

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/969

<u>Applicant</u>	: Mr. TANG Shu Tak represented by Mr. Tang Lok San
<u>Site</u>	: Lot 763 S.A (Part) in D.D. 109, Kam Tin North, Yuen Long, New Territories
<u>Site Area</u>	: About 91m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use) with Building Licence No. 1294 allowing erection of a 3-storey New Territories Exempted House (NTEH) – Small House with roofed-over area not exceeding 65.04m ² and a height of not more than 7.62m
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/11 (currently in force) Draft Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/10 (at the time of submission) [No change to the zoning of the application site on the OZP]
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Proposed House (NTEH – Small House)

1. The Proposal

- 1.1 The applicant, who claims himself to be an indigenous villager of Shui Tau Tsuen (水頭村), seeks planning permission to build a NTEH (Small House) on the application site (the Site) which falls within an area zoned “AGR” on the Kam Tin North OZP (**Plan A-1**). According to the Notes of the OZP for “AGR” zone, ‘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 which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant, covered by lawn which forms part of an area used as place of recreation without valid planning permission (**Plans A-3 and A-4**).

1.2 Details of the proposed NTEH (Small House) are as follows:

Total Floor Area	: 195.09m ²
No. of Storey	: 3
Building Height	: 8.23m
Roofed-over Area	: 65.03m ²

1.3 According to the applicant, no car parking space will be provided. Layout of the proposed Small House development including location of the septic tank is shown on **Drawing A-1**.

1.4 In support of the application, the applicant has submitted the following documents:

(a) Application form and supplementary information (**Appendix I**) received on 6.11.2023

(b) Further Information (FI) received on 8.12.2023* (**Appendix Ia**)

** accepted and exempted from publication and recounting requirements*

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form, supplementary information and FI in **Appendices I** and **Ia**. They can be summarised as follows:

- (a) The proposed development is not incompatible with the surrounding environment. Building Licence was granted on 11.6.1979 for development of a Small House at the Site.
- (b) The proposed development would not induce adverse environmental, drainage and landscape impacts on the surrounding areas.
- (c) The applicant claims that the Site is currently vacant without specific land use and does not form part of the place of recreation use (namely Kam Tin Country Club) in the vicinity of the Site. The applicant will ensure that no development would be undertaken at the Site without prior approval from the Board.
- (d) Consents from the relevant land owners and operator of the Kam Tin Country Club have been obtained to ensure that the Site is accessible via the local tracks to the east and southeast of the Site, which are currently within the boundary of the Club.

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. **Background**

The Site is currently not subject to any active planning enforcement case.

5. **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**.

6. **Previous Application**

There is no previous application covering the Site.

7. **Similar Application**

- 7.1 There are 15 similar applications, involving 14 sites, for Small House development within/straddling the same “AGR” zone in the vicinity of the Site since the first promulgation of the Interim Criteria in November 2000 (**Plan A-1**).
- 7.2 14 applications were rejected by the Rural and New Town Planning Committee (the Committee) or the Board on review, or with appeal dismissed by the Appeal Board Panel (Town Planning) between September 2001 and March 2023 mainly on the grounds that the proposed development was not in line with the planning intention of “AGR” zone and/or the Interim Criteria in that the site fell outside or mostly outside the “Village Type Development” (“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 application would set undesirable precedents for Small House development within the “AGR” zone; and there was no sufficient information in the submission to demonstrate that the proposed development would not generate adverse impacts.
- 7.3 Application No. A/YL-KTN/380 was approved with conditions by the Committee in May 2012 mainly on the considerations 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 development generally had no adverse comment on the

application; and while Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application, there was no active agricultural activities carried out on the site.

- 7.4 Details of the similar applications are summarised in **Appendix III** and the locations are shown on **Plan A-1**.

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

- 8.1 The Site is:

- (a) currently vacant, covered by lawn which forms of a place of recreation which is not covered by valid planning permission;
- (b) located outside the ‘VE’ of Shui Tau Tsuen and Shui Mei Tsuen; and
- (c) accessible from local access branching off Shui Mei Road.

- 8.2 The surrounding areas are rural in character predominated by residential structures/dwellings of Shui Tau Tsuen and Shui Mei Tsuen with some other uses as farmlands, plant nursery, open storage/storage yards and car park. To the north, east and west of the Site are mainly vacant land covered by lawn with temporary structures used as place of recreation without valid planning permission. An outdoor recreation centre, namely Kam Tin Country Club, with some temporary structures/sheds covered by valid planning permission under application No. A/YL-KTN/830 for temporary place of recreation (including barbecue spot, picnic area, children playground and handicraft making area).

9. 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.

10. Comments from Relevant Government Departments

- 10.1 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 - Footprint of the proposed Small House	- -	100% 100%	- The Site and the footprint of the proposed Small House fall entirely within “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	- -	100% 100%	- The District Lands Officer/Yuen Long, Lands Department (DLO/YL of LandsD) advises that the Site does not fall within any ‘VEs’ of recognized village (Plan A-1).
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 6.25ha (equivalent to 250 Small House sites). The outstanding Small House applications for Shui Tau Tsuen, Shui Mei Tsuen and Kam Tin Wai are 114 ¹ while the 10-year Small House demand forecast is 136 ² . <u>Land available</u> - Land available to meet 10-year Small House demand within the “V” zone of the villages concerned: about 7.79ha (equivalent to about 312 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” zone?		✓	- DAFC advises that 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. He does not support the application from

¹ Among the 114 outstanding Small House applications, 96 fall within the “V” zone and 18 straddle or outside the “V” zone. For those 18 applications straddling or being outside the “V” zone, none of them has obtained valid planning approvals from the Board.

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>
				agricultural perspective as the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/development?	✓		- The proposed Small House is not incompatible with the surrounding land uses which are predominantly rural in character comprising village houses, residential structures/dwellings, plant nursery, farmlands and place of recreation.
6.	Within Water Gathering Ground?		✓	- The Chief Engineer/Construction, Water Supplies Department (CE/C of WSD) has no objection to the application.
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 applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD.
9.	Traffic impact?	✓		- The 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 resulting cumulative adverse traffic impact could be substantial. Notwithstanding the above, the application only involves construction of a Small House, the application could be tolerated.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
10.	Drainage impact?		✓	- The Chief Engineer/Mainland North, the Drainage Services Department (CE/MN of DSD) has no objection in-principle from public drainage point of view.
11.	Sewerage impact?		✓	- The Director of Environmental 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, the Planning Department (CTP/UD&L of PlanD) has no objection to the application from landscape planning perspective. Significant adverse impact on the landscape resources and character arising from the proposed development is not anticipated. -
13.	Local objections conveyed by DO(YL)?		✓	- The District Officer (Yuen Long), the Home Affairs Department (DO(YL) of HAD) advises that no local objection to the application has been received.

10.2 Comments from the following government departments have been incorporated in paragraph 10.1 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;
- (g) CE/C of WSD;
- (h) DO(YL) of HAD; and
- (i) DAFC.

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

- (a) Project Manager (West), Civil Engineering and Development Department;
- (b) Chief Highway Engineer/New Territories West, Highways Department;
- (c) Chief Building Surveyor/NTW, Buildings Department;
- (d) Commissioner of Police; and
- (e) Director of Electrical and Mechanical Services.

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

The application was published for public inspection. During the statutory public inspection period, two public comments were received from the Kadoorie Farm and Botanic Garden Corporation and an individual objecting to the application mainly on the grounds that the proposed development is not in line with the planning intention; it does not comply with the Interim Criteria; and there is no history of previous approval.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed Small House on 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 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 point of view as the Site possesses potential for agricultural rehabilitation.
- 12.2 Regarding the Interim Criteria (**Appendix II**), the proposed Small House footprint falls entirely outside both the ‘VE’ and the ‘V’ zone. Such Small House development would normally not be approved unless under very exceptional circumstances, such as possession of a building status under the lease for the application site. DLO/YL, LandsD has no adverse comment on the application and advises that the subject lot of the Site has building entitlement for erecting a 3-storey Small House with roofed-over area not exceeding 65.04m² and a height of not more than 7.62m under a Building Licence executed on 11.6.1979, and the applicant has also applied to his office for modifying the restricted height in the Building Licence from 7.62m to 8.23m, which will be considered by his office in accordance with the New Territories Small House Policy. Given that the proposed development has possessed an executed building licence, sympathetic consideration could be given for the current application in light of the exceptional circumstance.
- 12.3 The proposed development is considered not incompatible with the surrounding areas which are rural in character intermixed with village houses, residential dwellings/structures, outdoor recreational centre, farmland and plant nursery. CTP/UD&L, PlanD considers that significant adverse landscape impact on resources and character arising from the proposed use is not anticipated and has no objection to the application from landscape planning perspective. C for T considers that Small House development should be confined within the “V” zone

as far as possible but given that the application involves construction of a Small House only, the application could be tolerated from traffic perspective. Other relevant government departments consulted including DEP, CE/MN of DSD, CE/C of WSD and FSD have no objection to or no adverse comment on the application.

- 12.4 There are 15 similar applications as mentioned in paragraph 7. The planning circumstance of the current application which involves a site possessing a building entitlement is different from the above similar applications.
- 12.5 Regarding the public comments as detailed in paragraph 11, the departmental comments and planning assessments as stated 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 above, the Planning Department has no objection to the application.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 22.12.2027, 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 advisory clauses are also suggested for Members' reference:

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VI**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Member's reference:
 - (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) 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 footprint of the proposed Small House falls outside the "V" zone and 'VE' of Shui Tau Tsuen and Shui Mei Tsuen.

14. Decision Sought

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

15. Attachments

Appendix I	Application form and supplementary information received on 6.11.2023
Appendix Ia	FI received on 8.12.2023
Appendix II	Extract of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Similar applications
Appendix IV	Detailed comments of relevant government departments
Appendix V	Public comments
Appendix VI	Recommended advisory clauses
Drawing A-1	Site layout Plan
Plan A-1	Location Plan
Plans A-2a & 2b	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
December 2023**