

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/767

<u>Applicant</u>	Mr. LEE Kwok Wing represented by Mr. LO Kin Chau Philip
<u>Site</u>	Lot 252 RP in D.D. 23, Wai Ha, Ting Kok, Tai Po
<u>Site Area</u>	About 830m ²
<u>Lease</u>	Block Government Lease demised for agricultural purpose
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claims himself as an indigenous villager of Wai Ha¹, seeks planning permission to build a NTEH (Small House) on the Site. The Site falls within an area zoned “AGR” on the approved Ting Kok OZP No. S/NE-TK/19 (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only)’ within the “AGR” zone is a Column 2 use 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

1.3 The Site is accessible via a local track leading to Tung Tsz Road off Ting Kok Road. The applicant proposes to connect the proposed development to an existing public sewer. The uncovered area of the Site will be left vacant. The layout of the proposed Small House and sewerage connection proposal submitted by the applicant are shown on **Drawing A-1**.

¹ As advised by District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD), the applicant claims himself to be an indigenous villager of Wai Ha. His eligibility for Small House grant has yet to be ascertained.

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form and Supplementary Information (SI) (**Appendix I**)
received on 4.1.2023 and 6.1.2023
 - (b) Further Information (FI) received on 8.2.2023 (**Appendix Ia**)
 - (c) FI received on 22.2.2023 (**Appendix Ib**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the application form, SI and FI at **Appendix I to Ib**, as summarized below:

- (a) there is no suitable land for building houses in Wai Ha Village. The Site is inherited from the applicant's ancestors and reserved for house development. It is currently owned by the applicant's relatives. Should the application be approved, the Site will be transferred to the applicant to proceed with the proposed development;
- (b) the proposed development is in line with the government's policy of better utilization of land resources to address housing needs and improve people's livelihood; and
- (c) the proposed development will not cause significant adverse environmental and landscape impacts on the surrounding areas.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not a "current land owner" but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by obtaining consents of the "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, which was promulgated on 7.9.2007, is at **Appendix II**.

5. Previous Application

There is no previous application on the Site.

6. Similar Applications

- 6.1 There are five similar applications (No. A/NE-TK/130, 134, 148, 149 and 194) in the vicinity of the Site straddling the “Village Type Development” (“V”) zone and the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-2a**).
- 6.2 All these similar applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2001 and 2005, before the Board’s formal adoption of a more cautious approach in approving applications for Small House development in August 2015, mainly on considerations that there was a general shortage of land to meet the demand for Small House development in the “V” zone at the time of consideration; and the proposed development would unlikely cause significant adverse impacts on the surrounding areas. Applications No. A/NE-TK/134, 148, 149 and 194 were also approved on consideration that more than 50% of the proposed Small House footprint fell within the village ‘environs’ (‘VE’).
- 6.3 Details of the similar applications are summarized at **Appendix III** 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) currently vacant and mostly covered with weeds;
 - (b) located outside the ‘VE’ of Wai Ha (**Plan A-2b**); and
 - (c) accessible via a local track leading to Tung Tsz Road off Ting Kok Road.
- 7.2 The surrounding areas are predominantly rural in character comprising village houses, vegetated areas, tree clusters, agricultural lands and vacant lands. Tung Tsz Road is about 65m to the south of the Site. Village clusters of San Tau Kok and Wai Ha are found at about 30m to the east and about 45m to the west of the Site respectively.

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 summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	<p>Within “V” zone?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - The Site 	-	100%	- The Site and the proposed Small House footprint fall entirely within the “AGR” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - The Site 	-	100%	- The Site and the proposed Small House footprint fall entirely outside the ‘VE’ of Wai Ha.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand forecast)?</p>	✓		<p><u>Land Required</u></p> <ul style="list-style-type: none"> - Land required to meet Small House demand in Wai Ha: about 0.23ha (equivalent to 9 Small House sites). The outstanding Small House applications for Wai Ha are 9². There is no information on the 10-year Small House demand forecast for the same village³.
	<p>Sufficient land in “V” zone to meet outstanding Small House applications?</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 Wai Ha: about 0.58ha (equivalent to 23 Small House sites) (Plan A-2b).
4.	<p>Compatible with the planning intention of “AGR” zone?</p>		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agriculture point of view as the Site possesses potential for agricultural rehabilitation, with active agricultural activities in the vicinity and agricultural infrastructures such as road access and water source available.
5.	<p>Compatible with surrounding area/development?</p>	✓		- The proposed Small House is not incompatible with the surrounding areas comprising mainly village houses, vegetated areas, tree clusters, agricultural lands and vacant lands.

² Among the nine outstanding Small House applications, three of them fall within the “V” zone and six of them straddle or fall outside the “V” zone. For those six applications straddling or being outside the “V” zone, none of them has obtained valid planning approval from the Board.

³ As advised by DLO/TP, LandsD, the respective Indigenous Inhabitant Representative has not provided the figure of 10-year Small House demand of Wai Ha Village in the past ten years.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
6.	Within Water Gathering Grounds (WGGs)?		✓	- Chief Engineer/Construction, Water Supplies Department (CE/C,WSD) has no objection to the application.
7.	Environmental and Sewerage impact?		✓	- Director of Environmental Protection (DEP) has no in-principle 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.
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.
10.	Traffic impact?	✓		- Commissioner for Transport (C for T) considers that Small House development 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 "V" zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impacts could be substantial. Notwithstanding the above, it is noted that there are open spaces around the NTEH within the Site and the application involves only the development of one Small House, and she considers that the application can be tolerated on traffic grounds.
11.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) considers that an approval condition on the submission and implementation of a drainage proposal is required.

	<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 landscape planning perspective as significant adverse landscape impact on landscape resources arising from the proposed Small House is not anticipated.
13.	Geotechnical impact?		✓	- Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) has no geotechnical comments on the application.
14.	Local objections received from DO?		✓	- District Officer/Tai Po, Home Affairs Department (DO/TP, HAD) has no comment on the application.

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

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

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD);
- (c) H(GEO), CEDD; and
- (d) DO/TP, HAD.

10. Public Comment Received During Statutory Publication Period (Appendix V)

During the statutory public inspection period, a public comment was received from an individual objecting to the application mainly for reasons of excessive site area for a Small House development; providing no strong justification for extending village development into the “AGR” zone; and being not in line with the planning intention of the “AGR” zone.

11. Planning Considerations and Assessments

- 11.1 This 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, as well as 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 point of view as 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 east of Wai Ha, is currently vacant and mostly covered with weeds. The proposed development is not incompatible with the surrounding areas which is predominantly rural in character comprising village houses, vegetated areas, tree clusters, agricultural lands and vacant lands (**Plans A-2a** and **A-3**). CTP/UD&L of PlanD has no objection to the application from landscape planning perspective as significant adverse landscape impact on the surrounding areas arising from the proposed development is not anticipated. C for T considers that the application involving only one Small House could be tolerated. Other relevant government departments including DEP, CE/C of WSD, CE/MN of DSD and D of FS have no objection to nor adverse comment on the application.
- 11.3 According to the Interim Criteria (**Appendix II**), development of Small House with more than 50% of the footprint outside both the ‘VE’ and ‘V’ zone would normally not be approved unless under very special circumstances. The proposed Small House footprint falls entirely outside the ‘VE’ and ‘V’ zone of Wai Ha. According to DLO/TP of LandsD, the number of outstanding Small House applications for Wai Ha is 9 and there is no information on the 10-year Small House demand forecast for the same village. Based on the latest estimate by PlanD, about 0.58ha of land (or equivalent to about 23 Small House sites) is available within the “V” zone concerned (**Plan A-2b**). In this regard, land available within the “V” zone is sufficient to fully meet the outstanding Small House applications. There are no exceptional circumstances in the submission to justify approval of the application. 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 are five similar applications (No. A/NE-TK/130, 134, 148, 149 and 194) in close proximity to the Site that fall partly within the same “AGR” zone (**Plan A-2a**). All of them were approved before the Board’s formal adoption of a more cautious approach in approving applications for Small House development in August 2015 mainly on considerations as set out in paragraph 6.2 above. Given that the proposed Small House footprint falls entirely outside the ‘VE’ of Wai Ha and land is still available in the “V” zone of the same village, the planning circumstances of approving the similar applications are not applicable to the current application.

11.5 Regarding the public comment objecting to the application 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 comment mentioned in paragraph 10 above, 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 current submission for a departure from the planning intention;
- (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that more than 50% of the proposed Small House footprint falls outside the "V" zone and the 'VE' of any recognized villages; and
- (c) land is still available within the "V" zone of Wai Ha 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 3.3.2027, 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 approval condition 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 VI**.

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 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 attachments and SI received on 4.1.2023 and 6.1.2023
Appendix Ia	FI received on 8.2.2023
Appendix Ib	FI received on 22.2.2023
Appendix II	Relevant Revised 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	Public comment
Appendix VI	Recommended advisory clauses
Drawing A-1	Layout Plan Submitted by the Applicant
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the “V” zone of Wai Ha for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2023**