

TPB Paper No. 10883

**For Consideration by
the Town Planning Board on 24.2.2023**

REVIEW OF APPLICATION NO. A/NE-KLH/611
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

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

Lot 857 RP in D.D. 9, Tai Wo Village, Tai Po, New Territories

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1. Background

- 1.1 On 27.6.2022, the applicant, Mr. Chan Wah Kwong represented by Rocky Fung Surveying Company, 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 26.8.2022, 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 “Village Type Development” (“V”) zone of Yuen Leng, Kau Lung Hang and Tai Wo 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/611 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 26.8.2022 (Annex B)
 - (c) Secretary of Town Planning Board’s letter dated 9.9.2022 (Annex C)

2. Application for Review

On 28.9.2022, the applicant applied under section 17(1) of the Ordinance for review of the RNTPC's decision to reject the application (**Annex D1**). On 28.11.2022 and 3.2.2023, the applicant submitted written representation in support of the review application (**Annex D2** and **D3**).

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in his written representation at **Annexes D2** and **D3** as summarized below:

- (a) the Site is the subject of a previous application (No. A/NE-KLH/275) for the same use which was approved with conditions by the RNTPC in 2001. The applicant of application No. A/NE-KLH/275 did not further pursue the approved application. Since then, all subsequent previous applications i.e. (Applications No. A/NE-KLH/445, 543, 570 and 595) were rejected in 2013, 2018, 2019 and 2021 respectively;
- (b) the previous application No. A/NE-KLH/445 submitted by the applicant of the current application was rejected in 2013 mainly for reason of having no public sewers available in the vicinity for connection. Such issue had been resolved in a subsequent application (No. A/NE-KLH/543) with a sewerage connection proposal and land owners' consents for laying the sewer across relevant lots submitted by the applicant. Relevant government departments, including Drainage Services Department (DSD), have no objection to the application;
- (c) during the review of Application No. A/NE-KLH/570, Agriculture, Fisheries and Conservation Department (AFCD) indicated no objection to the application in that the potential for agricultural rehabilitation at the Site was low as the Site was small in size with no water source available and surrounded by existing village houses and fallow agricultural land. AFCD also had no objection to the previous applications (No. A/NE-KLH/275, 543 and 570) considered in 2001, 2018 and 2019. There had been no change to the Site over the years; and
- (d) the Site is located in close proximity to the 'VE' of Yuen Leng, and the Indigenous Inhabitant Representative of Yuen Leng Village attended the Town Planning Board meeting previously to express that there was insufficient land in Yuen Leng Village for Small House development. The first previous application at the Site was submitted in 2010, which was before the adoption of a cautious approach, sympathetic considerations should be given.

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 areas at the time of 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.

4.2 The Site is:

- (a) hard paved and partly fenced off;
- (b) located in Water Gathering Ground (WGG) and bounded by a footpath and a local track on either side; and
- (c) accessible by vehicles via the local track.

4.3 The surrounding areas are predominantly rural in character intermixed with village houses, temporary domestic structures, vacant land and active/fallow agricultural land. (**Plans R-2a and R-3**).

Planning Intention

4.4 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

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 was promulgated on 7.9.2007 and is at Appendix II of **Annex A**.

Previous Applications

4.6 The Site is the subject of five previous applications (No. A/NE-KLH/275, 445, 543, 570 and 595) for Small House development. Application No. A/NE-KLH/275 submitted by a different applicant was approved with conditions by the Committee on 21.9.2001 before criterion (i) ¹ of the Interim Criteria came into effect mainly on the grounds that the Site fell entirely within the village ‘environ’ (‘VE’) and there was a general shortage of land in meeting the Small House demand at the time of consideration.

4.7 Applications No. A/NE-KLH/445, 543, 570 and 595 were submitted by the same applicant of the current application. Application No. A/NE-KLH/445 was rejected by the Board on review on 22.2.2013 mainly for reason of not complying with the Interim Criteria in that the proposed Small House located within the WGG would not be able to be connected to the planned sewerage system in the area. Since the formal adoption of a more cautious approach by the Board in approving applications for Small House development in August

¹ Criterion (i) 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.

2015 (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 (LandsD)), the remaining three applications No. A/NE-KLH/543, 570 and 595 were rejected by the Board on review on 14.12.2018 and 20.12.2019, and by the Committee on 12.3.2021 respectively mainly on the grounds of being not in line with the planning intention of “AGR” zone and land still being available within the “V” zone. Compared with the last previous application (No. A/NE-KLH/595), there is no change to the footprint and major development parameters of the proposed Small House under the current application.

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

Similar Applications

- 4.9 When the s.16 application was considered by the RNTPC on 26.8.2022, there were 32 similar applications for Small House development within the same “AGR” zone in the vicinity of the Site since the first promulgation of the Interim Criteria (**Plan R-2a**). There has been no change in the number of similar applications since then. Among these similar applications, 16 cases were approved and 16 cases were rejected.
- 4.10 Among the approved cases, six applications (No. A/NE-KLH/271, 272, 273, 277, 279 and 281) were approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002. The remaining 10 (No. A/NE-KLH/328, 341, 345, 346, 391, 392, 402, 409, 438 and 491) were approved between 2003 and 2015 before the formal adoption of a more cautious approach by the Board in approving applications for Small House development in recent years. These 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; the proposed development was able to be connected to the planned sewerage system; and/or the application site was the subject of a previously approved case. After the Board’s formal adoption of a more cautious approach, no similar application has been approved within the same “AGR” zone in the vicinity of the Site.
- 4.11 For the rejected applications, 12 (No. A/NE-KLH/299, 303, 321, 360, 362, 374, 380, 444, 455, 478, 479 and 484) were considered before the Board’s formal adoption of a more cautious approach, and most of them were rejected mainly on the grounds that the proposed development located within WGG was not being able to be connected to the existing/planned sewerage system in the area. Another two applications (No. A/NE-KLH/526 and 548) were rejected in 2017 and 2018, after the Board’s formal adoption of a more cautious approach, mainly on two grounds i.e. being unable to be connected with the planned sewerage system and land was still available within the “V” zones for Small House development. For the remaining two applications (No. A/NE-KLH/593 and 594), they were rejected mainly for reason that land was still available within “V” zones for Small House development.

- 4.12 Details of the similar applications are summarized in **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 Director of Agriculture, Fisheries and Conservation (DAFC) are recapitulated as follows:
- the Site falls within “AGR” zone and is currently a piece of vacant land. Based on site inspection in July 2022, there are active agricultural activities in the vicinity, and agricultural infrastructure such as road access 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.

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

- 6.1 On 7.10.2022 and 16.12.2022, the review application was published for public inspection. During the statutory public inspection period, a total of five public comments were received from individuals raising objections to the application, mainly for reasons that previous applications were rejected; and the proposed development would adversely affect traffic, environment, flooding and ecology of the surroundings as well as villagers’ safety and their living quality.
- 6.2 Two public comments were received at the s.16 application stage. One objected to the application and another one provided views as 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 26.8.2022 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” zones of Yuen Leng, Kau Lung Hang and Tai Wo for Small House development. To support the review application, the applicant has submitted written representation claiming that (i) the Site was a subject of previously approved application; (ii) the sewerage connection issue has been solved in previous application; (iii) AFCD had no objection to the previous applications considered in 2001, 2018 and 2019 in that the potential for agricultural rehabilitation at the Site was low; and (iv) there is insufficient land available for Small House development. 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.

Planning Intention of the “AGR” zone

- 7.2 The application is for a proposed Small House on the Site zoned “AGR” on the OZP (**Plan R-1**). 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 as the Site possesses potential for agricultural rehabilitation. There is no strong justification in the submission for a departure from the planning intention.

Land Availability within the “V” zones

- 7.3 Regarding the Interim Criteria, more than 50% of the proposed Small House footprint falls within the ‘VE’ of Tai Wo (**Plan R-2a**) and the proposed development located within WGG would be able to be connected to public sewerage system. According to the record of District Lands Officer/Tai Po of LandsD, the total number of outstanding Small House applications for Yuen Leng, Kau Lung Hang and Tai Wo Villages is 124 (149 at the time of consideration of s.16 application) while the 10-year Small House demand forecast is 894. Based on the latest estimate by PlanD, about 8.3 ha of land (or equivalent to about 331 Small House sites) is available within the “V” zones of the concerned villages (**Plan R-2b**). Since there is an overlapping between the ‘VE’ of Tai Wo and the ‘VE’ of Yuen Leng and Kau Lung Hang Lo Wai and San Wai, the land availability for Small House development in this application is assessed by combining the “V” zones of all these villages to avoid double counting. In this regard, while land available within the “V” zones is insufficient to fully meet the total future Small House demand of 1,018 Small Houses in these villages, such available land is capable of meeting the outstanding 124 Small House applications. It should be noted that the Board has formally adopted a more cautious approach in approving applications for Small House development in August 2015. 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. As such, 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.

Responses to the Applicants’ Justifications for the Review

- 7.4 Regarding the approved previous application No. A/NE-KLH/275, it should be noted that this application was submitted by a different applicant and the planning permission granted in 2001 lapsed in 2005. Since the planning application was considered before the formal adoption of a more cautious approach in August 2015, the planning considerations of this previous application are not applicable to the current application.

- 7.5 For sewerage connection, during the s.16 application stage, the applicant proposed to connect the proposed Small House to the existing public sewer on Tai Wo Service Road East, which is about 100m to the west of the Site (**Plan R-2a**). DEP, CE/MN of DSD and CE/C of WSD have no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at their own cost, and adequate space within the Site will be reserved for connection. The current application was not rejected by the RNTPC on sewerage grounds.
- 7.6 Although DAFC had no objection to the previous applications considered in or before 2019, DAFC did not support the last previous application No. A/NE-KLH/595 which was rejected on 12.3.2021 and considered that the Site possessed potential for agricultural rehabilitation according to the site inspection in February 2021 which showed that there were active agricultural activities in the vicinity and agricultural infrastructure was available. Regarding the current application, DAFC maintains its views based on the recent site inspection in July 2022. As for the grounds of insufficient land available within the “V” zones, it should be noted that land available within the “V” zones of Yuen Leng, Kau Lung Hang and Tai Wo Villages (i.e. about 8.3 ha of land or equivalent to about 331 Small House sites) is capable of meeting the outstanding 124 Small House applications.
- 7.7 Regarding the public comments objecting to the review application on the grounds as detailed 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, 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” zones of Yuen Leng, Kau Lung Hang and Tai Wo Villages 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 24.2.2027, 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 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 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

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| 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/611 |
| Annex B | Extract of minutes of the RNTPC meeting held on 26.8.2022 |
| Annex C | Secretary of Town Planning Board's letter dated 9.9.2022 |
| Annex D1 | Letter received by Town Planning Board on 28.9.2022 from the applicant applying for a review of the RNTPC's decision |
| Annex D2 | Written Representation from the Applicant's Representative received on 28.11.2022 |
| Annex D3 | Further information from the Applicant's Representative received on 3.2.2023 |

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| Annex E | Previous applications |
| Annex F | Similar applications |
| Annex G | Public comments |
| Annex H | Recommended advisory clauses |

**PLANNING DEPARTMENT
FEBRUARY 2023**