

**TPB Paper No. 10951**

**For Consideration by  
the Town Planning Board on 19.1.2024**

**REVIEW OF APPLICATION NO. A/NE-KLH/623**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

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

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**1. Background**

- 1.1 On 11.5.2023, the applicant, CHEUNG Hin Yeung represented by Mr. LAU Chee Sing, 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”) (about 65.8%) and “Agriculture” (“AGR”) (about 34.2%) zones on the approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11 (**Plan R-1**).
- 1.2 On 23.6.2023, 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 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.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-KLH/623 (Annex A)
  - (b) Extract of minutes of the RNTPC meeting held on 23.6.2023 (Annex B)
  - (c) Secretary of Town Planning Board’s letter dated 14.7.2023 (Annex C)

## 2. Application for Review

On 31.7.2023, the applicant applied under section 17(1) of the Ordinance for review of RNTPC's decision to reject the application and subsequently has submitted written representations on 26.10.2023<sup>1</sup> and 23.11.2023 in support of the review application (**Annex D**, **Annex D1** and **Annex D2** respectively).

## 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 D2** as summarized below:

- (a) the footprint of the proposed Small House falls within an area zoned "V" (about 72%) and "AGR" (about 28%). It is similar to the approved applications No. A/NE-KLH/389 and 427 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 "V" zone. Besides, the footprint of Small House (about 72%) falls largely within "V" zone which can be understood as to be "on the fringe of "V" zone boundary";
- (b) according to the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) (B)(b), as not less than 50% of the footprint of the Small House falls within the "V" zone, it is hoped that favourable consideration may be given; and
- (c) as the Board has adopted a 'more cautious approach' in considering Small House application since August 2015, 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 provided by LandsD. At the time of consideration of the application, the number of outstanding Small House application is 9, of which 8 falling within "V" zone and one falling outside "V" zone without valid planning permission. It reflects that the number of outstanding Small House application bears no relationship to the shortage of land in meeting the demand in "V" zone. For the current review application, the Board would only give favourable consideration if the number of outstanding of Small House application provided by LandsD Department exceeds the estimated land available (equivalent to 108 Small Houses) within "V" zone in Wai Tau in accordance with the Interim Criteria. It is considered illogical, unrealistic and unfair to the indigenous villagers.

## 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

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<sup>1</sup> According to the applicant, the written representation dated 26.10.2023 was superseded by the one dated 23.11.2023.

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) vacant and partly covered with overgrown grass;
- (b) located at the northwestern fringe of Wai Tau Tsuen but entirely outside the village 'environ' ('VE');
- (c) located within upper indirect water gathering grounds (WGG); and
- (d) accessible via a local footpath.

4.3 The surrounding areas are predominantly rural in character comprising village houses, farmlands, vegetated areas and tree clusters. The existing village cluster of Wai Tau Tsuen is found to the immediate southeast of the Site. (**Plans R-2a** and **R-3**).

Planning Intention

4.4 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

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

Previous Application

4.6 The Site forms part of a previous planning application (No. A/NE-KLH/599) for the same use submitted by the same applicant, which was rejected by RNTPC and the Board on review on 24.9.2021 and 25.2.2022 respectively. The s.16 application was rejected by RNTPC mainly for reasons of being not in line with the planning intention of "AGR" zone; not able to be connected to the existing or planned sewerage system; and land was still available within "V" zone of the concerned village at the time of consideration. The s.17 review application was rejected by the Board for similar reasons as mentioned above, except for the one related to sewerage connection which had subsequently been addressed. As compared to the previous application, the site area has been reduced from 165m<sup>2</sup> to 81m<sup>2</sup>.

4.7 Details of the previous application are summarized at **Annex E** and their locations are shown on **Plan R-2a**.

### Similar Applications

- 4.8 There are five similar applications for NTEH development within the same “AGR” zone in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Among them, three applications were approved and two were rejected.
- 4.9 Applications No. A/NE-KLH/389 and 427 were approved by RNTPC in 2009 and 2011 respectively before the formal adoption of a more cautious approach in considering Small House applications since August 2015 mainly on the grounds of being generally in line with the Interim Criteria that even though the application sites are outside ‘VE’, more than 50% of the proposed Small House footprint was located within the “V” zone; the proposed development would be able to be connected to the planned sewerage system; and there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration. Application No. A/NE-KLH/571 was approved on 16.8.2019 mainly on sympathetic consideration for being the subject of a previously approved application and the Small House grant application was under processing by LandsD.
- 4.10 Application No. A/NE-KLH/302 was rejected by RNTPC on 13.12.2002 mainly on consideration that the application site and the Small House footprint were located mostly outside the ‘VE’ and “V” zone, while Application No. A/NE-KLH/405 was rejected by RNTPC on 11.6.2010 mainly for reason of not being able to be connected to the planned sewerage system in the area.
- 4.11 Details of the similar applications are summarized at **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 IV of **Annex A**. Their advisory comments, if any, are at Appendix VI of **Annex A** and recapped at **Annex G**.
- 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 Wai Tau Tsuen is 8 (9 at the time of consideration of s.16 application), while the 10-year Small House demand forecast is 305 (the same 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:

|   | <u>Criteria</u>  | <u>Yes</u> | <u>No</u> | <u>Remarks</u>   |
|---|--|------------|-----------|--|
| 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><br>Land required to meet Small House demand in Wai Tau Tsuen: about 7.83ha (equivalent to 313 Small House sites). The outstanding Small House applications are 8 <sup>2</sup> while the 10-year Small House demand forecast is 305. |
|   | Sufficient land in “V” zone to meet outstanding Small House applications?  | ✓          |           | <u>Land Available</u><br>Land available to meet Small House demand within the “V” zones of concerned village: about 2.7 ha (equivalent to about 107 Small House sites) ( <b>Plan R-2b</b> ).   |

**6. Public Comment Received During Statutory Publication Period (Annex H)**

- 6.1 On 11.8.2023 and 3.11.2023, the review application was published for public inspection. During the statutory public inspection period, one public comment was received from an individual raising objection to the application, mainly for reason that the future Small House demand suggested by the applicant is more aspirational than factual.
- 6.2 Two objecting public comments were received at the s.16 application stage and set out in paragraph 10 of **Annex A**.

<sup>2</sup> All 8 outstanding Small House applications fall within “V” zone.

## 7. Planning Considerations and Assessment

- 7.1 The subject s.16 application was rejected by the RNTPC on 23.6.2023 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 Wai Tau Tsuen 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 also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. 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 “V” of Wai Tau Tsuen (**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 Wai Tau Tsuen is 8 (9 at the time of consideration of s.16 application) while the 10-year Small House demand forecast is 305 (the same at the time of consideration of s.16 application). Based on the latest estimate by PlanD, about 2.7 ha of land (or equivalent to about 107 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 313 Small Houses in these villages, such available land is capable of meeting the outstanding 8 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 favourable consideration may be given to the current review application, according to the Interim Criteria (B)(b), favourable consideration may be given if more than 50% of the proposed Small House footprint is located outside the ‘VE’ but not less than 50% of the proposed footprint falls within the “V” zone, provided that there is a general shortage of and in meeting the demand for Small house development in the “V” zone of the village and the other criteria can be satisfied. Regarding the current review

application, although more than 50% of the proposed Small House footprint falls within the “V” zone, land available within the “V” zones of Wai Tau Tsuen (i.e. about 2.7 ha of land or equivalent to about 107 Small House sites) is capable of meeting the outstanding 8 Small House applications. Notwithstanding that about 72% of the revised Small House footprint falls within the “V” zone, it should be noted that the estimated land available in Wai Tau Tsuen far exceeds the number of outstanding Small House applications, and the Board has consistently adopted a more cautious approach with regard to the Interim Criteria in considering Small House application since August 2015. Also, it should be noted that the Site is located at the northwestern fringe of Wai Tau Tsuen and falls entirely outside the ‘VE’. It is neither surrounded by the existing village clusters nor considered as an ‘infill’ site. In view of the above, favourable consideration may not be given under the Interim Criteria.

- 7.5 Regarding the approved similar applications mentioned by the applicant (**Plan R-2a**), applications No. A/NE-KLH/389 and 427 were approved by RNTPC in 2009 and 2011 respectively before the formal adoption of a more cautious approach in considering Small House applications since August 2015. Application No. A/NE-KLH/571 was approved on 16.8.2019 mainly on sympathetic consideration for being the subject of a previously approved application. In view of the above, the planning considerations of the similar applications concerned are not applicable to the current review application.

## 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 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 19.1.2028, 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 advisory clauses at **Annex G** are also suggested for Members’ reference.



**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**

|                  |  |
|------------------|--|
| <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>  | Unmanned Aerial Vehicle Photo  |
| <b>Plan R-4</b>  | Site Photo   |
| <b>Annex A</b>   | RNTPC Paper No. A/NE-KLH/623   |
| <b>Annex B</b>   | Extract of Minutes of the RNTPC Meeting held on 23.6.2023  |
| <b>Annex C</b>   | Secretary of Town Planning Board's letter dated 14.7.2023  |
| <b>Annex D</b>   | Letter Received by Town Planning Board on 31.7.2023 from the Applicant Applying for a Review of the RNTPC's decision |
| <b>Annex D1</b>  | Written Representation Received by Town Planning Board on 26.10.2023   |
| <b>Annex D2</b>  | Written Representation Received by Town Planning Board on 23.11.2023   |
| <b>Annex E</b>   | Previous Application   |
| <b>Annex F</b>   | Similar Applications   |
| <b>Annex G</b>   | Recommended Advisory Clauses   |
| <b>Annex H</b>   | Public comment   |

**PLANNING DEPARTMENT  
JANUARY 2024**