

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-LYT/738**

- Applicant** : Mr. PANG Chi Ming represented by Gender Consultants Limited
- Site** : Lot 1810 S.C in D.D. 76, Kan Tau Tsuen, Lung Yeuk Tau, New Territories
- Site Area** : 119.4 m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17
- Zonings** : “Agriculture” (“AGR”) (about 107.1m<sup>2</sup> or 89.8% of the Site)  
“Village Type Development” (“V”) (about 12.3m<sup>2</sup> or 10.2% of the Site)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

**1. The Proposal**

1.1 The applicant, who claimed himself an indigenous villager of Fanling Village of Fanling Heung<sup>1</sup>, seeks planning permission to build a proposed NTEH (Small House) on the application site (the Site) in Kan Tau Tsuen, Fanling (**Plans A-1 and A-2a**). The Site falls within an area partly zoned “AGR” (about 89.8%) and partly zoned “V” (about 10.2%) on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, ‘House (NTEH only)’ is a use always permitted within the “V” zone while ‘House (NTEH only)’ is a Column 2 use in the “AGR” zone requiring planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) are as follows:

Total Floor Area	:	195.09 m <sup>2</sup>
Number of Storeys	:	3
Building Height	:	8.23 m
Roofed Over Area	:	65.03 m <sup>2</sup>

1.3 Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**. The applicant indicates that the uncovered area of the Site would be used as garden of the proposed Small House.

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<sup>1</sup> According to District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant’s eligibility for Small House concessionary grant has yet to be ascertained.

- 1.4 The Site is the subject of two previous planning applications (No. A/NE-LYT/593 and 726) for the proposed Small House development submitted by the same applicant. The applications were rejected by the Rural and New Town Planning Committee (the Committee) on 24.6.2016 and 12.6.2020 respectively. Compared with the last previous application, the major development parameters, including the site area and the general layout of the proposed Small House, remain unchanged (**Drawing A-1**).
- 1.5 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received on 22.9.2020.

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form at **Appendix I**. They can be summarized as follows:

- (a) the applicant owned the Site since 2015 and intended to live in the village for retirement;
- (b) he hopes his application can be approved as the Site is only a small piece of land he owns; and
- (c) he does not want to live outside the village as he cannot afford such high rent.

## **3. Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is the “current land owner” of the respective lot. Detailed information would be deposited at the meeting for Members’ inspection.

## **4. Assessment Criteria**

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

## **5. Previous Applications**

- 5.1 The Site is the subject of two previous planning applications (No. A/NE-LYT/593 and 726) for the proposed Small House development submitted by the same applicant, which were rejected by the Committee on 24.6.2016 and 12.6.2020 respectively mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the proposed development did not comply with the Interim Criteria in that more than 50% of the footprint fell outside the Village ‘Environs’ (‘VE’) and “V” zone of Kan Tau Tsuen; and land was still available within the “V” zone of Kan Tau Tsuen. Compared with the last previous application, the major development parameters, including the site area and the general layout of the proposed Small House remain unchanged (**Plans A-1 and A-2a**).
- 5.2 Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plan A-2a**.

## 6. Similar Applications

- 6.1 There are 103 similar applications for Small House development within / partly within the “AGR” zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Of 93 approved applications, 54 applications were approved with conditions by the Committee between March 2001 and January 2015 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-1**) mainly on the considerations that the applications generally complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the ‘VE’ and there was a general shortage of land within the “V” zone of the same village in meeting the Small House demand; the proposed developments were not expected to have significant adverse traffic, drainage, environmental or landscape impacts on the surrounding area. The remaining 39 applications were approved between December 2015 and September 2020 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1**) mainly for reasons of being the subject of previously approved application; the processing of Small House grants was already at an advance stage; the implementation of new Small House under construction and approved Small House development nearby was forming a new village cluster in the locality.
- 6.3 The other 10 applications were rejected by the Committee or the Board on review between September 2003 and July 2019 mainly on the grounds that the proposed Small House developments did not comply with the Interim Criteria as the footprints of the proposed Small Houses fell mainly/entirely outside the “V” zone and the ‘VE’ of a recognized village; the proposed developments were not in line with the planning intention of the “AGR” zone; land was still available within the “V” zone; and approval of the applications would set undesirable precedents for similar applications.
- 6.4 Details of these applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

## 7. The Site and Its Surrounding Area (Plans A-1, A-2a and aerial photo on **Plan A-3** and **site photo on Plan A-4**)

- 7.1 The Site is:
  - (a) flat, vacant and mainly overgrown with shrubs (**Plan A-3**);
  - (b) located in close proximity to the village cluster of Kan Tau Tsuen; and
  - (c) accessible via Sha Tau Kok Road – Ma Mei Ha.
- 7.2 The surrounding areas have the following characteristics:
  - (a) rural landscape character dominated by village houses, temporary structures used for domestic purposes and vacant land;
  - (b) to the immediate north is fallow agricultural land and to the further north are some domestic structures, temporary structures intermixed with active/fallow agricultural land;

- (c) to the immediate south is the “V” zone of Kan Tau Tsuen where village houses and vacant land could be found (**Plan A-2a**);
- (d) to the immediate west are two sites with Small House grants approved by LandsD<sup>2</sup> and to the further west are some village houses, domestic structures intermixed with vacant land and fallow agricultural land; and
- (e) to the immediate east are some vacant land, active agricultural activities can be found to the further northeast of the Site.

## 8. Planning Intentions

- 8.1 The planning intention of the “AGR” zone is intended 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.
- 8.2 The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

## 9. Comments from Relevant Government Departments

- 9.1 The application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone?  - The Site - Footprint of the proposed Small House	10.2% 8.3%	89.8% 91.7%	- The Site falls mainly (about 89.8%) within the “AGR” zone whereas part of the Site (about 10.2%) falls within the “V” zone.
2.	Within ‘VE’?  - The Site - Footprint of the proposed Small House	4.8% 2.4%	95.2% 97.6%	- DLO/N, LandsD advises that most of the Site and footprint of the proposed Small House fall outside the ‘VE’ of Kan Tau Tsuen. He further advises that Small House grant application would not be generally considered under the Small House Policy as more than 50% of the footprint of the proposed Small House falls outside the ‘VE’ of the village and the “V” zone. The

<sup>2</sup> According to the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories, planning permissions for those two Small Houses will not be required as more than 50% of their footprints fall within the ‘VE’ and “V” zone of a recognised village.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				Small House grant application was rejected in 2016.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	<p><u>Land Required</u></p> <p>- Land required to meet the Small House demand in Kan Tau Tsuen: about 3.025 ha (equivalent to 121 Small House sites). The outstanding Small House applications for Kan Tau Tsuen are 43<sup>3</sup> while the 10-year Small House demand forecast for the same village is 78.</p>
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		<p><u>Land Available</u></p> <p>- Land available to meet the Small House demand within the “V” zone of Kan Tau Tsuen: about 1.94 ha (equivalent to 77 Small House sites) (<b>Plan A-2b</b>).</p>
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently an abandoned land. 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. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
5.	Compatible with surrounding area/ development?	✓		- The proposed Small House is not incompatible with the surrounding rural setting and environment dominated by active/fallow agricultural land and village houses ( <b>Plan A-2a</b> ).
6.	Within Water Gathering Grounds (WGGs)?		✓	

<sup>3</sup> Among the 43 outstanding Small House applications, 11 of them fall within the “V” zone and 32 straddle or outside the “V” zone. For those 32 applications straddling or outside the “V” zone, 19 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) has reservation on the application and advises that Small House development should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the "V" zone, if permitted, will set undesirable precedent cases for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial.  - Notwithstanding the above, the application involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
12.	Landscaping impact?		✓	<p>- The Chief Town Planner / Urban Design and Landscape, Planning Department (CTP/UD&amp;L, PlanD) has no objection to the application from the landscape planning point of view.</p> <p>- The Site is located within rural inland plains landscape character area comprising of dense temporary structures, village houses and local vehicular access. Patchy areas of weedy vegetation are found among them. The proposed use is considered not entirely incompatible with the surrounding landscape areas with high density of village houses and significant adverse landscape impact within the Site arising from the development is not anticipated.</p>
13.	Local objections conveyed by DO?	✓		<p>- District Officer (North) (DO(N)) advises that he has consulted the locals. The Chairman, the First Vice-Chairman and the Vice-Chairman of Fanling District Rural Committee and the two Indigenous Inhabitant Representatives of Kan Tau Tsuen object to the application mainly on the grounds that the applicant is not an indigenous villager of Kan Tau Tsuen and there are susceptible drainage and environmental problems arising from the proposed development. The North District Council Member of the subject constituency did not reply.</p>

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Detailed comments from Government departments are at **Appendix V**.

- (a) District Lands Officer/North, Lands Department;
- (b) Commissioner for Transport;
- (c) Director of Environmental Protection;
- (d) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (e) Chief Engineer/Mainland North, Drainage Services Department;
- (f) Director of Fire Services;

- (g) Chief Engineer/Construction, Water Supplies Department;
- (h) Director of Agriculture, Fisheries and Conservation; and
- (i) District Officer (North), Home Affairs Department.

9.3 The following Government departments have no comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department; and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department.

## **10. Public Comments Received During Statutory Publication Period**

On 29.9.2020, the application was published for public inspection. During the statutory public inspection period, nine public comments were received (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining eight comments from North District Council Member, the Chairman, the First Vice-Chairman, the Vice-Chairman of Fanling District Rural Committee, Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong, Hong Kong Bird Watching Society and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; the proposed development does not comply with the Interim Criteria for Consideration of Application for Small House; the applicant is not an indigenous villager of Kan Tau Tsuen; adverse environmental and drainage problems are anticipated; land is still available within the “V” zone of Kan Tau Tsuen; and approval of the application would set an undesirable precedent for similar applications within the “AGR” zone.

## **11. Planning Considerations and Assessments**

- 11.1 The application is for a proposed Small House in an area partly zoned “AGR” (about 89.8%) and partly zoned “V” (about 10.2%) 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 to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. As the Site possesses potential for agricultural rehabilitation, DAFC does not support the application from agricultural point of view. There is no strong justification in the submission for a departure from the planning intention.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Kan Tau Tsuen is 43 while the 10-year Small House demand forecast for the same village is 78. According to the latest estimate by PlanD, about 1.94 ha (equivalent to 77 Small House sites) of land are available in the “V” zone of Kan Tau Tsuen for Small House development (**Plan A-2b**). DLO/N, LandsD advises that Small House grant application would not be generally considered under the Small House Policy as more than 50% of the footprint of the proposed Small House falls outside the ‘VE’ of the village and the “V” zone. The Small House grant application was rejected by DLO/N, LandsD in 2016.
- 11.3 The Site is flat, vacant and covered with shrubs (**Plans A-3 and A-4**). It is located to the north of the “V” zone of Kan Tau Tsuen (**Plan A-1**). The proposed Small House is not entirely incompatible with the surrounding landscape character with high density of



village houses and significant adverse landscape impact within the Site arising from the development is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the application from the landscape planning perspective. C for T considers that Small House developments should be confined within the “V” zone as far as possible but given that the proposed development involves one Small House, the application could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment or no objection to the application.

- 11.4 The proposed Small House development does not comply with the Interim Criteria (**Appendix II**) as more than 50% of the footprint of the proposed Small House falls outside the ‘VE’ and “V” zone of Kan Tau Tsuen (**Plan A-2a**). Whilst land available within the “V” zone is insufficient to fully meet the future Small House demand of 121 Small Houses, such available land (about 1.94 ha or equivalent to 77 Small House sites) is capable to meet the 43 outstanding Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. Amongst 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. 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 infrastructure and services.
- 11.5 The Site is the subject of two previous planning applications (No. A/NE-LYT/593 and 726) for Small House development submitted by the same applicant. These applications were rejected by the Committee in 2016 and June 2020 respectively mainly on the grounds of not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that more than 50% of the footprint falls outside the ‘VE’ and “V” zone of Kan Tau Tsuen; and available land within the “V” zone of Kan Tau Tsuen. There has been no major change in planning circumstances since the rejection of the previous applications.
- 11.6 There are 8 similar applications for Small House development in close proximity to the Site (**Plan A-2a**). Amongst these similar cases, except for four applications (No. A/NE-LYT/296, 299, 354 and 434) approved by the Committee between 2005 to 2011 (i.e. before a more cautious approach is adopted by the Board) mainly on the grounds of compliance with the Interim Criteria, the remaining four applications (No. A/NE-LYT/594, 595, 695 and 697) were rejected by the Committee between June 2016 to July 2019. Whilst applications No. A/NE-LYT/695 and 697 were rejected on the grounds of not in line with the planning intention of “AGR” zone and land was still available within the “V” zone, the other two applications (No. A/NE-LYT/594 and 595) were rejected mainly on the grounds that the proposed Small House developments did not comply with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell outside the “V” zone and ‘VE’ of a recognized village. The circumstances of the current application are similar to the rejected applications No. A/NE-LYT/594 and 595.
- 11.7 Regarding local objections conveyed by DO(N) of HAD and the adverse public comments mentioned in paragraphs 9.1 and 10, Government departments’ comments and planning assessments above are relevant.

## 12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the local objections conveyed by DO(N) of HAD and the adverse public comments mentioned in paragraphs 9.1 and 10, the Planning Department does not support the 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 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) the proposed development does not comply with the Interim Criteria for consideration of application for New Territories Exempted House/Small House in New Territories in that more than 50% of the footprint of the proposed Small House falls outside the village 'environs' and "Village Type Development" zone of Kan Tau Tsuen.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 20.11.2024, 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 conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) 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

The recommended advisory clauses are attached at **Appendix VII**.

## 13. Decision Sought

13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.

13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

13.3 Alternatively, should the Committee decide to approve the 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.

**14. Attachments**

<b>Appendix I</b>	Application Form with attachments received on 22.9.2020
<b>Appendix II</b>	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
<b>Appendix III</b>	Previous Applications
<b>Appendix IV</b>	Similar s.16 Applications for Proposed House (New Territories Exempted House (NTEH) - Small House) within/partly within the “AGR” Zone in the vicinity of the Sites in the Lung Yeuk Tau and Kwan Tei South area
<b>Appendix V</b>	Detailed Comments from Relevant Government Departments
<b>Appendix VI</b>	Public Comments
<b>Appendix VII</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2a</b>	Site Plan
<b>Plan A-2b</b>	Estimated Amount of Land Available within the “V” zone of Kan Tau Tsuen for Small House Development
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photo

**PLANNING DEPARTMENT  
NOVEMBER 2020**