

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/476

- Applicant** : Mr. LIU King Yung represented by Chuo Wang Development Consultant Limited
- Site** : Lot 496 S.F in D.D. 94, Hang Tau, Sheung Shui, New Territories
- Site Area** : 125.42 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kwu Tung South Outline Zoning Plan No. S/NE-KTS/16
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

- 1.1 The applicant who claims to be an indigenous villager¹ of Sheung Shui Heung seeks planning permission to build a house (NTEH - Small House) on the application site (the Site) in Hang Tau Village, Sheung Shui. The Site falls within an area zoned “AGR” on the approved Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/16 (**Plans A-1 and A-2a**). According to the Notes of the OZP, the proposed ‘House (NTEH)’ in “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is vacant and partly covered by wild grass (**Plan A-4**).
- 1.2 The Site is the subject of 2 previous applications. The first application No. A/NE-KTS/314 for a proposed house (NTEH – Small House) was approved with conditions by the Rural and New Town Planning Committee (the Committee) in 2011. The planning permission lapsed in 2015. In 2019, application No. A/NE-KTS/468 for the same Small House submitted by another applicant (the same person as the applicant of the current application) was rejected by the

¹ As advised by the District Lands Officer/North, Lands Department (DLO/N, LandsD), the eligibility of the applicant for Small House concessionary grant has yet to be ascertained.

Committee.

- 1.3 The proposed Small House has a covered area of 65.03m², 3 storeys (8.23m) and a total gross floor area of 195.09m². The applicant has indicated that the uncovered area of the Site will be used as circulation area. There is no vehicular access to the Site. Septic tank is proposed. Layout of the proposed Small House development is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with plans received on 8.7.2019 **(Appendix I)**
 - (b) Further Information dated 31.7.2019 **(Appendix Ia)**

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 are summarized as follows:

- (a) The applicant is an indigenous villager of Sheung Shui Heung and he is eligible for the construction of a Small House according to the Small House Policy.
- (b) The Site falls within the Village 'Environs' ('VE') of Hang Tau. The proposed development is compatible with the surrounding land uses with a number of Small Houses found to the immediate east and north of the Site (**Plan A-2a**). Small House applications are found to the west and north of the Site (**Plan A-2c**).
- (c) There are 3 Small Houses developed near the Site. The formation works for the 3 Small Houses covered the Site and its adjoining land when the 3 Small Houses were constructed. Hence, it is difficult for agricultural rehabilitation in the Site.
- (d) The proposed development would not cause adverse landscape impact.
- (e) The previous application for Small House development at the Site was approved by the Committee in 2011, and the planning permission expired in 2015. However, the applicant was not aware of applying for extension of time limit.
- (f) The applicant bought the Site in 2014. Since the Site was involved in legal matter, the Small House grant application was affected. The legal matter has been solved in 2018 and LandsD has re-activated the processing of the Small House grant application. The applicant was informed by LandsD of the need to submit planning application.
- (g) About 55 Small Houses were developed with planning permission in Hang Tau Village. Amongst them, 15 Small Houses are in the vicinity of the Site and their circumstances and locations are similar to the Site. Hence, the current application should be approved with conditions.

- (h) One of the rejection reasons of the previous application mentions that land is still available within the “Village Type Development” (“V”) zone of Hang Tau Village for Small House development. The applicant has conducted site visit and consulted the village representative and find that most of the still available land is circulation area of developments, and 3 larger parcels of land are owned by Tso Tong, parts are Government land or already used for private purpose. Only 3 to 4 parcels of land can be used for Small House development, however, they are private land. The applicant cannot develop Small House on these lands. Hence, available land in Hang Tau Village is not much for Small House development and insufficient to meet Small House demand.

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

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

4. Assessment Criteria

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

5. Background

The Site is not subject to planning enforcement action.

6. Previous Applications

- 6.1 The Site is the subject of 2 previous applications No. A/NE-KTS/314 and 468 for Small House development. Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plan A-2a**.
- 6.2 Application No. A/NE-KTS/314 submitted by another applicant was approved with conditions on 19.8.2011 mainly on the grounds of complying with the Interim Criteria in that the Small House footprint fell within the ‘VE’ of Hang Tau and there was a general shortage of land in meeting the demand for Small House development in the “V” zone of Hang Tau Village, locating close to Hang Tau Village with similar approved applications in the vicinity, being not incompatible with the surrounding land uses, and no significant adverse traffic, environment, drainage and landscape impacts to the surrounding areas. The planning permission lapsed on 20.8.2015.

- 6.3 Application No. A/NE-KTS/468 submitted by the same applicant as the current application was rejected on 3.5.2019 mainly for reasons that the proposed development is not in line with the planning intention of the “AGR” zone, land is still available within the “V” zone of Hang Tau Village which is primarily intended for Small House development, and that 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.

7. Similar Applications

- 7.1 There are 45 similar applications at 34 locations for Small House development within/partly within the “AGR” zone in the vicinity of Hang Tau Village since the first promulgation of the Interim Criteria on 24.11.2000. Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1 and A-2c**.

Approved Applications

- 7.2 40 applications were approved with conditions by the Committee. 37 applications (No. A/NE-KTS/135 to 144, 146 to 149, 152, 158 to 161, 190, 209 to 213, 252, 255, 259, 279 to 281, 289, 300, 329, 330, 358, 360) were approved between 2001 and 2014 mainly on considerations that the applications complied with the Interim Criteria in that the entire/majority of the footprints of the proposed Small Houses fell within the ‘VE’ and that there was not sufficient land within the “V” zone to satisfy the Small House demand. The remaining 3 applications No. A/NE-KTS/444, 445 and 456 were approved in 2017 and 2018 as planning permissions had been granted to previous applications for the same use on the sites and there was no material change in the planning circumstances since then.

Rejected Applications

- 7.3 5 applications were rejected by the Committee or by the Board on review. Of which, 3 applications (No. A/NE-KTS/368, 388 and 402) were rejected between 2014 and 2015 mainly for reasons of not complying with the Interim Criteria in that more than 50% of the sites and/or the footprint of the proposed Small Houses fall outside both the ‘VE’ and “V” zone and land was still available within the “V” zone, being not in line with the planning intention of the “AGR” zone, and setting undesirable precedent causing cumulative adverse traffic and landscape impacts to the area.
- 7.4 Since the Board adopted a more cautious approach in considering applications for Small House development in recent years as stated in paragraph 12.3 below, 2 applications (No. A/NE-KTS/443 and 447) were rejected in 2017 mainly for reasons of being not in line with the planning intention of the “AGR” zone and availability of land within “V” zone to meet the outstanding Small House

applications.

8. The Site and Its Surrounding Areas (Plan A-2a and aerial photo on Plan A-3 and site photos on Plan A-4)

8.1 The Site is:

- (a) generally flat, vacant and partly covered by wild grass;
- (b) located to the immediate east of the village cluster of Hang Tau village and falls entirely within the 'VE' of Hang Tau; and
- (c) accessible via a footpath to the west of the Site. There is no vehicular access to the Site. There is a village road, about 120m to the southwest of the Site, connecting Hang Tau Road.

8.2 The surrounding area is predominantly rural in nature with village houses, plant nursery and active/fallow agricultural land, with the following characteristics:

- (a) to the immediate north and east are village houses which were developed with planning permissions granted between 1999 and 2007. To the further north, and east as well as south are mainly plant nursery, scattered domestic structures and fallow agricultural land; and
- (b) to the southwest and west are village cluster of Hang Tau village and active agricultural land.

9. Planning Intention

The planning intention of the "AGR" zone 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.

10. Comments from Relevant Government Departments

10.1 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? - Footprint of the proposed Small	-	100%	- The Site and the footprint of the proposed Small House falls wholly within "AGR" zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	House - Site	-	100%	
2.	Within 'VE'? - Footprint of the proposed Small House - The Site	100% 100%	- -	- DLO/N, LandsD has advised that the Site falls entirely within the 'VE' of Hang Tau.
3.	Sufficient land in "V" zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	- Land required to meet Small House demand in Hang Tau Village: about 81.3 ha (equivalent to about 3,253 Small House sites). The outstanding Small House applications for Hang Tau Village are 53 ² while the 10-year Small House demand forecast for the village is between 2,900 and 3,200.
	Sufficient land in "V" zone to meet outstanding Small House applications? (Plan A-2d)	✓		- Land available to meet the Small House demand within the "V" zone of the village concerned: about 4.42 ha (equivalent to about 176 Small House sites).
4.	Compatible with the planning intention of "AGR" zone?		✓	The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural point of view. The Site is currently a fallow land overgrown with seeds. Agricultural activities are active in the vicinity and agricultural infrastructures such as footpath and water source are available. The Site can be used for agricultural activities such as open field cultivation, greenhouses, etc. The Site possesses potential for agricultural rehabilitation.

² Among the 53 outstanding Small House applications, 25 of them fall within the "V" zone, and 28 straddle or outside the "V" zone including 2 sites with valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
5.	Compatible with surrounding area/ development?	✓		The Site is located in an area predominantly rural in nature with village houses, plant nursery and active/fallow agricultural land.
6.	Within Water Gathering Grounds (WGGs)?		✓	
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 specific comment on the application. Detailed fire safety requirements will be formulated upon receipt of formal application referred by the LandsD.
9.	Traffic impact?	✓		The Commissioner for Transport (C for T) has reservation on the application due to setting undesirable precedent resulting in cumulative adverse traffic impact, but considers that the application only involving construction of one Small House can be tolerated.
10.	Drainage impact?		✓	The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no comment on the application and the drainage proposal. He advised that approval condition requiring implementation of the accepted drainage proposal be imposed should the application be approved.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
11.	Sewerage impact?		✓	<ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) has advised that in view of the small-scale nature of the proposed developments, the application alone is unlikely to cause major pollution. - Septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage.
12.	Landscaping impact?		✓	<ul style="list-style-type: none"> - The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning perspective. - Further significant landscape impact arising from the proposed use is not anticipated. - In view that there is inadequate space for meaningful landscape within the Site, landscape condition is not recommended.
13.	Local objections conveyed by District Officer (North) (DO(N))?		✓	<ul style="list-style-type: none"> - The Chairman of the Sheung Shui District Rural Committee (SSDRC), the North District Council (NDC) member of subject constituency, and the Indigenous Inhabitant Representatives (IIRs) and the Resident Representative (RR) of Hang Tau have no comment on the application.

10.2 Comments from the following Government departments have been incorporated in paragraph 10.1 above. Their other detailed comments, if any, are at **Appendix V**.

- (a) DLO/N, LandsD;
- (b) DAFC;
- (c) D of FS;
- (d) C for T;
- (e) CE/MN, DSD;
- (f) DEP;

- (g) Chief Engineer/Construction, Water Supplies Department (CE/C,WSD);
- (h) CTP/UD&L, PlanD; and
- (i) DO(N), Home Affairs Department.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
- (b) Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD).

11. Public Comments Received During Statutory Publication Period

On 16.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, a total of 8 public comments from Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong, Hong Kong Bird Watching Society and individuals (including local villagers) were received. 2 commenters (**Appendices VIa** and **VIb**) indicate no comment on the application. The remaining 6 comments (**Appendices VIc** to **VIh**) object to the application mainly on the following grounds:

- (a) The proposed development is not in line with the planning intention of “AGR” zone which is not primarily intended for building Small House. Approval of the application would set an undesirable precedent for similar applications.
- (b) There are active farmlands near the Site. The Site has potential for farmland rehabilitation.
- (c) Land is still available within “V” zone. While land available within the “V” zone was insufficient to fully meet the future Small House demand, it was capable to meet the outstanding Small House applications.
- (d) Previous application No. A/NE-KTS/468 for Small House was rejected by the Committee in May 2019.
- (e) Natural vegetation in the Site has been cleaned up. Approval of the application may reward unauthorised use and/or ‘destroy first and develop later’ situation in the Site.
- (f) The applicant is not the villager of Hang Tau Village.

12. Planning Considerations and Assessments

12.1 The application is for a NTEH (Small House) within the “AGR” zone. 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 infrastructures such as footpath and water source are available and the Site can be used for agricultural activities and possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention.

- 12.2 The Site is partly covered by wild grass. It is located to the immediate east of the village cluster of Hang Tau Village. The proposed development is not incompatible with surrounding environment which is rural in nature with village houses, plant nursery and active/fallow agricultural land. DEP advises that septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage. CE/MN, DSD has no comment on the application and considers the drainage proposal submitted by the applicant acceptable. It is not anticipated that the proposed development would have significant adverse drainage and environmental impacts on the surrounding area. While C for T has concern on cumulative adverse traffic impact caused by future similar developments, given that the application involving one Small House only, he considers that the application could be tolerated. Other Government department consulted, including CTP/UD&L, PlanD, has no objection to the application.
- 12.3 Regarding the Interim Criteria (**Appendix II**), 100% of the footprint of the proposed Small House falls within the 'VE' of Hang Tau (**Plan A-1**). According to DLO/N, LandsD, the total number of outstanding Small House applications for Hang Tau Village is 53. As provided by the IIRs of Hang Tau, the 10-year Small House demand forecast for the Village is between 2,900 and 3,200. Based on the latest estimate by PlanD, about 4.42 ha (or equivalent to about 176 Small House sites) of land is available within the "V" zone of Hang Tau Village (**Plan A-2c**). There is sufficient land available within the "V" zone to meet the outstanding Small House applications though it cannot fully meet the 10-year Small House demand. In recent years, the Board has adopted a more cautious approach in considering applications for Small House development. 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. For the current application, there is still land available in the "V" zone to meet the 53 outstanding Small House applications. Although the Site was granted with planning permission in 2011 for the same use, the planning permission lapsed in 2015 and the current application is submitted by a different applicant. According to the Interim Criteria, application for Small House with previous planning permission lapsed will be considered on its own merits. In general, proposed development which is not in line with the criteria would normally not be allowed. There is no special circumstance to support the application. In addition, the applicant's subsequent application (No. A/NE-KTS/468) for Small House at the Site was rejected by the Committee on 3.5.2019.

- 12.4 The applicant points out that land available within the “V” zone of Hang Tau Village as estimated by PlanD under the previous application No. A/NE-KTS/468 is insufficient to meet Small House demand as most of the available land are circulation area of developments, owned by Tso Tong, Government land or already used for private purpose. It should be noted that PlanD, in estimating land available for Small House development in the “V” zone, has adopted a consistent approach and would make use of the latest available information. In general, land occupied by road, existing and approved village houses, steep slope, major tree cluster and stream buffer will be deducted from the area available for Small House development. Land ownership is not a material consideration as it could be subject to change and land parcel could be subdivided to suit development needs. For land currently being occupied by temporary uses or private gardens of existing houses, they will be included as a source of land supply.
- 12.5 There are 45 similar applications for proposed Small House development which fell entirely/partly within the same “AGR” zone in the vicinity of Hang Tau Village (**Plans A-1 and 2c**). As stated in paragraph 7, 37 applications were approved mainly based on the consideration of complying with the Interim Criteria and another 3 applications were approved due to previous approved applications for the same use on the sites and no material change in the planning circumstances since then. The remaining 5 applications were rejected based on grounds of being not in line with the planning intention of the “AGR” zone, setting undesirable precedent, available land within “V” zone, and/or not complying with the Interim Criteria. The Site is the subject of 2 previous planning applications for the same use. Although previous application No. A/NE-KTS/314 was approved in 2011 (the permission lapsed in 2015), it was submitted by a different applicant. Another previous application No. A/NE-KTS/468 submitted by the same applicant as the current application was rejected in 2019 as mentioned in paragraph 6. As there has been no material change in planning circumstances since the last rejected application, rejection of of the current application is in line with the previous decisions of the Committee.
- 12.6 There are 4 local views conveyed by DO(N) and 8 public comments received (as stated in paragraphs 10.1 and 11), of which 6 object to the application mainly in the aspects of planning intention of “AGR” zone, potential for farmland rehabilitation, still available land within the “V” zone and previously rejected application. In this regard, relevant Government departments’ comments and planning assessments as stated in paragraphs 12.1 to 12.5 above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the local views and public comments mentioned in paragraphs 10.1 and 11, the PlanD 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) land is still available within the “Village Type Development” (“V”) zone of Hang Tau 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 more orderly development pattern, efficient use of land and provision of infrastructures and services.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 6.9.2023, 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 implementation of the agreed 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**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 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.

15. Attachments

Appendix I	Application Form with plans received on 8.7.2019
Appendix Ia	Further Information dated 31.7.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Previous Applications
Appendix IV	Similar Applications
Appendix V	Comments from Relevant Government Departments
Appendices VIa to VIh	Public Comments
Appendix VII	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan
Plans A-2a to A-2c	Site Plans
Plan A-2d	Estimated Amount of Land Available for Small House Development within the "V" Zone
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2019**