

TOWN PLANNING BOARD

TPB Paper No. 10968

**For Consideration by
the Town Planning Board on 26.4.2024**

**REVIEW OF APPLICATION NO. A/NE-LT/762
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

Lot 623 RP in D.D. 8, Ma Po Mei Village, Lam Tsuen, Tai Po

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1. Background

- 1.1 On 15.11.2023, the applicant, Mr. WONG Oliver Ka Kit, 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 entirely within “Agriculture” (“AGR”) zone on the approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11 (**Plan R-1**).
- 1.2 On 12.1.2024, 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 “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 Tai Mong Che and Ma Po Mei 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/762 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 12.1.2024 (Annex B)
 - (c) Secretary of the Board’s letter dated 26.1.2024 (Annex C)

2. **Application for Review**

On 16.2.2024, the applicant applied under section 17(1) of the Ordinance for review of the 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 Site is the only piece of land owned by the applicant for Small House development; and
- (b) the land within the "V" zone of Ma Po Mei is not available for Small House development due to land ownership issue.

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) currently vacant, covered with self-seeded vegetation;
 - (b) located entirely within the village 'environs' ('VE') of Ma Po Mei;
 - (c) accessible via a footpath leading to Lam Kam Road; and
 - (d) located within the upper indirect water gathering ground (WGG).
- 4.3 The surrounding areas are predominantly rural in character with village houses, farmland, plant nursery and scattered tree groups. The village houses of Ma Po Mei are mainly located to the north of the Site in the "V" zone covering both Ma Po Mei and Tai Mong Che Villages. Tree groups are found to the northwest 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/268) submitted by a different applicant for the same proposed use. It was approved with conditions by the RNTPC on 7.12.2001 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 considerations that the proposed development was in line with the Interim Criteria in that 100% of the proposed Small House footprint was within the 'VE' of Ma Po Mei Village; compatible with the surrounding rural and village environment; and general shortage of land in meeting the demand for Small House development in the "V" zone concerned at the time of consideration.
- 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 12.1.2024, there were seven similar applications for Small House development within/straddling the same "AGR" zone since the first promulgation of the Interim Criteria. There has been no change in the number of similar applications since then. Among these similar applications, one was approved and six were rejected.
- 4.9 For the approved application No. A/NE-LT/465, it was approved in 2012 before the formal adoption of a more cautious approach by the Board since August 2015 mainly on considerations of being in line with the Interim Criteria in that more than 50% of the Small House footprint fell within the "V" zone and 'VE'; general shortage of land within the "V" zone to meet the demand for Small House development at the time of consideration; and being able to be connected to the planned sewerage system.
- 4.10 For the six rejected applications (No. A/NE-LT/291, 360, 411, 412, 422 and 656), they were rejected by the RNTPC/the Board upon review between 2003 and 2019 mainly on considerations of being not in line with the planning intention of the "AGR" zone; and/or the applicants failed to demonstrate that the proposed developments located within the WGG would be able to be connected to the existing or planned sewerage system and would not cause adverse impact on the water quality in the area. Application No. A/NE-LT/656 was rejected also on the grounds of not complying with the Interim Criteria in that the applicant failed to demonstrate that the proposed development would not have adverse geotechnical impact on the surrounding area, and land was still

available within the “V” zone concerned for Small House development.

- 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 its previous adverse views on the s.16 as stated in paragraph 9 of **Annex A**, as recapitulated below:
- (a) the Site is generally abandoned. The agricultural activities are active in the vicinity, and agricultural infrastructure such as road access and water source is also 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 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 (DLO/TP) 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 Ma Po Mei is three (five at the time of consideration of s.16 application) and Tai Mong Che is 13 (21 at the time of consideration of s.16 application), while the 10-year Small House demand forecast for both villages is 200 (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		✓	<u>Land Required</u> - Land required to meet Small House demand in Tai Mong Che and Ma Po Mei: about

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	demand)?			5.4 ha (equivalent to 216 Small House sites). The outstanding Small House applications are 16 ¹ while the 10-year Small House demand forecast for the same villages is 200. <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the villages concerned: about 1.96 ha (equivalent to 78 Small House sites) (Plan R-2b).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		

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

- 6.1 On 1.3.2024, the review application was published for public inspection. During the statutory public inspection period, no public comment was received.
- 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 12.1.2024 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 Tai Mong Che and Ma Po Mei for Small House development. To support the review application, the applicant has submitted written representations as set out in paragraph 3 above. There has been no major change in the planning circumstances since the consideration of the subject application by the RNTPC in January 2024. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid.

Planning Intention of the “AGR” Zone

- 7.2 The application is for a proposed Small House development at the Site zoned “AGR” on the OZP. 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

¹ Among the 16 outstanding Small House applications, 13 of them fall within or largely within the “V” zone and three fall outside the “V” zone. For those three applications falling outside the “V” zone, two of them have obtained valid planning approval from the Board.

purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC maintains his previous adverse views of not supporting the application from the agricultural perspective as there are active agricultural activities in the vicinity; agricultural infrastructure such as road access and water source is available; and the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the current submission for a departure from the planning intention.

Land Availability within the “V” Zone

- 7.3 Regarding the Interim Criteria, the footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Po Mei. According to DLO/TP, LandsD, the number of outstanding Small House applications for Tai Mong Che and Ma Po Mei is 16 while the 10-year Small House demand forecast is 200. Based on PlanD’s latest estimate, about 1.96 ha of land (equivalent to 78 Small House sites) is available within the “V” zone concerned. While the amount of land available within the “V” zone is insufficient to fully meet the future Small House demand, it is sufficient to accommodate the outstanding 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, the Board has put more weighting on the number of outstanding Small House applications as provided by LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. In response to the applicant’s claim that the Site is the only piece of land owned by him for Small House development and the land within the “V” zone of Ma Po Mei is not available for Small House development due to land ownership issue, it should be noted that land ownership is subject to change and is not a material planning consideration.

Previous Application

- 7.4 The Site is the subject of a previous application (No. A/NE-LT/268) approved by RNTPC before the formal adoption of a more cautious approach by the Board since August 2015 as set out in paragraph 4.6 above. At the s.16 application stage, the applicant claimed that he is the son of the applicant of the previously approved application and the Small House development, which was not implemented due to financial and technical difficulties at that time. It should be noted that this previous application was submitted by a different applicant and the planning permission, which was granted in 2001, lapsed in 2004. Considering the Interim Criteria, application with previous planning permission lapsed will be considered on its own merits, and sympathetic consideration is not applicable for the subject application.

8. **Planning Department's Views**

- 8.1 Based on the assessments made in paragraph 7, 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 Tai Mong Che and Ma Po Mei 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 infrastructures and services.
- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 26.4.2028, 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 recommended advisory clauses are at **Annex G**.

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**

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/762
Annex B	Extract of minutes of the RNTPC meeting held on 12.1.2024
Annex C	Secretary of the Board's letter dated 26.1.2024
Annex D	Letter received on 16.2.2024 from the applicant applying for a review of the RNTPC's decision
Annex E	Previous application
Annex F	Similar applications
Annex G	Recommended advisory clauses

PLANNING DEPARTMENT
APRIL 2024