latest estimate, about 1.56 ha (equivalent to 62 Small House sites) is available within the “V” zone concerned (**Plan A-2b**). While the amount of land available within the “V” zone of Hung Leng 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. In this regard, 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.

- 11.4 There were two similar applications falling partly within the same “V” and/or “AGR” zones in the vicinity of the Site. Application No. A/NE-TKL/313 was approved with conditions by the Committee in 2008 before the Board’s formal adoption of the more cautious approach in considering application for Small House development since August 2015. Application No. A/NE-TKL/314 for proposed replacement of existing domestic buildings by a NTEH approved with conditions by the Committee in 2009 did not adopt the Interim Criteria in its consideration. It is considered that the planning circumstances of these two applications are different from the current application.
- 11.5 Regarding the public comments as detailed in paragraph 10 above, 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 as detailed in paragraph 10, 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. 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 “V” zone of Hung Leng 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 4.10.2028, 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 V**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the 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(s) and 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 received on 7.8.2024
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Similar Applications
Appendix IV	Detailed Comments from Relevant Government Departments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comments
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 for Small House Development within the “V” zone of Hung Leng
Plan A-3	Aerial Photo
Plan A-4	Site Photo

**PLANNING DEPARTMENT
OCTOBER 2024**