

TOWN PLANNING BOARD

TPB Paper No. 10915

**For Consideration by
the Town Planning Board on 3.11.2023**

**REVIEW OF APPLICATION NO. A/NE-LT/755
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

Lots 338 S.A and 408 S.B ss.6 in D.D.10, Chai Kek Village, Lam Tsuen, Tai Po

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1. Background

- 1.1 On 28.2.2023, the applicant, Mr. CHUNG Chor Hei 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 93%) and “Village Type Development” (“V”) zone (about 7%) on the approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11 (**Plan R-1**).
- 1.2 On 21.4.2023, 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 “V” zone of Chai Kek and Wo Liu 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-LT/755 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 21.4.2023 (Annex B)
 - (c) Secretary of the Board’s letter dated 5.5.2023 (Annex C)

2. **Application for Review**

On 24.5.2023, the applicant applied under section 17(1) of the Ordinance for review of the RNTPC's decision to reject the application (**Annex D1**). On 9.8.2023, the applicant's representative submitted Further Information (FI) providing written representations in support of the review application (**Annex D2**).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in the FI at **Annex D2**, as summarised below:

- (a) the applicant is an indigenous villager of Chai Kek, Tai Po. The Site is the only piece of land owned by the applicant for Small House development, and it has been left vacant for years. The land suitable for Small House development in the village proper of Chai Kek is not owned by the applicant and therefore not available;
- (b) the Site falls entirely within the village 'environs' ('VE') of Chai Kek. There are similar applications approved in the vicinity of the Site. Approval of the application would not set an undesirable precedent for similar applications; and
- (c) no adverse environmental and traffic impact arising from the proposed development is anticipated, and no adverse departmental comment was received on the application.

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 its surrounding areas at the time of consideration of the s.16 application by the RNTPC was set out 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.
- 4.2 The Site is:
 - (a) hard paved and occasionally occupied by private vehicles;
 - (b) situated at the northwestern fringe of the village proper of Chai Kek and falls entirely within the 'VE' of the same village;
 - (c) accessible via a local track leading to Chai Kek Road; and
 - (d) located within the upper indirect water gathering grounds (WGG).
- 4.3 The surrounding areas are predominantly rural in character comprising village houses, vegetated areas and tree groups. A cluster of village houses is found to the east of the Site. An area for temporary private car park with planning

permission is found to the immediate north of the Site. Lam Kam Road is situated at about 45m to the west of the Site.

Planning Intention

- 4.4 There has been no change in 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.

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 Application

- 4.6 The Site is the subject of a previous application (No. A/NE-LT/617) submitted by the same applicant for the same proposed use. It was rejected by the RNTPC in 2017 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.
- 4.7 Details of the previous application are summarized at **Annex E** and its location is shown on **Plans R-1** and **R-2a**.

Similar Applications

- 4.8 When the s.16 application was considered by the RNTPC on 21.4.2023, there were 10 similar applications for Small House development within/straddling the same “AGR” and “V” zones since the first promulgation of the Interim Criteria on 24.11.2000. There has been no change in the number of similar applications since then. Among these similar applications, three were approved and seven were rejected.
- 4.9 For the three approved applications (No. A/NE-LT/ 307, 308 and 375), they were approved between 2003 and 2008 before the formal adoption of a more cautious approach by the Board since August 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)) mainly on consideration that the proposed developments were in line with the Interim Criteria in that more than 50% of the respective Small House footprint was within the ‘VE’; there was a general shortage of land in meeting the demand for Small House development in the “V” zone concerned at the time of consideration; and the proposed developments were able to be connected to the planned public sewerage system.

- 4.10 For the seven rejected applications (No. A/NE-LT/310, 347, 365, 530, 535, 597 and 616), they were rejected by the RNTPC/the Board upon review between 2004 and 2017 mainly for being not in line with the planning intention of the “AGR” zone; failure 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/or not complying with the Interim Criteria in that land was still available within the “V” zone concerned for Small House development. The applicant of application No. A/NE-LT/365 has lodged an appeal against the Board’s decision, and the appeal was dismissed by the Town Planning Appeal Board on 29.4.2008 mainly for the aforesaid reasons.
- 4.11 Details of the above 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 V of **Annex A**.
- 5.2 For the review application, the Director of Agriculture, Fisheries and Conservation (DAFC) maintains his previous adverse views on the s.16 in paragraph 9 of **Annex A**, as recapitulated as follows:
- (a) the Site is a piece of paved land. There are active agricultural activities 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; and
 - (b) as the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
- 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 of 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 Chai Kek is seven (19 at the time of consideration of s.16 application), while the 10-year Small House demand forecast is 90 (same as 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> <ul style="list-style-type: none"> - Land required to meet Small House demand in Chai Kek and Wo Liu: about 2.43 ha (equivalent to 97 Small House sites). The outstanding Small House applications are seven ¹ while the 10-year Small House demand forecast for the same villages is 90. <u>Land Available</u> <ul style="list-style-type: none"> - Land available to meet Small House demand within the “V” zone of the villages concerned: about 1.63 ha (equivalent to 65 Small House sites) (Plan R-2b).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		

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

6.1 On 2.6.2023 and 11.8.2023, the review application and FI were published for public inspection. During the statutory public inspection period, two public comments were received. One public comment received from an individual objects to the application mainly on the ground that there was no justification for the review application. The remaining one from the Tai Po Rural Committee supports the application as the applicant being an indigenous villager has the right to apply for construction of Small House.

6.2 One public comment objecting to the application was received at the s.16 application stage 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 21.4.2023 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” zone of Chai Kek and Wo Liu for Small House development. To support the review application, the applicant has submitted written representations as set out in

¹ All the seven outstanding Small House applications fall within the “V” zone of Chai Kek and Wo Liu.

paragraph 3 above. There has been no major change in the planning circumstances since the consideration of the subject application by the RNTPC in April 2023. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid. The planning considerations/assessments on and responses to the applicant's justifications for the review application as set out in paragraph 3 above are provided below.

- 7.2 The applicant claims that the Site is the only piece of land owned by him for Small House development and the land in "V" zone of Chai Kek is not owned by the applicant and therefore not available, it should be noted that land ownership is subject to change and is not a material planning consideration in assessing land available within the "V" zone.
- 7.3 The applicant claims that there are similar applications approved in the vicinity of the Site. It should be noted that the three approved applications (No. A/NE-LT/ 307, 308 and 375) were all approved before the Board's formal adoption of a more cautious approach since August 2015 in considering Small House applications, for reasons as mentioned in paragraph 4.9 above. The planning circumstances of the current application are different from these approved cases. The Site and the proposed Small House footprint fall entirely within the 'VE' of Chai Kek. According to DLO/TP of LandsD, the number of outstanding Small House applications for Chai Kek and Wo Liu is seven while the 10-year Small House demand forecast is 90. Based on the latest estimate by the Planning Department (PlanD), about 1.63 ha² of land (equivalent to about 65 Small House sites) is available within the "V" zone of the concerned villages. In this regard, while land available within the "V" zone is insufficient to fully meet the total future Small House demand of 97³ Small Houses in these villages, such available land is capable of meeting the seven outstanding Small House applications. According to the more cautious approach, 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 The applicant also claims that no adverse environmental and traffic impact arising from the proposed development is anticipated, and no adverse departmental comment was received on the application. It should be noted that the application was not rejected on such grounds. As regards the applicant's claim that there are no adverse departmental comment received on the application, it should be noted that DAFC maintains his view for not supporting the current review application as the Site possesses potential for agricultural rehabilitation. The proposed Small House development is not in line with the

² Part of the 'VE' of Chai Kek overlaps with that of Wo Liu. On the overlap area, land available for Small House developments is 0.66 ha (equivalent to 26 Small House sites), which serves the villages concerned for Small House developments.

³ The land required to meet Small House demand in Chai Kek is 2.43 ha (equivalent to 97 Small House sites). The number of outstanding Small House applications for Chai Kek is seven while the 10-year Small House demand forecast is 90. For Wo Liu, there is no outstanding application and the figure of 10-year Small House demand forecast has not been provided by the respective Indigenous Inhabitant Representative (IIR).

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. There is no strong justification given in the submission for a departure of such planning intention.

- 7.5 Regarding the public comments 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 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; and
- (b) land is still available within the “Village Type Development” zone of Chai Kek and Wo Liu 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.

- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 3.11.2027, 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 recommended advisory clauses are 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 advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.

10. 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/755
Annex B	Extract of minutes of the RNTPC meeting held on 21.4.2023
Annex C	Secretary of the Board’s letter dated 5.5.2023
Annex D1	Letter received on 24.5.2023 from the applicant’s representative applying for a review of the RNTPC’s decision
Annex D2	FI received on 9.8.2023 from the applicant’s representative providing written representations in support of the review application
Annex E	Previous application
Annex F	Similar applications
Annex G	Public comments
Annex H	Recommended advisory clauses

**PLANNING DEPARTMENT
NOVEMBER 2023**