

TPB Paper No. 10812

**For Consideration by
the Town Planning Board on 25.2.2022**

**REVIEW OF APPLICATION NO. A/NE-KLH/599
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House)
in “Agriculture” and “Village Type Development” Zones**

**Lot 975 S.A in in D.D. 7
Wai Tau Tsuen, Tai Po, New Territories**

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Lot 975 S.A. in D.D. 7, Wai Tau Tsuen, Tai Po, New Territories

1. Background

- 1.1 On 4.8.2021, the applicant, Mr. CHEUNG Hin Yeung, represented by Mr. HUI Kwan Yee, sought planning permission to build a house (New Territories Exempted House (NTEH) – Small House) at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls partly within “Agriculture” (“AGR”) zone (about 66%) and partly within “Village Type Development” (“V”) zone (about 34%) on the approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11 (**Plan R-1**).
- 1.2 On 24.9.2021, 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 development was 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. It was also intended 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;
 - (b) the proposed development did not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the applicant failed to demonstrate that the proposed development located within the water gathering ground (WGG) would be able to be connected to the existing or planned sewerage system and would not cause adverse impact on the water quality in the area; and
 - (c) land was still available within the “V” zone of Wai Tau Tsuen which was primarily intended for Small House development. It was 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.

1.3 For Members' reference, the following documents are attached:

- (a) RNTPC Paper No. A/NE-KLH/599 (Annex A)
- (b) Extract of minutes of the RNTPC meeting held on 24.9.2021 (Annex B)
- (c) Secretary of Town Planning Board's letter dated 15.10.2021 (Annex C)

2. **Application for Review**

The application submitted by the applicant under section 17(1) of the Ordinance for review of the RNTPC's decision to reject the application was received by the Board on 21.10.2021 (**Annex D1**). Further information (FI) was submitted on 6.12.2021 (**Annex D2**) including justifications on the review application and a proposed sewerage plan shown on **Drawing R-1**.

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in the FI at **Annex D2**. They can be summarised as follows:

- (a) the land available for Small House development within the "V" zone is not owned by the applicant. The Site is the only land possessed by him to develop Small House;
- (b) the Site is located immediately adjacent to existing Small Houses. There are also similar applications for Small House development approved in the vicinity. Approval of the proposed development will not significantly extend the existing developed area, and hence, will not be an undesirable precedent;
- (c) sewerage plan has been submitted with the FI for the review application. Environmental Protection Department (EPD) has advised that the application will be acceptable, if the proposed house is connected to existing public sewerage system;
- (d) the Site is located on flatland and is accessible via a local footpath. Adverse traffic impact is not anticipated. There is also no objection to the application from relevant government departments; and
- (e) there are not many agricultural activities in the proximity of the Site, and the Site is currently vacant with wild grass. It is more suitable to allow the applicant to build Small House on the Site so that he and his family could live with other villagers in the same neighbourhood.

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 the surrounding area 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) partly fenced off, flat, vacant and covered with ground covers;
 - (b) located at the northern fringe of Wai Tau Tsuen but entirely outside the village 'environs' ('VE'); and
 - (c) accessible via a local footpath.
- 4.3 The surrounding areas are predominantly rural in character comprising village houses and farmlands. The existing village cluster of Wai Tau Tsuen is found to the immediate south of the Site (**Plan R-2a**).

Planning Intentions

- 4.4 There has been no change to the planning intentions of "AGR" and "V" zones as mentioned in paragraph 8 of **Annex A**.
- 4.5 The planning intention of the "AGR" zone is primarily to retain and safeguard good quality agriculture 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.
- 4.6 The planning intention of the "V" zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

Assessment Criteria

- 4.7 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 and had been amended four times. On 23.8.2002, criterion (i) which requires that the application site, if located within WGG, should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at Appendix II of **Annex A**.

Previous Application

- 4.8 There is no previous application on the Site.

Similar Applications

- 4.9 When the s.16 application was considered by the RNTPC on 24.9.2021, there were six similar applications for Small House development within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan R-1**). There has been no change in the number of similar applications since then. Among these similar applications, four were approved and two were rejected.
- 4.10 Among the approved applications, one (No. A/NE-KLH/248) was approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Two applications (No. A/NE-KLH/389 and 427) were approved in 2003 and 2015 respectively before the adoption of a more cautious approach by the Board in approving applications for Small House development in recent years, 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 LandsD. These two applications were generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was 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 development was able to be connected to the planned sewerage system. The remaining application (No. A/NE-KLH/571) was approved by the RNTPC in 2019 mainly on sympathetic consideration because previous approval for the same use was granted to the same applicant.
- 4.11 The two rejected cases (No. A/NE-KLH/302 and 405) were rejected by the RNTPC in 2002 and 2010 respectively mainly because the application site was located mostly outside the ‘VE’ and the “V” zone or it was not able to be connected to the planned sewerage system in the area.
- 4.12 Details of the similar applications are summarized in **Annex E** and their locations are shown on **Plans R-1** and **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 and their views are summarized as follows:

Land Administration

- 5.2.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):
- (a) the number of outstanding Small House applications in Wai Tau Tsuen has been updated as 18 (17 at s.16 application stage);

- (b) he has no objection to the review application on the basis that more than 50% of the proposed Small House footprint falls within “V” zone;
- (c) he has no further comments on the review application and maintains his previous views on the s.16 application which are recapitulated below:
 - (i) the applicant is an indigenous villager of Wai Tau Tsuen as confirmed by the Indigenous Inhabitant Representative (IIR). However, his eligibility of Small House grant has yet to be ascertained;
 - (ii) the Site is not covered by any Modification of Tenancy or Building Licence;
 - (iii) the Site is held under Block Government Lease demised for agricultural use. Small House application submitted by the applicant at the Site is still under processing; and
 - (iv) in case the planning permission is approved by the Board, LandsD will process the Small House application according to their prevailing procedures. However, there is no guarantee at this stage that the Small House application would be approved. If the Small House application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD. There is no guarantee to the grant of a right of way to the Small House concerned or approval of the emergency vehicular access thereto.

Environment

5.2.2 Comments of the Director of Environmental Protection (DEP):

- (a) the Site falls within the “AGR” and “V” zones and is within WGG. It is noted that a proposal to connect the proposed house with the existing public sewer has been included in the applicant’s submission for the review application. In this regard, there is an existing public sewer at about 35 m away from the Site, which has sufficient capacity to accommodate discharge from the proposed house;
- (b) he has no objection to the application provided that:
 - (i) the proposed house will be connected to the public sewer;
 - (ii) adequate land space within the Site will be reserved for connection of the proposed house to the public sewer; and

- (iii) the cost of sewer connection will be borne by the applicant.

Drainage and Sewerage

5.2.3 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) the applicant should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The applicant shall neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify/modify the nearby existing/original drainage system if they are found to be inadequate or ineffective to accommodate the additional runoff arisen from the proposed development. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure or ineffectiveness of the modified drainage systems caused by their works;
- (b) DSD's maintained public sewer exists in the vicinity but the feasibility of sewerage connection is subject to the invert of discharge connection pipe leading from the Site. No stud pipe is reserved for sewage connection. It is noted that the applicant would connect the proposed house with the public sewerage system;
- (c) written consent(s) from relevant lot owner(s) and/or LandsD's permission for laying new drains/channels and/or modifying/upgrading existing ones outside the application lot(s) or on government land (where required) should be provided;
- (d) an approval condition of submission and implementation of the drainage proposal for the Site to the satisfaction of DSD or the Board should be imposed to ensure that the proposed development will not cause adverse drainage impact to the adjacent area; and
- (e) the cost and work of drainage and sewerage connection as well as future maintenance responsibility shall be borne by the applicant.

Water Supplies

5.2.4 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) no objection to the application;
- (b) the Site is located within upper indirect WGG and is more than 30m away from the nearest water course. It is noted that the applicant will connect the proposed Small House to the public sewerage system in the area. DEP advised that the Site is able to be connected to the public sewerage system in the area;
- (c) it is noted that DEP has no objection to the application provided that the applicant shall connect the proposed Small House with public sewer for sewage disposal. He supports DEP's view by imposing the following conditions:
 - (i) the foul water drainage system of the proposed Small House shall be connected to the public sewerage system in the area and the applicant shall connect the whole of the foul water drainage system to the public sewerage system;
 - (ii) adequate protective measures shall be taken to ensure that no pollution or siltation occurs to the WGG; and
 - (iii) an executed Deed of Grant of Easement for each private lot through which the sewer connection pipes are proposed to pass shall be submitted to demonstrate that it is both technically and legally feasible to install sewerage pipes from the proposed Small House to the public sewerage system via relevant private lot; and
- (d) for provision of water supply to the proposed development, the applicant may need to extend the inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

5.3 The following government departments have no further comments on the review application and maintain their previous views on the s.16 application in Appendix IV of **Annex A**, which are recapitulated as follows:

Agriculture

5.3.1 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- the Site falls within “AGR” and “V” zones and is currently a piece of abandoned land. There are active agricultural activities in the vicinity, and agricultural infrastructure such as footpath and water source is available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

Landscape

5.3.2 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) no objection to the application from the landscape planning perspective;
- (b) according to aerial photo of 2021, the Site is located in an area of settled valleys landscape character surrounded by village houses and farmlands. The Site is vacant with no significant landscape resource observed. Hence, significant adverse impact on existing landscape resources arising from the proposed development is not anticipated;
- (c) the proposed Small House is considered not entirely incompatible with its surrounding environment; and
- (d) as there is insufficient space within the Site for meaningful landscaping and there is no major public frontage along the site boundary, should the Board approve this application, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

Traffic

5.3.3 Comments of the Commissioner for Transport (C for T):

- (a) such type of 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 for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial;
- (b) notwithstanding the above, the application only involving development of a Small House can be tolerated on traffic grounds; and
- (c) the proposed development is adjacent to a footpath. The maintenance and management party of the access road should be consulted.

Fire Safety

5.3.4 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application; and
- (b) the applicant is reminded to observe the 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by the LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

5.4 The following government departments maintain their previous views of having no comment on the review application:

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) Project Manager/North, Civil Engineering and Development Department;
- (d) Director of Electrical and Mechanical Services; and
- (e) District Officer (Tai Po), Home Affairs Department.

6. Public Comments Received During Statutory Publication Period (Annex F)

6.1 On 29.10.2021 and 24.12.2021, the review application was published for public inspection. During the statutory public inspection periods, a total of five public comments were received. Three comments, from two individuals, raise objection to the application mainly on the grounds of adverse impacts on water quality, traffic, environment, fire safety and villagers' living quality. Two comments, from the IIR of Wai Tau Tsuen and the Tai Po Rural Committee, show support to the application for reasons of the applicant's status as an indigenous villager entitled for Small House grant, no adverse comments from relevant government departments, the applicant's commitment to connect the proposed house to existing public sewer, shortage of land for Small House development; and compatibility with the surrounding cluster of Small Houses.

6.2 Three public comments raising objection to the application were received at the s.16 application stage which are 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 24.9.2021 mainly on the grounds that the proposed development was not in line with the planning intention of the "AGR" zone, did not comply with the Interim Criteria for failing to demonstrate that the proposed development would be able to be connected to the existing or planned sewerage system and would not cause adverse impact on the water quality in the area, and land was still available within the "V" zone of Wai Tau Tsuen for Small House development. To support the review

application, the applicant has put forward justifications that the land available for Small House development within the “V” zone is not possessed by him; the Site is located in vicinity of existing/approved Small Houses; relevant government departments have no objections to/adverse comments on the application; and the Site which is vacant with not many agricultural activities nearby is more suitable for Small House development. The applicant has also submitted a sewerage plan for connecting the proposed house to the existing public sewerage system (**Annex D2** and **Drawing R-1**). In this regard, EPD advises that the existing public sewer in the vicinity of the Site has sufficient capacity to accommodate discharge from the proposed house. On this basis, both EPD and WSD have no objection to the application. The rejection reason under paragraph 1.2 (b) has been addressed.

- 7.2 Apart from the above, there are no other material change to the applicant’s proposal and the relevant planning circumstances since the consideration of the s.16 application by the RNTPC on 24.9.2021. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain largely valid as recapitulated below.
- 7.3 This application is for a proposed Small House development, which both the Site and the footprint of the proposed Small House fall entirely within the ‘VE’ of Wai Tau Tsuen, in an area zoned partly “AGR” (about 66%) and partly “V” (about 34%) 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 also 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 development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as footpath and water source are available; and the Site possesses potential for agricultural rehabilitation.
- 7.4 Regarding the Interim Criteria, more than 50% of the footprint of the proposed Small House falls within the “V” zone and the proposed development within WGG would be able to be connected to the public sewerage system (**Plan R-2a**). According to the DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Wai Tau Tsuen is 18 (which was previously 17 at the s.16 application stage) while the 10-year Small House demand forecast is 295. Based on the latest estimate by Planning Department, about 2.73 ha of land (equivalent to about 109 Small House sites) is available within the “V” zone of Wai Tau Tsuen (**Plan R-2b**). While the land available is insufficient to fully meet the future demand of 313 Small Houses, it is capable to meet the outstanding 18 Small House applications (**Plan R-2b**). It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. Amongst 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. In respect of the applicant’s claim that

the land available for Small House development in the “V” zone is not owned by him, it should be noted that land ownership is not a material consideration for planning applications as it could be subject to change and land parcel could be subdivided to suit development needs.

- 7.5 The Site, located at the northern fringe of Wai Tau Tsuen (**Plan R-2a**), is partly fenced off, flat and covered with groundcovers (**Plan R-4**). The surrounding areas are predominantly rural in character comprising village houses and farmlands (**Plans R-2a and R-3**). CTP/UD&L of PlanD advises that significant landscape impact arising from the proposed development is not anticipated and the proposed development is not entirely incompatible with the surrounding environment. Other relevant government departments have no in-principle objection to nor adverse comment on the application.
- 7.6 According to **Plan R-2a**, there are five similar applications in close proximity to the Site with three cases approved and two cases rejected. Out of the three approved applications, one (No. A/NE-KLH/248) was approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Two (No. A/NE-KLH/389 and 427) were approved in 2003 and 2015 respectively before the adoption of a more cautious approach by the Board in approving applications for Small House development in recent years, 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 LandsD. These two applications were generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was 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 development was able to be connected to the planned sewerage system. The remaining application (No. A/NE-KLH/571) was approved by the RNTPC in 2019 mainly on sympathetic consideration because previous approval for the same use was granted to the same applicant.
- 7.7 The two rejected cases (No. A/NE-KLH/302 and 405) were rejected by the RNTPC in 2002 and 2010 respectively mainly because the application site was located mostly outside the ‘VE’ and the “V” zone or it was not able to be connected to the planned sewerage system in the area.
- 7.8 Regarding the public comments on 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 assessment 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 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 “Village Type Development” (“V”) zone of Wai Tau Tsuen 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.

8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 25.2.2026, 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 conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or of the Town Planning Board.

Advisory Clauses

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

9. Decision Sought

- 9.1 The Board is invited to consider the application for 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 applicant.
- 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

Drawing R-1	Proposed sewerage plan submitted by the applicant
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
Plan R-4	Site photo
Annex A	RNTPC Paper No. A/NE-KLH/599
Annex B	Extract of minutes of the RNTPC meeting held on 24.9.2021
Annex C	Secretary of the Town Planning Board’s letter dated 15.10.2021
Annex D1	Letter received by the Town Planning Board on 21.10.2021 from the applicant applying for a review of the RNTPC’s decision
Annex D2	Further information received on 6.12.2021 from the applicant’s representative
Annex E	Similar applications
Annex F	Public comments
Annex G	Recommended advisory clauses

**PLANNING DEPARTMENT
FEBRUARY 2022**