

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/862

- Applicants** : 鄧世傑先生及鄧世樂先生 (both are 鄧鐸英祖司理) represented by M&D Planning and Surveyors Consultant Limited
- Site** : Lot 672 S.B (Part) in D.D. 109, Kam Tin North, Yuen Long, New Territories
- Site Area** : About 1,400.26 m²
- Land Status** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Two Houses (New Territories Exempted Houses (NTEHs) – Small Houses)

1. The Proposal

- 1.1 The applicants seek planning permission to build two NTEHs (Small Houses) on the application site (the Site) for accommodation of their sons who claimed to be indigenous villagers of Shui Tau Tsuen. The Site falls within an area zoned “AGR” on the approved Kam Tin North OZP No. S/YL-KTN/9 (**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)’ use is a Column 2 use within the “AGR” zone, which requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of each of the two proposed Small Houses are as follows:
- | | |
|------------------|-------------------------|
| Total floor area | : 195.09 m ² |
| No. of storeys | : 3 |
| Building height | : 8.23m |
| Roofed over area | : 65.03 m ² |
- 1.3 Layout of the two proposed Small Houses including location of the septic tanks is shown on **Drawings A-1** and **A-2**. The uncovered area of the Site is proposed for gardens of the proposed Small Houses.
- 1.4 In support of the application, the applicants have submitted the following

documents:

- (a) Application form with attachments received on 10.10.2022 **(Appendix I)**
- (b) Further Information (FI) received on 5.12.2022 **(Appendix II)**

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the application are detailed in the application form with attachments and FI at **Appendices I and Ia**. They are briefly summarised as follows:

- (a) due to increase in population of Shui Tau Tsuen, there is insufficient land within the “Village Type Development” (“V”) zone for Small House development;
- (b) the proposed Small Houses are compatible with the surrounding rural land uses. Similar applications for Small House development have been granted by the Rural and New Town Planning Committee (the Committee) in the “AGR” zones in the past; and
- (c) the Site is suitable for Small House development as there is no major infrastructure projects nor slopes in the vicinity. The proposed Small House development would not induce adverse impacts nor nuisance to the nearby residents.

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

The applicants are 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 New Territories Exempted House/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and has been revised several times subsequently. The latest set of Interim Criteria, promulgated on 7.9.2007, is at **Appendix II**.

5. Previous Application

There is no previous application in respect of the Site.

6. Similar Applications

- 6.1 There are nine similar applications for Small House developments within/straddling over the same “V” zone and “AGR” zone in the vicinity of the Site on the Kam Tin North OZP since the first promulgation of the Interim Criteria in November 2000.

- 6.2 Eight applications (No. A/YL-KTN/153, 177, 265, 284 to 286, 545 and 627) were rejected by the Committee or the Board on review between February 2003 and March 2019 mainly on the grounds that the proposed developments were not in line with the planning intention of “AGR” zone and/or the Interim Criteria in that the sites fell outside or mostly outside the “V” zone and ‘village environs’ (‘VE’); there was no general shortage of land in the “V” zone for meeting the demand for Small House development; approval of the applications would set undesirable precedents for Small House development within the “AGR” zone; and there was no sufficient information in the submissions to demonstrate that the proposed developments would not generate adverse landscape and ecological impacts.
- 6.3 Application No. A/YL-KTN/380 was approved with conditions by the Committee in May 2012 mainly on the reasons that the proposed development complied with the Interim Criteria in that more than 50% of the footprint of the proposed development fell within “V” zone and there was a general shortage of land within “V” zone to meet the demand of Small House development; relevant developments generally had no adverse comment on the application; and though DAFC did not support the application, there was no active agricultural activities carried out on the site.
- 6.4 Details of the similar applications are summarized in **Appendix III** and the locations are shown on **Plan A-1**.

7. **The Site and Its Surrounding Areas** (Plans A-1 to A-3 and site photos on Plan A-4)

- 7.1 The Site is:
- (a) currently mainly used for cultivation purpose;
 - (b) located outside the ‘VE’ of Shui Tau Tsuen and Shui Mei Tsuen; and
 - (c) accessible via local track connecting to Shui Tau Road.
- 7.2 The surrounding areas have the following characteristics:
- (a) to the north, west and southwest are grassland, a barbecue site and some temporary structures / sheds forming part of a privately operated outdoor recreation centre (part of the site with valid planning permission under Application No. A/YL-KTN/830);
 - (b) to the east and southeast is active farmland; and
 - (c) to the further west and southwest are village houses of Shui Tau Tsuen, Shui Mei Tsuen, Pak Wai Tsuen and Kam Hing Wai within the “V” zone on the OZP.

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 summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprints of the two proposed Small Houses		100% 100%	- The Site and the footprints of each of the two proposed Small Houses fall entirely within the “AGR” zone.
2.	Within ‘VE’? - The Site - Footprints of the two proposed Small Houses		100% 100%	- The DLO/YL of LandsD advises that the Site and the footprint of the two proposed Small Houses fall entirely outside the ‘VE’ of Shui Tau Tsuen and Shui Mei Tsuen (Plan A-2a).
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 Shui Tau Tsuen, Shui Mei Tsuen and Kam Hing Wai: about 6.375ha (equivalent to 255 Small House sites). The outstanding Small House applications for Shui Tau Tsuen, Shui Mei Tsuen and Kam Tin Wai are 119 ¹ while the 10-year Small House demand forecast is 136 ² .

¹ Including the Small House application at the Site received by DLO/YL of LandsD in 2022.

² The figure was provided by the Indigenous Inhabitant Representatives of the said villages and DLO/YL of LandsD is unable to verify such information. DLO/YL of LandsD further advises that the figure of 10-year Small House demand forecast for Shui Tau Tsuen has not been provided by the Indigenous Inhabitant Representative.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		<u>Land available</u> - Land available to meet 10-year Small House demand within the “V” zone of the villages concerned: about 8.025ha (equivalent to about 321 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural point of view as the Site is under active cultivation and agricultural activities in the vicinity are active. The Site, together with the farmland in the vicinity, possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character comprising village houses, a privately operated outdoor recreation centre and active farmland.
6.	Within Water Gathering Ground?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and Emergency Vehicular Access (EVA)?		✓	- The Director of Fire Services (D of FS) has no objection in-principle to the application. The applicants should be reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by Lands Department.
9.	Traffic impact?		✓	- The Commissioner for Transport (C for T) considers that the application could be tolerated.
10.	Drainage impact?		✓	- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN of DSD) has no objection in-principle from public drainage point of view. - Approval condition to request the applicants to submit and implement a drainage proposal for the Site should be included to ensure the proposed Small House will not cause adverse drainage impact to the adjacent area.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
11.	Sewerage impact?		✓	- The Director of Environment Protection (DEP) considers that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscape impact?	✓		- The Chief Town Planner/ Urban Design and Landscape, Planning Department (CTP/ UD&L of PlanD) has some reservation from landscape planning perspective as approval of the application would alter the landscape character and degrade the landscape quality of the “AGR” zone.
13.	Local objections conveyed by DO(YL)?		✓	
14.	Others	✓		- Detailed comments of Government departments are at Appendix IV .

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

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (c) District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD);
- (d) Commissioner of Police (C of P); and
- (e) Project Manager/West, Civil Engineering and Development Department (PM(W), CEDD).

10. **Public Comments Received During Statutory Publication Period**

The application was published for public inspection. During the statutory public inspection period, four public comments were received from Kadoorie Farm & Botanic Garden Corporation, World Wide Fund for Nature Hong Kong and individuals. The commenters object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; approval of the application would set an undesirable precedent for similar applications; active and quality farmland should be preserved; and the proposed development will bring about adverse traffic and environmental impacts and fire safety risk thus affecting the living quality and safety of nearby villagers.

11. **Planning Considerations and Assessments**

- 11.1 The application is for two proposed Small Houses on the Site zoned “AGR” on the OZP. The proposed development is not in line with the planning intention of “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 the agricultural point of view as the Site is under active cultivation and possesses potential for agricultural rehabilitation, together with the active farmland in its vicinity. There is no strong planning justification in the submission for a departure from the planning intention.
- 11.2 The Site, located to the east of the “V” zone of Shui Tau Tsuen and Shui Mei Tsuen (**Plan A-2a**), is currently mainly used for cultivation purpose (**Plan A-4**). It is situated in an area of rural landscape character comprising active farmland, vacant land, ponds, scattered tree groups and village houses. The CTP/UD&L of PlanD has some reservation on the application from the landscape planning perspective and concerns that approval of the application would alter the landscape character and degrade the landscape quality of the “AGR” zone.
- 11.3 Regarding the Interim Criteria, the proposed development does not comply with the Interim Criteria in that both the Site and the two proposed Small Houses footprints fall entirely outside the ‘VE’ and “V” zone of Shui Tau Tsuen and Shui Mei Tsuen. DLO/YL of LandsD states that these types of Small House applications would not be considered under the Small House Policy even if planning approval is given. Besides, according to DLO/YL of LandsD’s records, the total number of outstanding Small House applications for Shui Tau Tsuen, Shui Mei Tsuen and Kam Hing Wai is 119 while the 10-year Small House demand forecast for the villages concerned is 136. Based on the latest estimation by PlanD, about 8.025 ha (or equivalent to about 321 Small House sites) of land is available within the “V” zone of the concerned villages. There is no general shortage of land in meeting the demand for Small House development in the concerned “V” zone.
- 11.4 The Site is not served by public sewer. The applicants propose to use septic tank and soakaway system to treat the sewage generated by the two proposed Small Houses. DEP and CE/MN of DSD have no objection to the application provided that the design and operation of the septic tank and soakaway system follows the requirements in EPD’s Practice note for Professional Person (ProPECC) PN 5/93 ‘Drainage Plans subject to Comment by Environmental Protection Department’, including percolation test and certification by Authorized Person. Other relevant

government departments consulted including D of FS, CHE/NTW of HyD and DO(YL) of HAD have no objection to / adverse comment on the application.

- 11.5 There are eight similar applications within the same “AGR” zone in the vicinity of the Site rejected by the Committee or the Board on review between February 2003 and March 2019 for reasons as stated in paragraph 6 above. The planning circumstances of the rejected applications are similar to the current application. Rejection of this application is in line with the Committee’s previous decisions.
- 11.6 Regarding the public comments as stated in paragraph 11 above, the departmental comments and planning considerations and assessments as stated above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 12 and having taken into account the public comments in paragraph 10 above, 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 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) 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 footprints of the two proposed Small Houses fall outside the “V” zone and ‘VE’ of Shui Tau Tsuen and Shui Mei Tsuen. There is no general shortage of land in meeting the demand for Small House development in the concerned “V” zone.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 9.12.2026, 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 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 applications and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to reject the applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application form with supplementary information received on 10.10.2022
Appendix Ia	FI received on 5.12.2022
Appendix II	Extract of 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 of relevant government departments
Appendix V	Recommended advisory clauses
Appendix VI	Public comments
Drawing A-1	Site layout plan
Drawing A-2	Section plan
Plan A-1	Location plan with similar applications
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within the “V” zone
Plan A-3	Aerial photo
Plan A-4	Site photos