

**REVIEW OF APPLICATION NO. A/NE-KTS/534**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

**Lot 496 S.F in D.D. 94, Hang Tau, Sheung Shui, New Territories**

**1. Background**

- 1.1 On 13.3.2024, the applicant, Mr. LIU King Yung represented by T.H. & Associates Limited, sought planning permission to build a proposed 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 draft Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/21 (**Plan R-1**).
- 1.2 On 10.5.2024, 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 “Agriculture” zone which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and 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 Hang Tau 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 infrastructures and services.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-KTS/534 (Annex A)
  - (b) Extract of minutes of the RNTPC meeting held on 10.5.2024 (Annex B)
  - (c) Secretary of the Board’s letter dated 24.5.2024 (Annex C)

**2. Application for Review**

On 4.6.2024, the applicant applied under section 17(1) of the Ordinance for review of

RNTPC's decision to reject the application (**Annex D**).

### 3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed at **Annex D** as summarized below:

- (a) the applicant bought the Site in 2014 as the Site was the subject of a previously approved planning application for proposed Small House in 2011. However, his applications for proposed Small House were rejected twice by the Committee in 2019 on the ground that land was still available within the "V" zone of Hang Tau to meet the Small House demand;
- (b) landownership in the New Territories is complicated and fragmented. Some land within the "V" zone are owned by Tso Tong and/or amassed by certain individuals. It is difficult for the applicant to purchase land within the "V" zone for Small House development. It is unreasonable that application for Small House would only be granted until all land within the "V" zone is used up;
- (c) although the Site is zoned "AGR", it has been occupied by debris for many years and is not suitable for cultivation. The applicant has no intention to carry out any agricultural activity on it. Small House development on the Site is a more efficient utilisation of land resources; and
- (d) the Site is surrounded by village houses. Some village houses are also built on agricultural land and far away from the "V" zone.

### 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 8.1 and 8.2 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) generally flat, vacant, partly covered by debris and partly covered by grass;
  - (b) located to the immediate east of the village cluster of Hang Tau and falls entirely within the 'VE' of Hang Tau; and
  - (c) accessible via a footpath to the west of the Site. There is no vehicular access to the Site. There is a village road, about 120m to the southwest of the Site, connecting Hang Tau Road.

- 4.3 The surrounding area is predominantly rural in nature with village houses, plant nursery and active/fallow agricultural land. To the immediate north and east are village houses. To the further north, northeast and east as well as south are mainly plant nursery, fallow agricultural/vacant land and scattered domestic structures. To the southwest and west are the village cluster of Hang Tau and active agricultural land (**Plans R-2a and R-3**).

#### Planning Intention

- 4.4 There has been no change in the planning intention of the “AGR” zone as mentioned in paragraph 9 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 promulgated on 7.9.2007 is at **Appendix II of Annex A**.

#### Previous Applications

- 4.6 The Site is the subject of three previous applications No. A/NE-KTS/314, 468 and 476 for Small House development. Application No. A/NE-KTS/314 submitted by another applicant was approved with conditions on 19.8.2011 (i.e. before the formal adoption of a more cautious approach by the Board since 14.8.2015<sup>1</sup>) mainly on the considerations that the proposed Small House complied with the Interim Criteria in that its footprint fell within the ‘VE’ of Hang Tau and there was a general shortage of land in meeting the demand for Small House development in the “V” zone of Hang Tau at the time of consideration; the application site was located close to Hang Tau with similar approved applications in the vicinity; the proposed Small House was not incompatible with the surrounding land uses; and there would be no significant adverse traffic, environment, drainage and landscape impacts to the surrounding areas. The planning permission was however lapsed in 2015.
- 4.7 Applications No. A/NE-KTS/468 and A/NE-KTS/476 submitted by the same applicant of the current application were rejected on 3.5.2019 and 6.9.2019 respectively mainly for the reasons that the proposed Small Houses were not in line with the planning intention of the “AGR” zone; land was still available within the “V” zone of Hang Tau which was primarily intended for Small House development; and that 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 infrastructures and services.

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<sup>1</sup> Among others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting shall be put on the number of outstanding Small House applications provided by LandsD.

- 4.8 Details of the previous applications are summarized at **Appendix III** of **Annex A** and its location is shown on **Plan R-2a**.

Similar Applications

- 4.9 When the s.16 application was considered by the RNTPC on 10.5.2024, there were 24 similar approved applications for Small House development within/partly within the same “AGR” zone in the vicinity of the Site in Hang Tau since the first promulgation of the Interim Criteria. There has been no change in the number of similar applications since then.
- 4.10 Among them, 21 applications were approved by the Committee between 2001 and 2014 before the Board’s formal adoption of a more cautious approach since August 2015. Three applications were approved by the Committee between 2017 and 2020 after the more cautious approach mainly on sympathetic consideration that the sites were the subject of previous approvals submitted by the same applicants for the same use and/or the site was an infill site enclosed by existing Small Houses.
- 4.11 Details of the above similar applications are summarized at **Appendix IV** of **Annex A** 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 10 and **Appendix V** of **Annex A**. Their advisory comments, if any, are at **Appendix VII** of **Annex A** and recapped at **Annex E**.
- 5.2 For the review application, relevant government departments have been further consulted and they maintained their previous comments on the application. The Director of Agriculture, Fisheries and Conservation (DAFC) maintains his previous adverse views on the s.16 application as set out in paragraph 10.1 (4) of **Annex A**, as recapitulated as follows:
- DAFC does not support the application from agricultural perspective as the Site falls within “AGR” zone and is generally abandoned and occupied by some wastes. The agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. The Site possesses potential for agricultural rehabilitation.
- 5.3 Comments from District Lands Officer/North of Lands Department (DLO/N, LandsD) are updated in view of the review application:

Land Administration

- 5.3.1 Comments of DLO/N, LandsD:

- previous comments are still valid except that the total number of outstanding Small House applications for Hang Tau is 48 (49 at the time of consideration of s.16 application), while the 10-year Small House demand forecast is between 2,900 and 3,200 (the same at the time of consideration of s.16 application).

5.3.2 In view of the latest comments of DLO/N of LandsD, the revised assessment of the land required and land available for Small House development (stated in paragraph 10.1(3) of **Annex A**) is as follows:

	<b>Criteria</b>	<b>Yes</b>	<b>No</b>	<b>Remarks</b>
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 Hang Tau: about 81.2ha (equivalent to about 3,248 Small House sites). The outstanding Small House applications are 48 <sup>2</sup> while the 10-year Small House demand forecast is between 2,900 and 3,200.
	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” zone of Hang Tau: about 3.95ha (equivalent to about 158 Small House sites) ( <b>Plan R-2b</b> ).

## 6. **Public Comments Received During Statutory Publication Period (Annex F)**

- 6.1 On 21.6.2024, the review application was published for public inspection. During the statutory public inspection period, one public comment from an individual was received (**Annex F**). The individual offers no comment on the application.
- 6.2 Four public comments were received at the s.16 application stage and set out in paragraph 11 of **Annex A**.

## 7. **Planning Considerations and Assessments**

- 7.1 The subject s.16 application was rejected by the RNTPC on 10.5.2024 mainly

<sup>2</sup> Among the 48 outstanding Small House applications, 26 of them fall within the “V” zone and 22 straddle or fall outside the “V” zone. For those 22 applications straddling or falling outside the “V” zone, 2 of them have obtained valid planning approvals from the Board.

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 Hang Tau 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 12 of **Annex A** remain valid.

- 7.2 In support of the review application, the applicant claims that the Site is the subject of a previously approved application for the same proposed use but his applications for Small House development were rejected twice in 2019 mainly on the ground that land is still available within the “V” zone of Hang Tau to meet the Small House demand. It should be noted that the previous application (No. A/NE-KTS/314) granted in 2011 was submitted by a different applicant, and the approval has already lapsed in 2015. The two previous applications (No. A/NE-KTS/468 and A/NE-KTS/476) rejected in 2019 and the current application submitted by the applicant are therefore considered as fresh applications. As far as the land availability within the “V” zone is concerned, 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. Land available within the “V” zone of Hang Tau (i.e. about 3.95ha of land or equivalent to about 158 Small Houses sites) (**Plan R-2b**) is capable of meeting the outstanding 48 Small House applications (49 at the time of consideration of s.16 application). 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. In this regard, sympathetic consideration is not given to the subject application.
- 7.3 The applicant’s claims that some land within the “V” zone are owned by Tso Tong and/or amassed by certain individuals. However, land ownership and land transaction are not the material planning considerations for Small House applications.
- 7.4 The applicant also states that he has no intention to carry out agricultural activities at the Site. It should be noted that proposed Small House is located within “AGR” zone (**Plan R-1**), and 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 his previous adverse view of not supporting the current review application from the agricultural perspective as agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities. There is no strong planning justification in the submission for a departure from the planning intention.
- 7.5 Regarding applicant’s claim that there are many village houses in the

agricultural land in the surroundings of the Site, as stated in paragraphs 4.9 and 4.10, there are 24 similar approved applications for Small House developments in the vicinity of the Site (**Plan A-2a**), of which 3 were approved by the Committee between 2017 and 2020 after the Board's formal adaption of a more cautious approach mainly on sympathetic considerations that the sites were the subject of previous approvals submitted by the same applicants for the same use and/or the application site was an infill site enclosed by existing Small Houses. For the current application, however, the planning circumstances are different in that the Site was not subject to any previous planning approval submitted by the current applicant; and there are vacant areas surrounding the Site and therefore is not regarded as an infill site among existing NTEHs/Small Houses. In view of the above, sympathetic consideration of the similar approved applications and previous approved application at the Site in 2011 are not applicable to the subject application.

- 7.6 Regarding the public comments on the review application as mentioned in paragraph 6.1 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 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 Hang Tau 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 23.8.2028, 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 E** 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>Drawing R-1</b>	Proposed Layout Plan
<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-4a and 4b</b>	Site Photos
<b>Annex A</b>	RNTPC Paper No. A/NE-KTS/534
<b>Annex B</b>	Extract of Minutes of the RNTPC Meeting held on 10.5.2024
<b>Annex C</b>	Secretary of Town Planning Board’s letter dated 24.5.2024
<b>Annex D</b>	Letter Received by Town Planning Board on 6.6.2024 from the Applicant Applying for a Review of the RNTPC’s decision
<b>Annex E</b>	Recommended Advisory Clauses
<b>Annex F</b>	Public comments

**PLANNING DEPARTMENT  
AUGUST 2024**

**TPB Paper No. 10980**

**For Consideration by  
the Town Planning Board on 23.8.2024**

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