

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/473

- Applicant** : Mr. LIU Ka Po represented by Access Consulting Limited
- Site** : Lot 643 S.E in D.D. 100, Tsiu Keng Lo Wai Village, Sheung Shui, New Territories
- Site Area** : 121.7 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 Sheung Shui Wai, seeks planning permission to build a house (NTEH - Small House) on the application site (the Site) in Tsiu Keng Lo Wai², 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, partly covered by wild grass and partly used as footpath and vehicular track (**Plan A-4**).
- 1.2 The Site was granted with planning permission on 12.12.2014 under application No. A/NE-KTS/379 submitted by the same applicant for a proposed House (NTEH – Small House). The planning permission lapsed on 13.12.2018.

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.

² Tsiu Keng Village comprises 4 areas in that Tsiu Keng Lo Wai, Tsiu Keng San Wai and Tsiu Keng Pang Uk are covered by one “Village Type Development” (“V”) zone and Chan Uk Po is covered by another “V” zone.

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 garden. A 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 16.5.2019 (Appendix I)
- (b) Letter dated 16.5.2019 (Appendix Ia)
- (c) Further Information dated 26.6.2019 (Appendix Ib)

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** and the Further Information at **Appendix Ib**. They are summarized as follows:

- (a) The applicant is indigenous villager in the New Territories and he has only one chance to apply for construction of NTEH (Small House).
- (b) The applicant submitted Small House grant application to LandsD before 2008. In 2008, the applicant was informed by LandsD of the need to obtain planning permission from the Board for the proposed Small House. In 2014, the planning permission was granted by the Board. In May 2019, at the request of LandsD, the applicant re-submitted the Small House grant application to LandsD as it was submitted long time ago.

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 any active enforcement action.

6. Previous Application

- 6.1 The Site is the subject of a previous application No. A/NE-KTS/379 for a proposed House (NTEH – Small House) submitted by the same applicant which was approved with conditions on 12.12.2014 mainly on the grounds of being not incompatible with the surrounding land uses, locating close to Tsiu Keng Lo Wai village cluster and Tsiu Keng Road, similar approved applications, meeting the Interim Criteria in that the Small House footprint fell within the ‘VE’ of Tsiu Keng Village and there might not be sufficient land in the two “V” zones in Tsiu Keng to meet the Small House demand, and no significant adverse traffic, drainage, environmental and landscape impacts to the surrounding areas are anticipated. The planning permission lapsed on 13.12.2018.
- 6.2 Details of the previous application are summarized at **Appendix III** and its location is shown on **Plan A-2a**.

7. Similar Applications

- 7.1 There are 54 similar applications for NTEH (Small House) within/partly within the “AGR” zone in the vicinity of the “V” zone of Tsiu Keng Lo Wai, Tsiu Keng San Wai and Tsiu Keng Pang Uk 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 **Plan A-1**.

Approved Applications

- 7.2 The 24 approved applications involve 16 sites and they are either located close to the existing village clusters or fell partly within the “V” zone. Of them, a cluster of 12 sites near the Site are located to the immediate south of Tsiu Keng Road (**Plan A-2a**). 21 applications (No. A/NE-KTS/132, 133, 162, 172 to 176, 182, 183, 275 to 277, 283, 292 to 295, 349, 366 and 389) were approved between 2001 and 2015 mainly on the considerations of complying with the Interim Criteria, not incompatible with the surrounding environment and similar approved applications. The remaining applications (No. A/NE-KTS/420 to 422) were approved in 2016 after the Board adopted a cautious approach in 2015. Although there was sufficient land to meet the outstanding Small House grant applications, considering that the sites are located close to Tsiu Keng Road, the Small House footprint fell entirely within the ‘VE’ of Tsiu Keng Village and a cluster of Small House applications was approved nearby, these applications were approved.

Rejected Applications

- 7.3 The 30 rejected applications (No. A/NE-KTS/332 to 337, 348, 350, 351, 354, 378, 380 to 387, 395 to 399, 408 to 411, 414 and 448) involve 11 sites and most of them are located away from the existing village cluster and/or access road (**Plan A-1**). They were rejected by the RNTPC or by the Board on review between 2013 and

2017 on the grounds of being not in line with the planning intention of the “AGR” zone and land still available within the “V” zones of Tsiu Keng Village. For applications No. A/NE-KTS/378, 380 to 387, 395 to 399, 408 to 411 and 414, the sites formed part and parcel of the large piece of active or fallow agricultural land to the north and north-west of Tsiu Keng Village, and the approval of these applications would set undesirable precedent resulting in further reduce the agricultural land in the area.

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) located to the east of the village cluster of Tsiu Keng Lo Wai and falls entirely within the ‘VE’ of Tsiu Keng Village;
- (b) generally flat, vacant, partly covered by wild grass and partly used as footpath and vehicular track; and
- (c) about 25m away from Tsiu Keng Road.

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

- (a) to the immediate northwest is fallow agricultural land; to the further northwest are village houses of Tsiu Keng Lo Wai, village office, restaurant and vacant land;
- (b) to the east are village houses which were developed with planning permissions granted between 2009 and 2010, fallow agricultural land and car park. To the further east is the proposed Agricultural Park; and
- (c) to the south and southwest are fallow 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 House - Site	-	100%	The Site and the footprint of the proposed Small House entirely fall within “AGR” zone.
2.	Within ‘VE’? - Footprint of the proposed Small House - The Site	100%	-	DLO/N, LandsD has advised that the Site falls entirely within the ‘VE’ of Tsiu Keng Village.
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 Tsiu Keng Village: about 6.5 ha (equivalent to about 261 Small House sites). The outstanding Small House applications for Tsiu Keng Village are 41 ³ while the 10-year Small House demand forecast for the village is about 220.
	Sufficient land in “V” zone to meet outstanding Small House applications? (Plan A-2b)	✓		- Land available to meet the Small House demand within the two “V” zones of the village concerned: about 2.9 ha (equivalent to about 116 Small House sites).

³ Among the 41 outstanding Small House applications, 13 of them fall within the “V” zones, and 28 straddle or outside the “V” zones including the subject application site and 5 sites with valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
4.	Compatible with the planning intention of “AGR” zone?		✓	The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application as the Site possesses potential for agricultural rehabilitation. The Site is currently an abandoned land with paved track. 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, etc.
5.	Compatible with surrounding area/ development?	✓		The Site is located in an area predominantly rural in nature with village houses, a car park 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 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.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
10.	Drainage impact?		✓	The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection in-principle to the application and advised that approval condition requiring submission and implementation of drainage proposal be imposed should the application be approved.
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 development, 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. - The proposed use is considered not incompatible with the existing landscape setting in proximity. - Based on his site visit conducted on 3.6.2019, the Site was vacant and no existing tree was found within the Site. Further significant landscape impact arising from the proposed use is not anticipated. - In view that there is no adequate space within the Site for meaningful landscape, landscape condition is not recommended.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
13.	Local objections conveyed by District Officer (North) (DO(N))?		✓	The North District Council (NDC) member of subject constituency supports the application. The Chairman of the Sheung Shui District Rural Committee (SSDRC), the Indigenous Inhabitant Representative (IIR) and Resident Representative (RR) of Tsiu Keng 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) CE/MN, DSD;
- (c) DEP;
- (d) DAFC;
- (e) Chief Engineer/Construction, Water Supplies Department (CE/C,WSD);
- (f) CTP/UD&L, PlanD;
- (g) D of FS;
- (h) C for T; 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 24.5.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 14.6.2019, 2 public comments (**Appendices VIa and VIb**) from two individuals were received and object to the application mainly for reasons that the footpath was used by villagers for decades; the Site is agricultural land which is not suitable for building village house; Tsiu Keng Village falls within area for agricultural use; land is still available within “V” zone for Small House development; and septic tanks is undesirable.

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 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.

- 12.2 The Site is partly covered by wild grass and partly used as footpath and vehicular track. It is located to the east of the village cluster of Tsiu Keng Lo Wai and close to Tsiu Keng Road. Some village houses with planning permissions have been developed to the east of the Site. The proposed development is not incompatible with surrounding environment which is rural in nature with village houses, active/fallow agricultural land and car park. DEP advises that septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage. It is not anticipated that the proposed development would have significant adverse landscape, drainage and environmental impacts on the surrounding area. Government departments consulted, including CTP/UD&L, PlanD, CE/MN, DSD and DEP, have no adverse comment on or no objection to the application. 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.
- 12.3 Regarding the Interim Criteria (**Appendix II**), 100% of the footprint of the proposed Small House falls within the 'VE' of Tsiu Keng (**Plan A-1**). According to DLO/N, LandsD, the total number of outstanding Small House applications for Tsiu Keng Village is 41. As provided by the IIR of Tsiu Keng Village, the 10-year Small House demand forecast for the Village is about 220. Based on the latest estimate by PlanD, about 2.9 ha (or equivalent to about 116 Small House sites of land) is available within the two "V" zones of Tsiu Keng Village (**Plan A-2b**). There is sufficient land available within the "V" zones 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. Nevertheless, the Site is the subject of a previously approved planning application No. A/NE-KTS/379 for the same use and submitted by the same applicant, but the permission lapsed on 13.12.2018. There has been no material change in the planning circumstances in the area since the previous application was approved in 2014. The Small House grant application submitted by the applicant to LandsD on the Site is being processed by LandsD. According to the Interim Criteria, sympathetic consideration may be given to application for Small House with previous planning permission.
- 12.4 There are 54 similar applications for proposed Small House development which fell entirely/partly within the same "AGR" zone in the vicinity of Tsiu Keng Village

(**Plan A-1**). As stated in paragraph 7, 30 applications were rejected between 2013 and 2017; 21 applications were approved before adoption of a more cautious approach by the Board in 2015 and another 3 applications were approved in 2016. 21 approved applications involve sites near the Site close to Tsiu Keng Road (**Plan A-2a**). As the Site was granted planning permission for Small House development (application No. A/NE-KTS/379) in 2014, approval of the current application is in line with the Committee's previous decision.

12.5 Of the 2 public comments received, all object to the application in the aspects of land use intention, available land in "V" zone and undesirability of septic tank. In this regard, relevant Government departments' comments and planning assessments as stated in paragraphs 12.1 to 12.3 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 has no objection to the application.

13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 5.7.2023, 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 submission and implementation of 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**.

13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:

- (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 “V” zones of Tsiu Keng Village 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.

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

15. Attachments

Appendix I	Application Form with plans received on 16.5.2019
Appendix Ia	Letter dated 16.5.2019
Appendix Ib	Further Information dated 26.6.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Previous Application
Appendix IV	Similar Applications
Appendix V	Detailed Comments from Relevant Government Departments
Appendices VIa and VIb	Public Comments
Appendix VII	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available for Small House Development within the “V” Zones
Plan A-3	Aerial Photo
Plan A-4	Site Photos