

# **TOWN PLANNING BOARD**

**TPB Paper No. 10835**

**For Consideration by  
the Town Planning Board on 13.5.2022**

**REVIEW OF APPLICATION NO. A/NE-KLH/602  
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House – Small House)  
in “Agriculture” Zone**

**Lot 1065 S.A in D.D. 7 and Adjoining Government Land, Wai Tau, Tai Po**

**REVIEW OF APPLICATION NO. A/NE-KLH/602**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House - Small House)  
in “Agriculture” Zone**

**Lot 1065 S.A. in D.D. 7 and Adjoining Government Land, Wai Tau, Tai Po**

**1. Background**

- 1.1 On 16.11.2021, the applicant, Mr. CHEUNG Dak Kin, 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 within “Agriculture” (“AGR”) zone on the approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11 (**Plan R-1**).
- 1.2 On 14.1.2022, 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 proposed development would cause adverse landscape impact on the surrounding area; and
  - (c) land was still available within the “Village Type Development” (“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/602 (Annex A)
  - (b) Extract of minutes of the RNTPC meeting held on 14.1.2022 (Annex B)
  - (c) Secretary of Town Planning Board’s letter dated 28.1.2022 (Annex C)

## 2. Application for Review

On 18.2.2022, the applicant applied, under section 17(1) of the Ordinance, for review of the RNTPC's decision to reject the application (**Annex D**). The applicant has not submitted any written representation in support of the review application.

## 3. The Section 16 Application

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

- 3.1 The situation of the Site and the surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no material change of the situation since then.
- 3.2 The Site is:
- (a) a piece of vacant land, and mostly hard paved; and
  - (b) abutting a local track leading to Tai Wo Service Road West to the east.
- 3.3 The surrounding areas are predominantly rural in character occupied by village houses, temporary domestic structures and tree groups. Wai Tau Tsuen village proper is located on the other side of the local track to the north and a woodland on a natural slope is situated to the immediate west of the Site (**Plans R-2a and R-3**).

### Planning Intention

- 3.4 There has been no change to the planning intention of "AGR" zone as mentioned in paragraph 8 of **Annex A**, which 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.

### Assessment Criteria

- 3.5 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 and had been amended four times. On 23.8.2002, criterion (i) which requires that the application site, if located within water gathering grounds (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 Applications

- 3.6 The Site is the subject of two previous applications (No. A/NE-KLH/453 and 501) for Small House development submitted by a different applicant.

Application No. A/NE-KLH/453 was rejected by the RNTPC on 19.7.2013 mainly for adverse landscape impact. Application No. A/NE-KLH/501 was rejected by the Board on 2.9.2016 for adverse landscape impact and also no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration. Compared with these previous applications, there is no change in major development parameters and footprint of the proposed Small House under the current application.

- 3.7 Details of the previous applications are summarized at **Annex E** and its location is shown on **Plans R-1** and **R-2a**.

#### Similar Applications

- 3.8 When the s.16 application was considered by the RNTPC on 14.1.2022, there were four 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, two were approved and two were rejected.
- 3.9 Three of these similar applications (Applications No. A/NE-KLH/349, 381 and 545), each for eight NTEHs, involved the same site. Application No. A/NE-KLH/349 was rejected by the Board on review on 17.8.2007 mainly on the grounds of being unable to be connected to the existing or planned public sewerage system, failing to address the landscape impact and setting undesirable precedent. Applications No. A/NE-KLH/381 and 545 were approved with conditions by the Committee on 22.5.2009 and 4.5.2018 respectively mainly on considerations that the proposed houses are able to be connected to the future public sewers; no adverse impacts on the surrounding area with proposed mitigation measures; and the subject lots had building entitlement.
- 3.10 The remaining Application (No. A/NE-KLH/587) for nine NTEH developments was rejected by the Committee on 1.9.2020 mainly on the grounds of being not able to be connected to the existing or planned public sewerage system; and adverse landscape, geotechnical and water quality impacts.
- 3.11 Details of the similar applications are summarized in **Annex F** and their locations are shown on **Plans R-1** and **R-2a**.

#### **4. Comments from Relevant Government Departments**

- 4.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 and Appendix V of **Annex A**.
- 4.2 For the review application, the relevant government departments have been further consulted. All maintain their previous views on the s.16 application and have no further comments on the review application. In relation to the reasons for rejection of the s.16 application, the views of Director of Agriculture, Fisheries and Conservation (DAFC) and Chief Town Planner/Urban Design and

Landscape, Planning Department (CTP/UD&L, PlanD) are recapitulated as follows:

Agriculture

4.2.1 Comments of the DAFC:

- the Site falls within “AGR” zone and is currently a piece of paved land. There are active agricultural activities in the vicinity, and agricultural infrastructure such as road access and water resources 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

4.2.2 Comments of the CTP/UD&L, PlanD:

- (a) the Site is located to the southwest of Selecta Garden and falls within an area zoned “Agriculture” (“AGR”) on the approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11. The Site is the subject of a previous planning application (No. A/NE-KLH/501) for the same use which was rejected by TPB in 2016;
- (b) based on the aerial photo of 2021, the Site is located in an area of settled valleys landscape character comprising village houses within “V” zone to the north and east, farmlands and clusters of trees. Wai Tau Tsuen Fung Shui Woodland is found adjoining the northwest of the Site. With reference to their site record taken on 10.12.2021, the Site is mainly hard paved and partly on vegetated slope. A large *Celtis sinensis* (朴樹) covered by vines/climbers is located at the fringe of Wai Tau Tsuen Fung Shui Woodland and close to the northwestern boundary outside the Site, while a 10m high *Litchi chinensis* (荔枝) in good condition is observed in close proximity to the western site boundary. According to the proposed layout plan, tree root zone of the above concerned trees will be affected by the development. Noting that information on tree treatment, tree preservation and mitigation measures are not provided in the planning statement, potential impact on these existing trees is anticipated;
- (c) the proposed Small House is considered not entirely incompatible with its surrounding environment. Consideration should be given to whether approval of the application would encourage more village house developments into the “AGR” zone, resulting in irreversible alteration of the landscape character of the “AGR” zone;

- (d) the applicant shall revise the development layout to avoid the impact on the existing trees in close proximity to the Site; and
- (e) should the Board approve the 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.

## **5. Public Comments Received During Statutory Publication Period (Annex G)**

- 5.1 On 25.2.2022, the review application was published for public inspection. During the statutory public inspection period, a total of four public comments were received from individuals, objecting to the application mainly on the grounds of causing adverse traffic, fire safety, environmental, landscape, geotechnical and fung shui impacts; and land still being available within the “V” zone.
- 5.2 Four 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**.

## **6. Planning Considerations and Assessments**

- 6.1 The subject s.16 application was rejected by the RNTPC on 14.1.2022 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 not cause adverse landscape impact on the surrounding area, and land was still available within the “V” zone of Wai Tau Tsuen for Small House development. The applicant has not submitted any written representation in support of the review application. Since the consideration of the s.16 application by the RNTPC on 14.1.2022, there has been no material change in planning circumstances. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid as recapitulated below.
- 6.2 The Site and the footprint of the proposed Small House fall entirely within the “AGR” zone on the OZP. The proposed Small House 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 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 the Site possesses potential for agricultural rehabilitation.
- 6.3 Regarding the Interim Criteria, the footprint of the proposed Small House falls entirely within the ‘VE’ of Wai Tau Tsuen, 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 record, the total number of outstanding Small House applications for Wai Tau Tsuen is 17 while the 10-year Small House demand forecast is 295. Based on the latest estimate by the

Planning Department, about 2.73 ha of land (or equivalent to about 109 Small House sites) is available within the “V” zone of Wai Tau Tsuen (**Plan R-2b**). While land available within the “V” zone of Wai Tau Tsuen is insufficient to fully meet the future demand of 312 Small Houses, it is capable to meet the outstanding 17 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.

- 6.4 The Site is currently vacant and mostly hard paved. The proposed development is considered not entirely incompatible with the surrounding areas which are predominantly rural in character with clusters of village houses to the north and east (**Plans R-2a** and **R-3**). However, CTP/UD&L of PlanD advises that the proposed development will affect the tree root zone of two large trees including a *Celtis sinensis* (朴樹) and a 10m high *Litchi chinensis* (荔枝) in close proximity to the western site boundary. Potential adverse landscape impact on these trees is anticipated.
- 6.5 The Site is located within the WGG. The applicant has proposed to connect the proposed Small House to the existing public sewerage system (**Plan R-2a**). In this regard, both DEP and CE/C of WSD have no objection to the application. CE/MN of DSD advises that an approval condition of submission and implementation of drainage proposal is required. C for T considers that such type of Small House development should be confined within “V” zone as far as possible but considers that the proposed development involving only one Small House can be tolerated unless it is rejected on other grounds. Other concerned government departments including D of FS, CHE/NTE of HyD, PM/N of CEDD and H(GEO) of CEDD have no objection to nor adverse comment on the application.
- 6.6 The Site is subject of two previous applications (No. A/NE-KLH/453 and 501) for Small House development, which were both rejected. Application No. A/NE-KLH/453 was rejected by the Committee on 19.7.2013 mainly for adverse landscape impact and Application No. A/NE-KLH/501 was rejected on review by the Board on 2.9.2016 for adverse landscape impact and no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration. The grounds for rejection of these latest previous applications are applicable to the current case.
- 6.7 As shown on **Plan R-2a**, there are three similar applications for NTEH developments in close proximity to the Site, all involving the same site with two cases approved and one case rejected. Application No. A/NE-KLH/349 was rejected by the Board on review on 17.8.2007 mainly on the grounds of being unable to be connected to the existing or planned public sewerage system, failing to address the landscape impact and setting undesirable precedent. Applications No. A/NE-KLH/381 and 545 were approved with conditions by the Committee

on 22.5.2009 and 4.5.2018 respectively mainly for reasons that the proposed houses are able to be connected to the future public sewers; no adverse impacts on the surrounding area with proposed mitigation measures; and the subject lots had building entitlement, which does not apply to the subject site under the current review application.

- 6.8 Regarding the public comments on the review application as mentioned in paragraph 5 above, government departments' comments and the planning assessments above are relevant.

## **7. Planning Department's Views**

- 7.1 Based on the assessments made in paragraph 6, having taken into account the public comments mentioned in paragraph 5 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;
  - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the proposed development would cause adverse landscape impact on the surrounding area; and
  - (c) 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.
- 7.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 13.5.2026, 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 Condition**

The submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.



Advisory Clause

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

**8. Decision Sought**

- 8.1 The Board is invited to consider the application for review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 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.
- 8.3 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.

**9. Attachments**

<b>Plan R-1</b>	Location plan
<b>Plan R-2a</b>	Site plan
<b>Plan R-2b</b>	Estimated amount of land available for Small House development within "V" zone
<b>Plan R-3</b>	Aerial photo
<b>Plan R-4</b>	Site photo
<b>Annex A</b>	RNTPC Paper No. A/NE-KLH/602
<b>Annex B</b>	Extract of minutes of the RNTPC meeting held on 14.1.2022
<b>Annex C</b>	Secretary of the Town Planning Board's letter dated 28.1.2022
<b>Annex D</b>	Letter received by the Town Planning Board on 18.2.2022 from the applicant applying for a review of the RNTPC's decision
<b>Annex E</b>	Previous applications
<b>Annex F</b>	Similar applications
<b>Annex G</b>	Public comments
<b>Annex H</b>	Recommended advisory clauses

**PLANNING DEPARTMENT  
MAY 2022**