

REVIEW OF APPLICATION NO. A/NE-TKL/723
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

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

Lot 662 S.B in D.D. 82,
Lei Uk Village, Ta Kwu Ling, New Territories

1. Background

1.1 On 3.4.2023, the applicant, Mr. LEE Bon Sin, sought planning permission to build a house (New Territories Exempted House (NTEH) - Small House) on the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14 (**Plan R-1**).

1.2 The application was considered by the Rural and New Town Planning Committee (RNTPC) on 19.5.2023. RNTPC was of the view that the east of the Site was mostly covered with grass and vegetation which possessed potential for agricultural rehabilitation; the Site did not appear to be a single pocket between the existing Small Houses; and the area to the further south of the Site along the eastern boundary of the subject “Village Type Development (“V”) zone was still vacant and approval of the application might lead to further extension of Small House development in the “AGR” zone. RNTPC decided to reject the application and the reason was:

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, 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.

1.3 For Members’ reference, the following documents are attached:

- | | | |
|-----|---|--------------------|
| (a) | RNTPC Paper No. A/NE-TKL/723 | (Annex A) |
| (b) | Extract of minutes of the RNTPC meeting held on 19.5.2023 | (Annex B) |
| (c) | Secretary of Town Planning Board’s letter dated 9.6.2023 | (Annex C) |

2. Application for Review

On 26.6.2023, the applicant applied under s.17(1) of the Ordinance for review of the RNTPC’s decision to reject the application (**Annex D1**). On 2.8.2023, the applicant submitted supplementary justifications in support of the review application (**Annex D2**).

3. **Justifications from the Applicants**

The justifications put forth by the applicant in support of the review application are detailed in the submission at **Annexes D1** and **D2**, as summarized below:

- (a) the applicant is an indigenous villager of Lei Uk Village which should be eligible to build a Small House in the village for his own use;
- (b) portion of the Site, which was zoned “V” in the past, was mistakenly taken by the Government for building an access road in 1968. It was only returned to the applicant in 2015;
- (c) the Site is located within a Small House cluster;
- (d) the Site is not suitable for farming due to small site area, no water source is available in the proximity, and no indigenous villagers of Lei Uk Village are familiar with farming; and
- (e) the Resident Representative (RR) of Lei Uk Village, who objects to the subject s.16 application, was granted permission¹ for deposition of construction waste in D.D. 82 lots 645 and 650 S.B, which is close to the Site and such deposition works would contaminate the surrounding areas.

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 is described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no material change in the situation since then.
- 4.2 The Site is:
 - (a) vacant and overgrown with grass;
 - (b) accessible via a local road; and
 - (c) to the west is the village proper of Lei Uk Village.
- 4.3 The surrounding areas are predominantly rural in character where village houses and fallow agricultural land are found.

¹ No valid planning permission was granted to the aforesaid deposition. DEP acknowledged via the notification form for deposition of construction waste in lots 645 and 650 S.B in D.D. 82 according to the "Waste Disposal Ordinance Cap. 354 - Acknowledgement on private land lot owners' permission of an intended construction waste deposition".

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 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.

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 There is no previous application for the Site.

Similar Applications

- 4.7 When the s.16 application was considered by the RNTPC on 19.5.2023, there were 15 similar applications within the same “AGR” zone and in the vicinity of the Site 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, 11 were approved and four were rejected.
- 4.8 For the 11 approved applications, ten applications (No. A/NE-TKL/216, 218, 221, 222, 223, 359, 360, 361, 466 and 493) were approved with conditions by the Committee between September 2002 and December 2014 (i.e. before the formal adoption of a more cautious approach since August 2015²) mainly on the grounds that more than 50% of the proposed Small House footprints fell within the Village Environs (‘VE’); there was a general shortage of land within “V” zone in meeting the Small House demand at the time of consideration; and the proposed Small House developments were not incompatible with the surrounding rural landscape character and would unlikely generate significant adverse impacts on the surrounding areas.
- 4.9 One application (No. A/NE-TKL/711) was approved by the Committee on 13.1.2023 (i.e. after the formal adoption of a more cautious approach since August 2015) mainly on sympathetic consideration that the Site was the subject of a previous approval submitted by the same applicant.
- 4.10 Four applications (No. A/NE-TKL/591, 592, 593 and 594) were rejected by the Board on review on 26.10.2018 mainly on the grounds that the applications were not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone of Lei Uk Village where land was primarily intended for Small House development.

² Among others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting shall be put on the number of outstanding Small House applications provided by LandsD.

- 4.11 Details of the above similar applications are summarized at **Annex E** 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 of Appendix IV of **Annex A**.
- 5.2 For the review application, the relevant government departments have been further consulted and their views are summarized as follows:

Land Administration

- 5.2.1 Comments of the District Lands Office/North, Lands Department (DLO/N, LandsD):
- (a) the updated number³ of outstanding Small House applications for Lei Uk Village is 34 (which was 44 at the s.16 application stage), whilst the 10-year Small House demand for Lei Uk Village is 600 (which was 110 at the s.16 stage);
 - (b) in response to the applicant justifications in paragraph 3(a) and (b) above, according to the Deed of Surrender dated 9 October 1968 registered under Memorial No. 162385 in the Land Registry, a western part of Lot 662 in D.D.82⁴ (known as Lot 662 S.A in D.D.82) was surrendered for the construction of a motor track at Lei Uk Village by the Government in 1968 and the surrendered area was 3,218 square feet. Her office has no record to show that the Government has ever returned any surrendered land to the applicant; and
 - (c) as compared with the land status plan in 1998 and 2023, it is noted that the alignment of the road was shifted westwards from the lots to the adjoining Government land.

Environment

- 5.2.2 Comments of the Director of Environmental Protection (DEP):

in response to the applicant justification in paragraph 3(e) above, please note that "Waste Disposal Ordinance Cap. 354 - Acknowledgement on private land lot owners' permission of an intended construction waste deposition" is a prior notification mechanism to enhance the regulatory control of depositing of construction waste on private land, identify illegal depositing of construction waste on private land and to enable relevant government departments to be alerted that depositing of construction waste may commence in a particular private lot such that they may take precautionary measure. Similar to other

³ According to DLO/N, the number of outstanding Small House application and 10-year Small House demand for Lei Uk Village as at 31.12.2018 and 31.12.2022 are 44 & 110 and 34 & 600 respectively.

⁴ Lot 662 in D.D. 82 is the mother lot of the Site.

cases, in the acknowledgement letter to the notifier of Lots 645 and 650 S.B in D.D. 82 (**Plan R-2a**), we have conveyed the concerns / comments received from the relevant departments and reminded the notifier to comply with the requirements of WDO Cap. 354 S16B(3) and all other relevant Hong Kong legislation. EPD will monitor the abovesaid site and taken necessary enforcement action if there is any violate to environmental legislation under EPD's ambits.

Agriculture

5.2.3 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

the agricultural activities are very active in the vicinity of the Site with over 8 d.c.⁵ (i.e. 5,395.76m²) of agricultural land under active cultivation. The eastern part of the Site is a large piece of fallow/abandoned land located next to the water source. Irrigation facilities could be established for supplying irrigation water to the fallow/abandoned land including the Site if they could be used for agricultural rehabilitation. Therefore, the Site possesses potential for agricultural rehabilitation.

5.3 The following Government departments maintain their previous views of having no comment/no objection on the review application:

- (a) Chief Highway Engineer/ New Territories East. Highway Department (CHE/NTE, HyD);
- (b) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (c) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (d) Commissioner of Transport (C of T)
- (e) Director of Fire Services (D of FS);
- (f) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (g) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (GEO,CEDD); and
- (h) District Office (North), Home Affairs Department (DO(N), HAD).

6. Public Comments Received During Statutory Publication Period

- 6.1 On 7.7.2023, the review application was published for public inspection. During the statutory public inspection period, seven public comments were received. Six individuals object to the application mainly on the grounds that the approval of the application would set an undesirable precedent of the similar application; the Small House development should be concentrated within "V" zone for efficient use of land; the applicant possesses another land within the "V" zone of Lei Uk Village; and land is still available within the "V" zone. The Kadoorie Farm and Botanic Garden Corporation raises concern that the land availability within "V" zone should be considered by the Board for the decision.

⁵ According to DAFC, "d.c." ("斗種") is a unit on measuring the size of agricultural land. 1 d.c is equal to 674.47m².

- 6.2 Three public comments (one indicates no comment, one adverse comment and one concern) were received at the s.16 application stage which are set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The subject application was rejected by RNTPC on 19.5.2023 for reason as detailed in paragraph 1.2 above. To support the review application, the applicant has submitted written representations as summarized in paragraph 3 above. Although there has been no material change in the planning circumstances since the consideration of the subject application by RNTPC in May 2023, and the planning consideration and assessments below are in response to the applicant's justifications provided in the review application.

Eligibility of the Applicant to Build Small House

- 7.2 The applicant claims that he is an indigenous villager of Lei Uk Village with eligibility to build a Small House in the village. As advised by DLO/N of LandsD, the eligibility of Small House grant is yet to be ascertained (see footnote 1 of **Annex A**).

Previous "V" Zoning of the Site

- 7.3 The applicant claims that a portion of the Site was zoned "V" in the past, which was mistakenly taken by the Government for building an access road in 1968 and was only returned to the applicant in 2015. According to DLO/N of LandsD, Lot No. 662 S.A in D.D. 82 (which falls outside the Site) was surrendered to the government in 1968. However, the government has no record of returning the surrendered land to the applicant.

The Suitability of the Site for Small House Development

- 7.4 The applicant claims that the Site is located with a Small House cluster, and is not suitable for farming. 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 to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from agricultural point of view as agricultural activities are very active in the vicinity of the Site. The eastern part of the Site is a large piece of fallow/abandoned land located next to the water source. Irrigation facilities could be established for supplying irrigation water to the fallow/abandoned land including the Site if they could be used for agricultural rehabilitation (see paragraph 5.2.3 above). There is no strong justification given in the submission for a departure from such planning intention.
- 7.5 In accessing the application, reference should be made to the Interim Criteria (**Appendix II of Annex A**). According to DLO/N of LandsD, the number of outstanding Small House applications for Lei Uk Village is 34 while the 10-year Small House demand forecast is 600. Based on PlanD's latest estimate, about 1.56 ha (equivalent to 62 Small House sites) is available within the "V" zone concerned. While the amount of land available within the "V" zone (**Plan R-2b**) 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, more weighting has been put on the number of outstanding Small House applications as provided by LandsD. As such, 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. This should be one of the reasons for not supporting the review application.

- 7.6 As regards the applicant’s claim that the Site is located within the Small House cluster, it should be noted that the Site does not appear to be a single pocket between the existing Small Houses, and the area to the further south of the Site along the eastern boundary of the subject “V” zone is still vacant. Besides, the area to the east of the Site is mostly covered with grass and vegetation which possesses potential for agriculture rehabilitation. To the immediate west and north of the Site are access road and a Small House respectively. As such, the Site does not appear to be situated in a Small House cluster.
- 7.7 The applicant’s claim that the RR of Lei Uk Village, who objects the section 16 application, has been granted for deposition of construction waste nearby (**Plan R-2a**). It should be noted that this issue is not a relevant planning consideration for the review application.
- 7.8 Regarding the public comments objecting and concerning to 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, having taken into account the public comments mentioned in paragraph 6, Planning Department does not support 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, and 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 Lei Uk Village 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 orderly development pattern, efficient use of land and provision of infrastructures and services.
- 8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until **15.9.2027**, 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 a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

- 8.3 The recommended advisory clauses are attached at **Annex G**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a 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 applicants.
- 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 of Lei Uk Village
Plan R-3	Aerial photo
Plan R-4	Site photos
Annex A	RNTPC Paper No. A/NE-TKL/723
Annex B	Extract of minutes of the RNTPC meeting held on 19.5.2023
Annex C	Secretary of the Town Planning Board's letter dated 9.6.2023
Annex D1	Letter received on 26.6.2023 from the applicant applying for review of the RNTPC's decision
Annex D2	Letter received on 2.8.2023 from the applicants providing further justifications in support of the review application
Annex E	Similar applications
Annex F	Public comments
Annex G	Recommended advisory clauses

**PLANNING DEPARTMENT
SEPTEMBER 2023**