

TOWN PLANNING BOARD

TPB Paper No. 10843

**For Consideration by
the Town Planning Board on 17.6.2022**

**REVIEW OF APPLICATION NO. A/NE-KLH/604
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

Lots 32 S.A ss.1 and 32 S.B in D.D. 7, Tai Hang, Tai Po

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1. Background

- 1.1 On 4.1.2022, the applicant, Mr. MAN Chun Kiu, represented by Mr. YEUNG Siu Fung, 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 “Village Type Development” (“V”) and “Agriculture” (“AGR”) zones on the approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11 (**Plan R-1**).
- 1.2 On 4.3.2022, 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; and
 - (b) land was still available within the “V” zone of Tai Hang Village 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/604 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 4.3.2022 (Annex B)
 - (c) Secretary of Town Planning Board’s letter dated 18.3.2022 (Annex C)

2. Application for Review

On 1.4.2022, 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 of the Site and the surrounding areas since then.

3.2 The Site is:

- (a) vacant and mainly paved with asphalt sand;
- (b) located at the northern fringe of Tai Hang Village but outside its village 'environs' '(VE)'; and
- (c) accessible by vehicles via a local track.

3.3 The surrounding areas are predominantly rural in character comprising village houses, temporary structures, vegetated areas and clusters of tree groups. The existing village cluster of Tai Hang is found about 30m to the south 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. The latest set of Interim Criteria 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/557 and 596) for Small House development submitted by the same applicant of current application. Application No. A/NE-KLH/557 was rejected by the Board on review on 8.11.2019 mainly for reasons of being not in line with the planning

intention of the “AGR” zone; non-compliance with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell outside the “V” zone and the ‘VE’ of Tai Hang; and there is no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration. Application No. A/NE-KLH/596 was rejected by the RNTPC on 23.7.2021 mainly for reasons of being not in line with the planning intention of the “AGR” zone; non-compliance with the Interim Criteria in that there is no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; and failure to demonstrate that the proposed development would be able to be connected to the existing/planned sewerage system in the area.

- 3.7 Compared with the latest previous application, the site area under current application has reduced from about 156 m² to about 116.2 m², the proposed Small House footprint has changed with about 83% falling within the “V” zone (previously about 75%) and sewerage connection instead of septic tank is proposed for sewage disposal.
- 3.8 Details of the previous applications are summarized at **Annex E** and its location is shown on **Plans R-1** and **R-2a**.

Similar Applications

- 3.9 When the s.16 application was considered by the RNTPC on 4.3.2022, there were 13 similar applications for Small House development within the same “AGR” zone since the first promulgation of the Interim Criteria (**Plan R-1**). There has been no change in the number of similar applications since then. Among these similar applications, four were approved and nine were rejected.
- 3.10 Among the rejected cases, seven covering six sites (No. A/NE-KLH/316, 323, 428, 454, 498, 567, 590) were rejected by the RNTPC between 2003 and 2020, mainly on the ground that there was no general shortage of land to meet the Small House demand at the time of consideration. Five of them (i.e. except Applications No. A/NE-KLH/428 and 498) were also rejected for reason that the application site was not able to be connected to the existing/planned sewerage system in the area or failure to demonstrate the proposed development would not cause adverse impact on the water quality in the area.
- 3.11 The remaining two rejected cases (Applications No. A/NE-KLH/309 and 326) covered the same site of two subsequently approved cases (Applications No. A/NE-KLH/331 and 452), and were rejected by the RNTPC in 2003 and 2004 respectively mainly because there was no general shortage of land to meet future Small House demand at the time of consideration. Application No. A/NE-KLH/331 was approved in 2005 mainly for compliance with the Interim Criteria in that more than 50% of the proposed Small House footprint fell within “V” zone and there was a general shortage of land in meeting the Small House demand at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Application No. A/NE-KLH/452 was approved in 2013 on sympathetic consideration as the application site was the subject of previous approval despite there was sufficient land available within the “V” zone in meeting the future Small House demand at the

time of consideration.

- 3.12 For the remaining two approved cases, Application No. A/NE-KLH/386 was approved in 2009 for reasons similar to those for approving Application No. A/NE-KLH/331 as mentioned in paragraph 3.11 above. For Application No. A/NE-KLH/451, although there was sufficient land available within the “V” zone in meeting the future Small House demand at the time of consideration, it was approved in 2013 on sympathetic consideration that the proposed Small House footprint fell entirely within the “V” zone and the proposed Small House could be connected to the planned sewerage system in the area.
- 3.13 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 All relevant government departments have no further comments on the review application and maintain their previous views on the s.16 application. In relation to the reasons for rejection of the s.16 application, the views of Director of Agriculture, Fisheries and Conservation (DAFC) are recapitulated as follows:

Agriculture

- the Site falls within “V” and “AGR” zones and is currently a piece of vacant 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.

5. Public Comments Received During Statutory Publication Period

- 5.1 On 22.4.2022, the review application was published for public inspection. During the statutory public inspection period, no public comment was received.
- 5.2 Two 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 4.3.2022 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone, and land was still available within the “V” zone of Tai Hang Village 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, 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 of the proposed Small House falls mainly within the “V” zone (about 74%) and partly within the “AGR” zone (about 26%) on the OZP. The proposed Small House development is not in line with the planning intention of the “AGR” zone as set out in paragraph 3.4 above. DAFC does not support the application from the agricultural development point of view as the Site has potential for agricultural rehabilitation.
- 6.3 Regarding the Interim Criteria, more than 50% of the proposed Small House footprint falls within the “V” zone of Tai Hang but it falls entirely outside any ‘VE’ (**Plan R-2a**). According to the record of District Lands Officer/Tai Po, Lands Department, the total number of outstanding Small House applications for Tai Hang Village is 28 (24 at the time of consideration of s.16 application) while the 10-year Small House demand forecast is 225. Based on the latest estimate by the Planning Department (PlanD), about 7.91 ha of land (or equivalent to about 316 Small House sites) is available within the “V” zone of Tai Hang (**Plan R-2b**). In this regard, there is sufficient land within the “V” zone of Tai Hang to fully meet the Small House demand of 253 houses (**Plan R-2b**). As there is no general shortage of land in meeting the demand for Small House development in the “V” zone, 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.
- 6.4 The Site is currently vacant and mostly paved. The proposed development is considered not entirely incompatible with the surrounding areas which are predominantly rural in character comprising village houses, temporary structures, vegetated areas and clusters of tree groups (**Plans R-2a and R-3**). Chief Town Planner/Urban Design and Landscape, PlanD has no objection to the application from landscape planning perspective as significant adverse impact on sensitive landscape resources arising from the proposed development is not anticipated.
- 6.5 The Site is located within the Water Gathering Grounds. The applicant has proposed to connect the proposed Small House to the existing public sewerage system (**Plan R-2a**). In this regard, both Director of Environmental Protection and Chief Engineer/Construction, Water Supplies Department have no objection to the application. Chief Engineer/Mainland North, Drainage Services Department advises that an approval condition of submission and implementation of drainage proposal is required. Commissioner for Transport 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. Other concerned government departments have no objection to or adverse comment on the application.
- 6.6 The Site is the subject of two previous applications submitted by the same

applicant as set out in paragraph 3.6 above. Application No. A/NE-KLH/557 was rejected by the Board on review on 8.11.2019 for the reasons mentioned in the said paragraph. Application No. A/NE-KLH/596 was rejected by the RNTPC on 23.7.2021 on similar grounds and also for a reason that the applicant failed to demonstrate that the proposed development would be able to be connected to the existing/planned sewerage system in the area. Compared with the latest previous application, the site area under current application is reduced from about 156 m² to about 116.2 m², the proposed Small House footprint is changed with about 83% falling within the “V” zone (previously about 75%) and sewerage connection instead of septic tank is proposed for sewage disposal. While the concern on sewerage connection could be addressed, the other grounds for rejection of these previous applications are still largely applicable to the current one.

- 6.7 There are 13 similar applications for Small House development within the same “AGR” zone. Out of which, two applications (No. A/NE-KLH/331 and 386) were approved by the RNTPC in 2005 and 2009 respectively for reasons mentioned in paragraph 3.11 above. The other two applications were approved in 2013 on sympathetic consideration that the proposed Small House footprint fell entirely within the “V” zone (Application No. A/NE-KLH/451) or the application site was the subject of a previously approved case (Application No. A/NE-KLH/452). The circumstances of these approved cases are not applicable to the current application.
- 6.8 The nine rejected applications (No. A/NE-KLH/309, 316, 323, 326, 428, 454, 498, 567 and 590) were rejected by the RNTPC between 2003 and 2020 mainly on the grounds mentioned in paragraphs 3.10 and 3.11 above. The current application is similar to these rejected cases with having no general shortage of land in the “V” zone to meet the Small House demand.

7. Planning Department’s Views

- 7.1 Based on the assessments made 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, PlanD 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 “V” zone of Tai Hang Village 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 Board decide to approve the application, it is suggested that the permission shall be valid until 17.6.2026, 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

- 7.3 The recommended advisory clauses are attached at **Annex G**.

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

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/604
Annex B	Extract of minutes of the RNTPC meeting held on 4.3.2022
Annex C	Secretary of Town Planning Board's letter dated 18.3.2022
Annex D	Letter received by Town Planning Board on 1.4.2022 from the applicant applying for a review of the RNTPC's decision
Annex E	Previous applications
Annex F	Similar applications
Annex G	Recommended advisory clauses