

TPB Paper No. 10924

**For Consideration by
the Town Planning Board on 15.9.2023**

**REVIEW OF APPLICATION NO. A/NE-KLH/621
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

**Lot 94 S.G ss.8 R.P, 94 S.G ss.9 and 324 S.B R.P in D.D. 9,
Kau Lung Hang, Tai Po, New Territories**

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Tai Po, New Territories**

1. Background

- 1.1 On 30.3.2023, the applicant, Mr. CHAN King-chuen, 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”) (about 51.5%) and “Village Type Development” (“V”) (48.5%) zones on the approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11 (**Plan R-1**).
- 1.2 On 19.5.2023, 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 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 Kau Lung Hang and Yuen Leng 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/621 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 19.5.2023 (Annex B)
 - (c) Secretary of Town Planning Board’s letter dated 9.6.2023 (Annex C)

2. **Application for Review**

On 28.6.2023, the applicant applied under section 17(1) of the Ordinance for review of RNTPC's decision to reject the application and has submitted written representation in support of the review application, in particular the layout of Small House has been revised in order to maximize the Small House footprint falling within the "V" zone (**Annex D**).

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 **Annex D** as summarized below:

- (a) the layout of the Small House has been revised in order to maximize the Small House footprint (about 86%¹) falling within the "V" zone (**Drawing A-1**);
- (b) according to the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) (A)(c)(iv) and (A)(b), as the Site falls within WGGs, exemption from planning permission is not applicable when not less than 50% of the footprint of a Small House falls within the "V" zone and the village 'environs' ('VE') of a recognized village. However, taking into account WSD's no objection stance to the application and about 86%¹ of the revised Small House footprint falling within the "V" zone, it is hoped that sympathetic consideration may be given;
- (c) the strip of 2m-wide government land abutting the northeast boundary of the Site is for the provision of public sewerage system. It is believed that Drainage Services Department (DSD) may not allow house development on the piece of land;
- (d) the Site falls within the Water Gathering Grounds (WGGs). Environmental Protection Department (EPD) and Water Supplies Department (WSD) have no objection to the application provided that the proposed development will be able to connect to the existing public sewerage system. In view of the above, the proposed development would not cause adverse impact on water quality and the surrounding;
- (e) the current review application is similar to the approved application Nos. A/NE-KLH/519, 533 and 540 in that there are existing village houses/approved Small House applications in the surroundings and more than 50% of the Small House footprint fall within 'VE' or "V" zone;
- (f) it is questionable that whether Heung Yee Kuk and District Council had been consulted on the formal adoption of a more cautious approach in considering Small House applications by the Board since August 2015. The said approach incurs unfair treatment to those planning applications after the effect date of the approach. According to paragraph 9.1(3) under RNTPC Paper No. A/NE-KLH/621 (**Annex A**), the Small House demand in Kau Lung Hang and Yuen Leng Villages is 876 Small House sites while 74 out of 98 outstanding Small House applications falls

¹ It should be about 78.1% according to PlanD's estimate based on the applicant's submitted drawing.

within the “V” zones. The huge difference between the Small House demand and the number of outstanding Small House within the “V” zones indicates that it is difficult for villagers to acquire land in “V” zones. It is hoped that the Board would take note that there is insufficient land supply in “V” zones for reasons that indigenous villagers will not sell private land in the “V” zones if they have not yet applied for Small House development; Tso/Tong land is not saleable; and real estate developers hoarded land. In view of the above, it is hoped that the Board would revert to the previous approach adopted before August 2015 in considering Small House applications.

4. **The Section 16 Application**

The Proposal

4.1 Details of the proposed Small House development in s.16 application and the current review application are as follows:

	s.16 application	Current review application
Application Site	About 48.5% (50.8m ²) in “V” zone; 51.5% (54m ²) in “AGR” zone.	
Footprint of proposed Small House	- About 62.5% (40.6m ²) in “V” zone; 37.5% (24.4m ²) in “AGR” zone. - About 99% in ‘VE’.	- About 78.1% (50.8m ²) in “V” zone; 21.9% (14.2m ²) in “AGR” zone. - 100% in ‘VE’.
Total floor area	195.09m ²	
Number of storeys	3	
Building height	8.23m	
Roofed over area	65.03m ²	

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

4.2 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.

4.3 The Site is:

- (a) largely paved and a small portion is covered with shrubs and vegetation;
- (b) located within the ‘VE’ of Kau Lung Hang and Yuen Leng Villages;
- (c) located within the upper indirect WGGs; and
- (d) accessible via a local track.

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

Planning Intention

- 4.5 There has been no change in 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

- 4.6 The latest set of Interim Criteria was promulgated on 7.9.2007 and is at Appendix II of **Annex A**.

Previous Application

There is no previous application at the Site.

Similar Applications

- 4.7 There are 19 similar applications for Small House development in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Among them, 15 cases were approved and four were rejected.
- 4.8 Among the approved cases, application No. A/NE-KLH/259 was approved on 2.2.2001 before criterion (i)² of the Interim Criteria came into effect on 23.8.2002. Eight applications (No. A/NE-KLH/347, 372, 397, 400, 442, 471, 472 and 473) covering five sites were approved between 2006 and 2015 before the formal adoption of a more cautious approach by the Board since August 2015.
- 4.9 Since then, there were six applications approved between 2016 and 2018, five of them (No. A/NE-KLH/523, 542, 553, 554 and 555) were approved mainly on sympathetic consideration as they were the subject of previously approved applications. The remaining one (No. A/NE-KLH/519) was approved by the RNTPC mainly on sympathetic consideration as approved similar applications adjoined the eastern site boundary and several similar applications were approved to the west of the “V” zone of Kau Lung Hang.
- 4.10 For the four rejected applications (No. A/NE-KLH/521, 537, 538 and 577), they were rejected by the Committee or the Board on review between 2017 and 2019 mainly on the grounds of being not in line with planning intention of “AGR” zone and land was still available within “V” zone for Small House development

² Criterion (i) requires that application site, if located within WGGs, should be able to be connected to the existing/planned sewerage system in the area.

at time of consideration. Application No. A/NE-KLH/577 was also rejected for reason that the applicant failed to demonstrate that the proposed Small House would be able to be connected to public sewerage system.

- 4.11 For three similar applications (A/NE-KLH/519, 533 and 540) mentioned by the applicant (**Plan A-2b**), while details of application No. A/NE-KLH/519 are set out in paragraph 4.9 above, applications No. A/NE-KLH/533 and 540 were approved in 2017 on sympathetic consideration that more than 90% of the Small House footprint fell within the “V” zone and the application sites were immediately surrounded by existing village houses/approved Small House applications.
- 4.12 Details of the similar applications are summarized at **Annex E** 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 IV of **Annex A**. Their advisory comments, if any, are at Appendix VI of **Annex A** and recapped at **Annex F**.
- 5.2 For the review application, the Director of Agriculture, Fisheries and Conservation (DAFC) maintains its previous adverse views on the s.16 in paragraph 9 of **Annex A**, as recapitulated as follows:
- the Site falls within “V” and “AGR” zones and there are active agricultural activities in the vicinity. Agricultural infrastructure such as road access and water source is available. The Site is suitable for agricultural rehabilitation for various types of agricultural activities such as open field cultivation, plant nurseries, greenhouses, etc. The proposed development is not supported from an agricultural perspective.
- 5.3 All other relevant government departments maintain their previous views on the s.16 application and have no further comments on the review application. Comments from District Lands Officer/Tai Po of Lands Department (DLO/TP, LandsD) are updated in view of the review application:

Land Administration

5.3.1 Comments of DLO/TP, LandsD:

- previous comments are still valid except that the total number of outstanding Small House applications for Kau Lung Hang and Yuen Leng Villages is 91 (98 at the time of consideration of s.16 application), while the 10-year Small House demand forecast is 730 (778 at the time of consideration of s.16 application).

5.3.2 In view of the latest comments of DLO/TP of LandsD, the revised assessment of the land required and land available for Small House development (stated in paragraph 9.1(3) of **Annex A) is as follows:**

	Criteria	Yes	No	Remarks
3	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	<u>Land Required</u> Land required to meet Small House demand in Kau Lung Hang and Yuen Leng Villages ³ : about 20.5ha (equivalent to 821 Small House sites). The outstanding Small House applications are 91 ⁴ while the 10-year Small House demand forecast is 730.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<u>Land Available</u> Land available to meet Small House demand within the “V” zones of concerned villages: about 6 ha (equivalent to about 239 Small House sites) (Plan R-2c).

6. **Public Comment Received During Statutory Publication Period**

On 14.7.2023, the review application was published for public inspection. During the statutory public inspection period, no public comments were received.

7. **Planning Considerations and Assessment**

7.1 The subject s.16 application was rejected by the RNTPC on 19.5.2023 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 Kau Lung Hang and Yuen Leng Villages for Small House development. To support the review application, the applicant has submitted written representation as set out in paragraph 3 above. Since the consideration of the s.16 application by RNTPC, there has been no material change in planning circumstances. The planning considerations and assessment as set out in paragraph 11 of **Annex A** remain valid.

7.2 The application is for a proposed Small House on the Site zoned “AGR” and “V” 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

³ As advised by DLO/TP of LandsD, the Site falls within the coverage of Kau Lung Hang Village under Small House grant application.

⁴ Among the 91 outstanding Small House applications, 73 fall within “V” zone and 18 straddle or fall outside the V” zone.

also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The applicant claims that about 86% of the revised Small House footprint falls within the “V” zone. According to PlanD’s estimate, it should be clarified that about 78.1% of the concerned footprint falls within the “V” zone. DAFC maintains its view for not supporting the current review application for considerations that the Site possessed potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention.

- 7.3 Regarding the Interim Criteria, more than 50% of the proposed Small House footprint falls within the ‘VE’ of Kau Lung Hang and Yuen Leng Villages (**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 DLO/TP of LandsD, the total number of outstanding Small House applications for Kau Lung Hang and Yuen Leng Villages is 91 (98 at the time of consideration of s.16 application) while the 10-year Small House demand forecast is 730 (778 at the time of consideration of s.16 application). Based on the latest estimate by PlanD, about 6 ha of land (or equivalent to about 239 Small House sites) is available within the “V” zones of the concerned villages (**Plan R-2b**). In this regard, while land available within the “V” zones is insufficient to fully meet the total future Small House demand of 730 Small Houses in these villages, such available land is capable of meeting the outstanding 91 Small House applications. 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, 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.
- 7.4 As for the grounds that sympathetic consideration may be given to the current review application, according to the Interim Criteria (B)(a), sympathetic consideration may be given if not less than 50% of the proposed Small House footprint falls within the ‘VE’ of the concern village and there is a general shortage of and in meeting the demand for Small house development in the “V” zone of the village. Regarding the current review application, although more than 50% of the proposed Small House footprint falls within the ‘VE’, land available within the “V” zones of Kau Lung Hang and Yuen Leng Villages (i.e. about 6 ha of land or equivalent to about 239 Small House sites) is capable of meeting the outstanding 91 Small House applications. In this regard, sympathetic consideration may not be given.
- 7.5 The applicant claims that relevant government departments including WSD and EPD have no objection to the application provided that the proposed development will be able to be connected to the existing public sewerage system, it should be noted that the current review application was not rejected by RNTPC on sewerage grounds.
- 7.6 Regarding the approved similar applications No. A/NE-KLH/519, 533 and 540, Application No. A/NE-KLH/519 was approved mainly on sympathetic

consideration as approved similar applications adjoined the eastern site boundary and several similar applications were approved to the west of the “V” zone of Kau Lung Hang. Applications No. A/NE-KLH/533 and 540 were approved on sympathetic consideration that more than 90% of the Small House footprint fell within the “V” zone and the application sites were immediately surrounded by existing village houses/approved Small House application (**Plan R-2b**). The latter two approved applications are sandwiched between Kau Lung Hang and Yuen Leng Villages. Regarding the current review application, although there are existing houses to the north of the Site, it should be noted that the Site is located at the fringe of the ‘VE’ of Kau Lung Hang and Yuen Leng Villages and is immediately surrounded by active/fallow agricultural land to the southwest and further south. In view of the above, the planning considerations of the similar applications concerned are not applicable to the current review application.

- 7.7 Regarding the applicant’s views on the formal adoption of a more cautious approach by the Board since August 2015 in considering Small House applications, it should be noted that the Board has considered application for New Territories Exempted House (NTEH)/Small House in accordance with the Interim Criteria which was first promulgated on 24.11.2000. The latest set of Interim Criteria was promulgated on 7.9.2007.

8. Planning Department’s Views

- 8.1 Based on the assessments made in paragraph 7 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 Kau Lung Hang and Yuen Leng 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 15.9.2027, 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 F**.

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	Layout Plan Submitted by the Applicant
Plan R-1	Location Plan
Plan R-2a	Site Plan
Plan R-2b	Similar Approved Applications in Kau Lung Hang Mentioned by the Applicant
Plan R-2c	Estimated Amount of Land Available for Small House Development within "V" zone
Plan R-3	Unmanned Aerial Vehicle Photo
Plan R-4	Site Photo
Annex A	RNTPC Paper No. A/NE-KLH/621
Annex B	Extract of Minutes of the RNTPC Meeting held on 19.5.2023
Annex C	Secretary of Town Planning Board's letter dated 9.6.2023
Annex D	Letter with Written Representation Received by Town Planning Board on 28.6.2023 from the Applicant Applying for a Review of the RNTPC's decision
Annex E	Similar Applications
Annex F	Recommended Advisory Clauses

**PLANNING DEPARTMENT
SEPTEMBER 2023**