

TOWN PLANNING BOARD

TPB Paper No. 10911

**For Consideration by
the Town Planning Board on 21.7.2023**

**REVIEW OF APPLICATION NO. A/NE-FTA/222
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Three Houses (New Territories Exempted Houses – Small Houses)
in “Agriculture” zone**

**Lots 208 S.A, S.B and S.C in D.D. 52,
Sheung Shui Wa Shan, Sheung Shui, New Territories**

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1. Background

- 1.1 On 31.1.2023, the applicants, Messrs. LIU Kam Hoi, LIU Derek Chi Keat and LIU Jeffrey Chi Honk represented by Mr. CHIN Poon On, sought planning permission to build three houses (New Territories Exempted Houses (NTEHs) - Small Houses) on the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the draft Fu Tei Au and Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/17 (currently in force)¹ (**Plan R-1**).
- 1.2 On 31.3.2023, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed developments were not in line with the planning intention of the “AGR” zone, which was 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 was no strong planning justification in the submission for a departure from the planning intention; and
 - (b) land was still available within the “Village Type Development” (“V”) zone of Wa Shan Village which was primarily intended for Small House development. It was considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-FTA/222 (**Annex A**)
 - (b) Extract of minutes of the RNTPC meeting held on 31.3.2023 (**Annex B**)
 - (c) Secretary of Town Planning Board’s letter dated 21.4.2023 (**Annex C**)

¹ The Site falls within an area zoned “AGR” on the approved Fu Tei Au and Sha Ling OZP No. S/NE-FTA/16 at the time of submission. There is no change to the “AGR” zone under the current OZP No. S/NE-FTA/17.

2. **Application for Review**

On 25.4.2023, the applicants' representative applied under s.17(1) of the Ordinance for review of the RNTPC's decision to reject the application (**Annex D1**). On 6.7.2023, the applicants' representative submitted supplementary justifications in support of the review application (**Annex D2**).

3. **Justifications from the Applicants**

The justifications put forth by the applicants' representative in support of the review application are detailed in the submission at **Annexes D1** and **D2**, as summarized below:

- (a) the applicants are the indigenous villagers of Wai Loi Tsuen, Sheung Shui. The Site is the only piece of land owned by the applicants for Small House development;
- (b) the Site has been left vacant for years. It is not accessible to water source, and no agricultural activities are found on the Site. It is not suitable for agricultural use;
- (c) the Site falls entirely within the village 'environs' ('VE') of Wa Shan Village. There are similar applications approved in the vicinity of the Site. Approval of the application would not set an undesirable precedent for similar applications;
- (d) no environmental and traffic impact arising from the proposed development is anticipated, and no adverse departmental comment was received on the application;
- (e) the land suitable for Small House development in the village proper of Wa Shan Village is largely owned by Sheung Shui Tso Tong and therefore not available; and
- (f) the applicants and their family members would move back to Hong Kong from Canada, hence there is a genuine housing need.

4. **The Section 16 Application**

The Site and its Surrounding Areas (Plans R-1 to R-4)

- 4.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC was described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no material change of the situation since then.
- 4.2 The Site is:
 - (a) currently vacant and overgrown with weeds;
 - (b) located to the west of the village proper of Wa Shan Village and falls entirely within the 'VE' of the same village; and
 - (c) only accessible via a footpath.
- 4.3 The surrounding areas are predominantly rural in character comprising active/fallow agricultural land, vacant land, village houses, open storage uses and a toilet. A

footpath leading to the village cluster of Wa Shan Village is located to the further east of the Site.

Planning Intention

- 4.4 There has been no change to the planning intention of the subject “AGR” zone as mentioned in paragraph 8 of **Annex A**, 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.

Assessment Criteria

- 4.5 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 promulgated on 7.9.2007 is at Appendix II of **Annex A**.

Previous Application

- 4.6 The Site forms part of the subject of a previous application (No. A/NE-FTA/191) submitted by the same applicants and two others for five NTEHs, which was rejected by the Board on review in 2019 based on the same grounds as the current application. Details of the previous application are summarized at **Annex E** and its location is shown on **Plans R-1** and **R-2a**.

Similar Applications

- 4.7 When the s.16 application was considered by the RNTPC on 31.3.2023, there were seven similar applications within the same “AGR” zone and in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. There has been no change in the number of similar applications since then. Among these similar applications, five were approved and two were rejected.
- 4.8 Among the approved cases, three applications (No. A/NE-FTA/90, 95 and 132) were approved in 2009 and 2014 before the formal adoption of a more cautious approach by the Board (i.e. 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 Lands Department). These applications were generally in line with the Interim Criteria in that more than 50% of the proposed Small House footprint fell within the ‘VE’; there were a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; and the proposed Small Houses would unlikely generate significant adverse impacts on the surrounding areas. After the Board’s formal adoption of a more cautious approach since August 2015, two applications (No. A/NE-FTA/164 and 219) were approved by the RNTPC in 2016 and 2022 respectively mainly on sympathetic consideration as the sites were the subject of previously approved applications (No. A/NE-FTA/90 and 132).
- 4.9 For the remaining two rejected applications (No. A/NE-FTA/188 and 204), they were rejected by the RNTPC in 2019 and 2021 respectively mainly for being not in line with the planning intention of the “AGR” zone and that land was still available within the “V” zone for Small House development.

- 4.10 Details of the above similar applications are summarized at **Annex F** and their locations are shown on **Plan R-2a**.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 and Appendix V of **Annex A**.
- 5.2 For the review application, the relevant government departments have been further consulted. They all maintain their previous views on the s.16 application and have no further comments on the review application. The views of the Director of Agriculture, Fisheries and Conservation (DAFC) are recapitulated as follows:
- The Site falls within “AGR” zone and is abandoned. 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 and plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

6. Public Comments Received During Statutory Publication Period

- 6.1 On 5.5.2023, the review application was published for public inspection. During the statutory public inspection period, two public comments were received from a member of the North District Council and Kadoorie Farm & Botanic Garden Corporation (KFBGC) respectively (**Annex G**). The member of North District Council indicates no comment on the application. KFBGC objects to the application on the grounds that the proposed Small House developments are not in line with the planning intention of the “AGR” zone and the Site is the subject of a previously rejected application for the same use.
- 6.2 Three public comments (one with no comment and two adverse comments) were received at the s.16 application stage which set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The subject s.16 application was rejected by the RNTPC on 31.3.2023 mainly for being not in line with the planning intention of the “AGR” zone, and land was still available within the “V” zone of Wa Shan Village for Small House development. To support the review application, the applicants have submitted written representations claiming that (i) the Site is the only piece of land owned by the applicants for Small House development; (ii) the Site has been left vacant with no access to water source, hence it is not suitable for agricultural activities; (iii) there are similar applications approved for Small House developments in the vicinity of the Site; (iv) adverse environmental and traffic impact from the proposed development is not anticipated and no adverse departmental comment was received on the application; (v) the land in the village proper of Wa Shan Village is largely owned by Tso Tong and therefore not available; and (vi) the applicants and their family members would move back from overseas and there is a genuine housing need for them. There has been no material

change in the planning circumstances since the consideration of the subject application by the RNTPC in March 2023. The planning consideration and assessments as set out in paragraph 11 of **Annex A** remain valid.

Planning Intention of the “AGR” zone

- 7.2 The Site and the footprint of the proposed Small Houses fall entirely within the “AGR” zone on the OZP. The proposed Small House developments are 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 as agricultural infrastructures such as road and water source are available and that the Site possesses potential for agricultural rehabilitation. There is no strong justification given in the submission for a departure from such planning intention.

Land Availability within the “V” zone

- 7.3 As advised by DLO/N, LandsD, the number of outstanding Small House applications for Wa Shan Village is 42 while the 10-year Small House demand forecast is 430. Based on PlanD’s latest estimates, about 2.47ha of land (equivalent to about 98 Small Houses sites) is available within the “V” zone concerned. While the amount of land available within the “V” zone is insufficient to fully meet the future Small Houses, it is capable of meeting the outstanding Small House applications (**Plan R-2b**). 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, the Board has put more weighting on the number of outstanding Small House applications provided by the LandsD. It is considered more appropriate to concentrate the proposed Small House developments within the “V” zone for more orderly development patterns, efficient use of land and provision of infrastructures and services.

Responses to the Applicants’ Justifications for the Review

- 7.4 The applicants claim that the Site is not accessible to water source and not suitable for agricultural activities; and no adverse departmental comment was received on the application. It should be noted that DAFC maintains her view of not supporting the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation and there are active agricultural activities in the vicinity and agricultural infrastructures are available (see paragraph 5.2 above). While other relevant departments consulted have no adverse comment on the application, the proposed Small House development is considered not in line with the planning intention of the “AGR” zone. There is no strong planning justification provided in the submission for a departure from such planning intention.
- 7.5 As regards the applicants’ claim that the Site is the only piece of land owned by them for Small House development and the land in “V” zone of Wa Shan Village is largely owned by Tso Tong and therefore not available, it should be noted that land ownership is subject to change and is not a material planning consideration.

- 7.6 As regards the applicants' claim that the Site falls entirely within the 'VE' of Wa Shan Village; and there are similar applications approved in the vicinity of the Site for Small House development, it should be noted that the land available in the "V" zone is capable of meeting the outstanding Small House applications, and hence it is considered more appropriate to concentrate the proposed Small House developments within the "V" zone for more orderly development patterns, efficient use of land and provision of infrastructures and services (see paragraph 7.3 above). Besides, the five approved applications, involving three sites in the vicinity of the Site, were approved by the RNTPC between 2009 and 2022 (**Plan R-2a**). Among these approved applications, three were approved before the formal adoption of a more cautious approach by the Board and the remaining two were approved mainly on sympathetic consideration as the sites were the subject of previous approvals (see paragraph 4.8 above). The planning circumstances of the current application are different from these approved cases.
- 7.7 Regarding the public comment objecting to the review application as mentioned in paragraph 6 above, government departments' comments and the planning assessments above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6 and given that there is no material change in the planning circumstances since the consideration of the subject application by the RNTPC, Planning Department maintains its previous views of not supporting the review application for the following reasons:
- (a) the proposed developments are 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; and
 - (b) land is still available within the "V" zone of Wa Shan Village which is primarily 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.
- 8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until **21.7.2027**, 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 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

8.3 The recommended advisory clauses are attached at **Annex H**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicants.
- 9.3 Alternatively, should the Board decide to approve the review 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.

10. Attachments

Plan R-1	Location plan
Plan R-2a	Site plan
Plan R-2b	Estimated amount of land available for Small House development within "V" zone
Plan R-3	Aerial photo
Plans R-4a and R-4b	Site photos
Annex A	RNTPC Paper No. A/NE-FTA/222
Annex B	Extract of minutes of the RNTPC meeting held on 31.3.2023
Annex C	Secretary of the Town Planning Board's letter dated 21.4.2023
Annex D1	Email received on 25.4.2023 from the applicants' representative applying for review of the RNTPC's decision
Annex D2	Letter received on 6.7.2023 from the applicants' representative providing further justifications in support of the review application
Annex E	Previous application
Annex F	Similar applications
Annex G	Public comments
Annex H	Recommended advisory clauses

**PLANNING DEPARTMENT
JULY 2023**