

TPB Paper No. 10905

**For Consideration by
the Town Planning Board on 16.6.2023**

**REVIEW OF APPLICATION NO. A/NE-LT/749
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House - Small House)
in “Agriculture” zone and area shown as ‘Road’**

Government Land in D.D. 19, Chung Uk Tsuen, Lam Tsuen, Tai Po

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1. Background

- 1.1 On 5.1.2023, the applicant, Mr. CHUNG Mei Wah represented by Mr. HUI Kwan Yee, 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 (about 55%) and area shown as ‘Road’ (about 45%) on the approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11 (**Plan R-1**).
- 1.2 On 3.3.2023, 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;
 - (b) the proposed development did not comply with the Interim Criteria for consideration of application for New Territories Exempted House/Small House in New Territories in that the applicant failed to demonstrate that the proposed development located within water gathering grounds would be able to be connected to the existing sewerage system and would not cause adverse impact on the water quality in the area; and
 - (c) land was still available within the “Village Type Development” (“V”) zones of Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai which was primarily intended for Small House development. It was considered more appropriate to concentrate the proposed Small House development within the “V” zones 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-LT/749 **(Annex A)**

(b) Extract of minutes of the RNTPC meeting held on 3.3.2023 (Annex B)

(c) Secretary of the Board's letter dated 17.3.2023 (Annex C)

2. **Application for Review**

On 17.3.2023, the applicant applied under section 17(1) of the Ordinance for a 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 its surrounding areas at the time of consideration of the s.16 application by RNTPC were described in paragraphs 7.1 and 7.2 of Annex A. There has been no material change of the Site and the surrounding areas since then.

3.2 The Site is:

- (a) currently vacant, partly covered with wild grass and partly paved;
- (b) partly located on an existing local footpath;
- (c) located entirely within the village 'environs' ('VE') of Chung Uk Tsuen;
- (d) accessible via a footpath leading to Lam Kam Road; and
- (e) within the upper indirect water gathering grounds (WGG).

3.3 The surrounding areas are predominantly rural in character comprising village houses, vegetated areas and tree groups. Lam Kam Road is located to the west of the Site. Some Small Houses are found about 10m to the east inside the "V" zone of Chung Uk Tsuen.

Planning Intention

3.4 There has been no change to the planning intention of the subject "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.

3.5 Part of the Site falls within an area shown as 'Road' on the OZP which is reserved for further widening of Lam Kam Road.

Assessment Criteria

- 3.6 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 Application

- 3.7 The Site is the subject of a previous application (No. A/NE-LT/713) submitted by the same applicant for the same proposed use. It was rejected by RNTPC in 2022 based on the same grounds as the current application. Compared with the last previous application, there is no change to the footprint and major development parameters of the proposed Small House under the current application.
- 3.8 Details of the previous application 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 RNTPC on 3.3.2023, there were nine similar applications for Small House development within/straddling the same “AGR” zone and area shown as ‘Road’ since the first promulgation of the Interim Criteria on 24.11.2000. Among all the nine similar applications (**Plan R-2a**), three were approved and six were rejected. Since then, there has been no further similar application for proposed Small House development.
- 3.10 Application No. A/NE-LT/333 was approved in 2005 by the Board on review under sympathetic consideration for being the subject of a previous application approved in 1997 before promulgation of the Interim Criteria. Application No. A/NE-LT/386 was approved with conditions by RNTPC in 2008 mainly for being in line with the Interim Criteria in that more than 50% of the Small House footprint was within the ‘VE’; there was a general shortage of land within the “V” zones to meet the demand for Small House development at the time of consideration; and being able to be connected with the planned public sewerage system. The planning permission of application No. A/NE-LT/386 lapsed in 2012 and the subsequent application No. A/NE-LT/580 submitted by the same applicant with minor changes in site boundary was approved in 2016.
- 3.11 The remaining six applications (No. A/NE-LT/385, 525, 527, 592, 621 and 631) were rejected by RNTPC/the Board on review between 2008 and 2018 mainly for being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that land was still available within the concerned “V” zones for Small House development; the applicant failed to demonstrate that the proposed developments located within WGG would be able to be connected to the existing or planned sewerage system and would not cause adverse water quality or landscape impacts on the surrounding areas; and setting of undesirable precedent. Application No. A/NE-LT/385 was rejected also on the ground that the proposed development fell within an area shown as ‘Road’ might affect the future widening of Lam Kam Road.

- 3.12 Details of the above similar applications are summarized in **Annex F** and their locations are shown on **Plan 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 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), Director of Environmental Protection (DEP), and Chief Engineer/Construction of Water Supplies Department (CE/C of WSD) are recapitulated as follows:

Agriculture

4.2.1 Comments of the DAFC:

- (a) the Site is a piece of vacant land. There are active agricultural activities in the vicinity, and agricultural infrastructure such as road access and water sources is available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc; and
- (b) as the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

Environment

4.2.2 Comments of the DEP:

- to prevent contamination of waters which are designated by statute for potable supply, he objects to the application as the subject site is located within WGG where no public sewer is available.

Water Supply

4.2.3 Comments of the CE/C of WSD:

- (a) objects to the application;
- (b) the Site is located within the upper indirect WGG and is about 34m away from the nearest stream. The applicant proposes to adopt septic tank system for foul water disposal and the wastewater generated from the proposed house will have potential in causing water pollution to the WGG; and

- (c) it is considered that compliance with the “Interim Criteria for Consideration of Applications for NTEH/Small House in New Territories” item (i) cannot be established.

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

- 5.1 On 31.3.2023, the review application was published for public inspection. During the statutory public inspection period, two public comments were received from individuals objecting to the application mainly on the grounds that the proposed development is not able to be connected to the existing sewerage system and will cause adverse environmental impact; the proposed development will block the access road of the villagers and the use of trolleys by cleaners; and land is still available within the “V” zones of Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai for Small House development.
- 5.2 Two public comments objecting to the application were received at the s.16 application stage as set out in paragraph 10 of **Annex A**.

6. Planning Considerations and Assessments

- 6.1 The subject s.16 application was rejected by RNTPC on 3.3.2023 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that the applicant failed to demonstrate that the proposed development located within WGG would be able to be connected to the existing or planned sewerage system and would not cause adverse water quality impact on the surrounding areas; and land was still available within the concerned “V” zones for Small House development.
- 6.2 The applicant has not provided any written representation in support of the review application. Moreover, there has been no major change in the planning circumstances since the consideration of the subject application by RNTPC on 3.3.2023. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid, as recapitulated below.

Planning Intention

- 6.3 The application is for a proposed Small House on the Site partly zoned “AGR” and partly shown as ‘Road’ on the OZP (**Plan R-1**). The proposed Small House 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, and 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 given in the submission for a departure of such planning intention.
- 6.4 Part of the Site falls within an area shown as ‘Road’ on the OZP which is reserved for further widening of Lam Kam Road. As advised by the

Commissioner for Transport (C for T), there is currently no plan for widening of the subject section of Lam Kam Road.

Land Availability within the “V” zones

- 6.5 Regarding the Interim Criteria, the Site and the proposed Small House footprint fall entirely within the ‘VE’ of Chung Uk Tsuen (**Plans R-2a** and **R-2b**). According to District Lands Officer/ Tai Po of the Lands Department (DLO/TP of LandsD), the number of outstanding Small House applications for Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai is 20 while the 10-year Small House demand forecast is 339. Based on the latest estimate by the Planning Department (PlanD), about 2.81 ha of land (equivalent to about 112 Small House sites) is available within the “V” zones of the concerned villages (**Plan R-2b**). Since there is an overlapping of the ‘VE’ of Chung Uk Tsuen and that of San Uk Tsai, Fong Ma Po, and Tong Min Tsuen, 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 339 Small Houses in these villages, such available land is capable of meeting the outstanding 20 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.

Departmental Comments

- 6.6 The Site falls within the upper indirect WGG and the applicant proposes to use septic tank system to treat wastewater. Both DEP and CE/C of WSD object to the application as the proposed development does not comply with the Interim Criteria in that the proposed Small House within WGG is not able to be connected to the public sewer for sewerage disposal. Other relevant government departments including District Officer (Tai Po) of Home Affairs Department, Director of Fire Services, C for T, Chief Engineer/Mainland North of Drainage Services Department and Chief Highway Engineer/New Territories East of Highways Department have no objection to or adverse comment on the application.

Previous and Similar Applications

- 6.7 The Site is the subject of a previous application (No. A/NE-LT/713) submitted by the same applicant for the same proposed use. It was rejected by RNTPC in 2022 based on the same grounds as the current application. The planning circumstances for rejecting the latest previous application are applicable to the current one.

- 6.8 There are nine similar applications in the vicinity of the Site, of which three were approved and six were rejected for reasons as stated in paragraphs 3.9 and 3.10 above. The planning circumstances of the rejected applications are similar to the current application. Rejection of this application is in line with the previous decisions of the RNTPC.

Public Comments

- 6.9 For the remaining public comments as detailed in paragraph 5 above, government departments' comments and the planning assessments above are relevant. Regarding the access issue, it should be noted that the Site could be accessed by other footpaths.

7. Planning Department's Views

- 7.1 Based on the assessments made in paragraph 6, having taken into account the public comments mentioned in paragraph 5 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 view of not supporting the review application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the "Agriculture" 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;
 - (b) the proposed development does not comply with the Interim Criteria for consideration of application for NTEH/Small House in New Territories in that the applicant fails to demonstrate that the proposed development located within water gathering grounds would be able to be connected to the existing sewerage system and would not cause adverse impact on the water quality in the area; and
 - (c) land is still available within the "Village Type Development" zones of Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the "V" zones for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 7.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 16.6.2027, 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 Clause

7.3 The recommended advisory clauses are attached at **Annex H**.

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 photos
Annex A	RNTPC Paper No. A/NE-LT/749
Annex B	Extract of minutes of the RNTPC meeting held on 3.3.2023
Annex C	Secretary of the Board's letter dated 17.3.2023
Annex D	Letter received by the Board on 17.3.2023 from the applicant's representative applying for a review of the RNTPC's decision
Annex E	Previous application
Annex F	Similar applications
Annex G	Public comments
Annex H	Recommended advisory clauses

**PLANNING DEPARTMENT
JUNE 2023**