

# **TOWN PLANNING BOARD**

**TPB Paper No. 10970**

**For Consideration by  
the Town Planning Board on 31.5.2024**

**REVIEW OF APPLICATION NO. A/NE-LYT/821  
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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

**Lot 1644 S.A in D.D. 76, Kan Tau Tsuen, Fanling, New Territories**

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**1. Background**

- 1.1 On 13.12.2023, the applicant, Mr. LEE Lok Hang represented by Ching Wan Engineering Consultants Company, 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”) (about 99.6%) and “Village Type Development” (“V”) (about 0.4%)<sup>1</sup> zones on the approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/19 (**Plan R-1**).
- 1.2 On 26.1.2024, 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 in the Lung Yeuk Tau and Kwan Tei South area 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 “V” zone of Kan Tau Tsuen 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-LYT/821 (Annex A)
  - (b) Extract of minutes of the RNTPC meeting held on 26.1.2024 (Annex B)
  - (c) Secretary of the Board’s letter dated 16.2.2024 (Annex C)

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<sup>1</sup> About 0.7m<sup>2</sup> (i.e. 0.4%) of the Site falls within the “V” zone, which is considered as minor boundary adjustment and not included in the planning assessments.

## 2. **Application for Review**

On 8.3.2024, 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 Site was the subject of a previously approved planning application for proposed Small House. It was unreasonable that the application was rejected on the ground that land was still available within the "V" zone of Kan Tau Tsuen to meet the Small House demand; and
- (b) the applicant has no intention to carry out any agricultural activity at the Site. Being the registered land owner, he has the right for granting a Small House at the Site.

## 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 7.1 and 7.2 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) currently vacant and occasionally occupied by private vehicles;
- (b) located to the immediate southeast of the "V" zone and village proper of Kan Tau Tsuen; and
- (c) connected via a track to Sha Tai Kok Road – Ma Mei Ha.

4.3 The surrounding areas are in a rural landscape character dominated by village houses, farmlands, vegetated areas and tree clusters. To the west and northwest is the village proper of Kan Tau Tsuen. To the further southeast are existing village houses, vacant land and Tan Shan River. To the east and northeast are temporary structures and a plant nursery (**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 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-LYT/629 submitted by a different applicant for the same proposed use. It was approved by the RNTPC on 23.6.2017 mainly on sympathetic consideration of being in line with the Interim Criteria in that more than 50% of the footprints of proposed Small House fell within the village ‘environs’ (‘VE’) of Kan Tau Tsuen; the site was in close proximity to the existing village proper of Kan Tau Tsuen; and there were approved Small House applications nearby. The planning permission lapsed on 24.6.2021.
- 4.7 Details of the previous application are summarized at **Appendix III of Annex A** and its location is shown on **Plan R-2a**.

#### Similar Applications

- 4.8 When the s.16 application was considered by the RNTPC on 26.1.2024, there were 39 similar applications for Small House development within/partly within the same “AGR” zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area since the first promulgation of the Interim Criteria. There has been no change in the number of similar applications since then.
- 4.9 Among them, 20 applications were approved by the Committee between July 2002 and January 2015 before the Board’s formal adoption of a more cautious approach since August 2015<sup>2</sup>. 19 applications were approved by the Committee between December 2015 and October 2023 after the more cautious approach mainly on sympathetic consideration that the sites were the subject of previous approvals and/or there were Small House applications approved in the vicinity at different stages of development nearby which formed new village clusters in the locality.
- 4.10 Details of the above similar applications are summarized at **Appendix IV of Annex A** and their locations are shown on **Plan R-2a**.

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<sup>2</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.

## 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**. 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 9.1 (4) of **Annex A**, as recapitulated as follows:

- DAFC does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation. 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.

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 Kan Tau Tsuen is 41 (46 at the time of consideration of s.16 application), while the 10-year Small House demand forecast is 130 (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 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> Land required to meet Small House demand in Kan Tau Tsuen: about 4.28ha (equivalent to 171 Small House sites). The outstanding Small House applications are 41 <sup>3</sup> while the 10-year Small House demand forecast is 130.

<sup>3</sup> Among the 41 outstanding Small House applications, 14 of them fall within the “V” zone and 27 straddle or fall outside the “V” zone. For those 27 applications straddling or falling outside the “V” zone, 13 of them have obtained valid planning approvals from the Board.

				<u>Land Available</u> Land available to meet Small House demand within the “V” zone of Kan Tau Tsuen: about 1.76ha (equivalent to about 70 Small House sites) ( <b>Plan R-2b</b> ).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		

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

- 6.1 On 15.3.2024, the review application was published for public inspection. During the statutory public inspection period, four public comments were received. While a member of North District Council indicates no comment on the application, the remaining three public comments from the Chairman, First Vice-Chairman, Vice-Chairman of Fanling District Rural Committee raise objection to the application mainly on the grounds that the applicant is not an indigenous villager and the proposed development would cause traffic and drainage impacts on the surroundings.
- 6.2 The same four public comments were received at the s.16 application stage and set out in paragraph 10 of **Annex A**.

## **7. Planning Considerations and Assessment**

- 7.1 The subject s.16 application was rejected by the RNTPC on 26.1.2024 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 Kan Tau Tsuen 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 11 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; it is unreasonable to reject the current application on the ground that land is still available within the “V” zone of Kan Tau Tsuen to meet the Small House demand. It should be noted that the previous application (No. A/NE-LYT/629) granted in 2017 was submitted by a different applicant, and the approval has already lapsed. As such, the current application is considered as a fresh application. 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 Kan Tau Tsuen (i.e. about 1.76ha of land or equivalent to about 70 Small Houses sites) (**Plan R-2b**) is capable of meeting the outstanding 41 Small House applications (46 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 may not be given to the subject application.

- 7.3 The applicant also states that he has no intention to carry out agricultural activities at the Site, and he has the right to build Small House as he is the registered land owner. It should be noted that proposed Small House is located mostly 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 the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention.
- 7.4 There are 39 similar applications for Small House developments in the vicinity of the Site (**Plan A-2a**), of which 19 were approved by the Committee between December 2015 and October 2023 after the Board’s formal adaption of a more cautious approach mainly on sympathetic consideration that the sites were the subject of previous approvals and/or there were Small House applications approved in the vicinity at different stages of development nearby which formed a new village clusters in the locality. The planning circumstances of the current application are different from those approved applications as the current application is submitted by a different applicant from its previous application and there are vacant areas surrounding the Site and therefore may not be regarded as an infill site among existing NTEHs/Small Houses. At the time of considering the previous application no. A/NE-LYT/629 in 2017, sympathetic consideration was given as there were approved Small House applications nearby and new village clusters were expected to be formed in the locality. However, as shown in **Plan A-3**, to the south is still vacant and new village clusters are still not yet formed. In view of the above, sympathetic consideration of the similar approved applications and previous application are not applicable to the subject application.
- 7.5 Regarding the public comments objecting the review application as mentioned 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 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 Kan Tau Tsuen 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 31.5.2028, 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>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-4</b>	Site Photos



<b>Annex A</b>	RNTPC Paper No. A/NE-LYT/821
<b>Annex B</b>	Extract of Minutes of the RNTPC Meeting held on 26.1.2024
<b>Annex C</b>	Secretary of Town Planning Board's letter dated 16.2.2024
<b>Annex D</b>	Letter Received by Town Planning Board on 8.3.2024 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**  
**MAY 2024**