

# **TOWN PLANNING BOARD**

**TPB Paper No. 10976**

**For Consideration by  
the Town Planning Board on 12.7.2024**

**REVIEW OF APPLICATION NO. A/NE-LT/765  
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

**Lots 567 S.D and 573 S.G in D.D. 8, Sha Pa, Lam Tsuen, Tai Po**

**REVIEW OF APPLICATION NO. A/NE-LT/765**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

**Lots 567 S.D and 573 S.G in D.D. 8, Sha Pa, Lam Tsuen, Tai Po**

**1. Background**

- 1.1 On 17.1.2024, the applicant, Mr. Chung Chi Fong 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 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 15.3.2024, 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”) zones of Shui Wo and Sha Pa 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 infrastructures and services.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-LT/765 (Annex A)
  - (b) Extract of minutes of the RNTPC meeting held on 15.3.2024 (Annex B)
  - (c) Secretary of the Board’s letter dated 5.4.2024 (Annex C)

**2. Application for Review**

On 24.4.2024, the applicant’s representative 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. The land suitable for Small House development in the "V" zones of Shui Wo and Sha Pa is either not owned by the applicant, or already occupied by trees, slopes, and existing village houses;
- (b) there are similar applications approved and existing village houses in the vicinity of the Site. Approval of the application would not set an undesirable precedent for similar applications; and
- (c) most of the government departments have no adverse comment 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) vacant, generally flat and covered with self-seeded vegetation;
  - (b) accessible via a footpath leading to Lam Kam Road across Lam Tsuen River; and
  - (c) within the upper indirect water gathering grounds (WGG) and Sha Pa Site of Archaeological Interest.
- 4.3 The surrounding areas are predominantly rural in character with village houses, farmlands, vegetated areas and clusters of tree groups. There are existing village houses located within the "V" zone to the northeast of the Site, and approved Small House applications by the Lands Department (LandsD) to the southeast, south, southwest, and west of the Site with construction yet to be commenced (**Plan R-2b**).

#### **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/758) as submitted by the same applicant as the current one for the same proposed use. It was rejected by the RNTPC on 13.10.2023 mainly on considerations 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 Shui Wo and Sha Pa which were primarily intended for Small House development.
- 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 15.3.2024, there were 33 similar applications for Small House development within/straddling the same “AGR” zone, of which 32 were submitted after the first promulgation of the Interim Criteria. There has been no change in the number of similar applications since then. Among these similar applications, 27 was approved and six were rejected.
- 4.9 20 applications (No. A/NE-LT/226, 240, 249, 263, 439, 718-724, 740-745, 747 and 754) were approved by the RNTPC between 2000 and 2023, mainly on considerations of being in line with the Interim Criteria in that more than 50% of the proposed Small House footprint fell within the village ‘environs’ (‘VE’) and there was a general shortage of land in meeting the demand for Small House development of the “V” zone concerned at the time of consideration. Seven applications (No. A/NE-LT/706-712) were approved in March 2022 (i.e. after the formal adoption of a more cautious approach by the Board since August 2015<sup>1</sup>) mainly on sympathetic consideration as the sites were part of the subject of previous approved applications for the same use submitted by the same applicants.
- 4.10 The remaining six applications (No. A/NE-LT/461-463 and 759-761) were rejected by the RNTPC between 2013 and 2023. Applications No. A/NE-LT/461-463 were rejected by the RNTPC mainly for reasons of not in compliance with the Interim Criteria in that the applicants failed to demonstrate that the proposed development would not cause adverse impact on the water

---

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

quality in the area. The other three applications (No. A/NE-LT/759-761) were rejected mainly on the grounds of not being in line with the planning intention of the “AGR” zone; and land was still available within the “V” zones of Shui Wo and Sha Pa which were primarily intended 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 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) are recapitulated as follows:
- (a) the Site is a piece of abandoned land. There are active agricultural activities in the vicinity, and agricultural infrastructure such as footpath and water source 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.

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

- 6.1 On 3.5.2024, the review application was published for public inspection. During the statutory public inspection period, no public comment was received.
- 6.2 No public comment was received at the s.16 application stage.

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

- 7.1 The subject s.16 application was rejected by the RNTPC on 15.3.2024 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” zones of Shui Wo and Sha Pa for Small House development. To support the review application, the applicant has submitted a written representation with justifications 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 March 2024. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid.

- 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 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. Other relevant government departments have been further consulted, and all maintain their previous views on the s.16 application and have no further comments on the review application.
- 7.3 In support of the review application, the applicant claims that the Site is the only piece of land owned by him for Small House development, and land suitable for Small House development in the “V” zones of Shui Wo and Sha Pa is not available. As far as the land availability issue is concerned (**Plan R-2b**), 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. Land available within the “V” zones of Shui Wo and Sha Pa (i.e. about 0.92 ha of land or equivalent to about 36 Small Houses sites) is capable of meeting the outstanding 19 Small House applications (same as that at the time of consideration of s.16 application). It should be noted that trees, slopes, and existing village houses have been excluded from the estimation of land availability of the “V” zones. 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. Land ownership is subject to change and is not a material planning consideration. In this regard, sympathetic consideration may not be given to the subject application.
- 7.4 The applicant also states that there are similar applications approved in the vicinity of the Site and approval of the application would not set an undesirable precedent for similar applications. It should be noted that when the s.16 application was considered by the RNTPC on 15.3.2024, there were 33 similar applications for Small House development within/straddling the same “AGR” zone, of which 27 was approved and six were rejected. Among those approved applications, 20 applications were approved by the RNTPC mainly on considerations of being in line with the Interim Criteria in that more than 50% of the proposed Small House footprint fell within the ‘VE’ and there was a general shortage of land in meeting the demand for Small House development of the “V” zones concerned at the time of consideration. Seven applications were approved by the RNTPC mainly on sympathetic consideration as the sites were part of the subject of previous approved applications for the same use submitted by the same applicants. For the current application, there is no general shortage of land in meeting Small House demand, the considerations of

previous approved applications are not applicable to the subject 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 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” zones of Shui Wo and Sha Pa 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 12.7.2028, 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**

<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” zones
<b>Plan R-3</b>	Aerial photo
<b>Plan R-4</b>	Site photo
<b>Annex A</b>	RNTPC Paper No. A/NE-LT/765
<b>Annex B</b>	Extract of minutes of the RNTPC meeting held on 15.3.2024
<b>Annex C</b>	Secretary of the Board’s letter dated 5.4.2024
<b>Annex D</b>	Letter received on 24.4.2024 from the applicant’s representative applying for a review of the RNTPC’s decision
<b>Annex E</b>	Previous application
<b>Annex F</b>	Similar applications
<b>Annex G</b>	Recommended advisory clauses

**PLANNING DEPARTMENT**  
**JULY 2024**