

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-LYT/695 and 697

- Applicants** : Mr. TANG Yan Chuen, Ernie (Application No. A/NE-LYT/695)
Mr. TANG Soei Wa, Harold (Application No. A/NE-LYT/697)
all represented by Mr. HUI Kwan Yee
- Sites** : Lot 1847 S.F (Application No. A/NE-LYT/695)
Lot 1847 S.H (Application No. A/NE-LYT/697)
all in D.D. 76, Kan Tau Tsuen, Fanling, New Territories
- Site Areas** : 135.6 m² (about) (Application No. A/NE-LYT/695)
140.8 m² (about) (Application No. A/NE-LYT/697)
- 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
- Zoning** : “Agriculture” (“AGR”)
- Applications** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposals

1.1 The applicants, who claimed to be indigenous villagers¹, seek planning permissions to build a proposed NTEH (Small House) on each of the application sites (the Sites) in Kan Tau Tsuen, Fanling (**Plans A-1a and A-2a**). The Sites fall within an area zoned “AGR” 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, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).

1.2 Details of each of the two proposed NTEHs (Small Houses) are as follows:

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

1.3 Layouts of the two proposed Small Houses under applications No. A/NE-LYT/695 and

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicants claimed themselves to be indigenous villagers of Hok Tau Wai of Fanling Heung. Their eligibility for Small House grant has yet to be ascertained.

697 are shown on **Drawings A-1 and A-2** respectively. The applicants indicate that there is no proposed use of the uncovered areas of the Sites.

- 1.4 The Sites are part of the subject of a previous planning application No. A/NE-LYT/299 covering a larger area for development of four Small Houses submitted by different applicants as the current applications. The application was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 15.4.2005 and the validity of the planning permission was extended once until 15.4.2012 under the application No. A/NE-LYT/299-2. The planning permission lapsed on 16.4.2012. Compared with the previous application, major development parameters for the subject two Small Houses remain unchanged whilst the layouts of the proposed Small Houses under the current applications are slightly different in the disposition of balcony and septic tank (**Plans A-1b and A-2a**).
- 1.5 In support of the applications, the applicants have submitted the Application Forms with attachments (**Appendices Ia and Ib**) which were received on 7.5.2019.

2. **Justifications from the Applicants**

The justifications put forth by the applicants in support of the applications are detailed in Part 9 of the Application Forms at **Appendices Ia and Ib** respectively. They can be summarized as follows:

- (a) the vacant agricultural land can be used for the proposed Small House development;
- (b) there is no alternative site for the proposed development; and
- (c) there are similar small house developments adjacent to the Sites.

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

The applicants are the “current land owners” of their respective lots. 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 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

5. **Previous Application**

- 5.1 The Sites are the subject of a previous planning application (No. A/NE-LYT/299) covering a larger area for development of four Small Houses submitted by different applicants. The application was approved with conditions by the Committee on 15.4.2005 mainly on the considerations that the application generally complied with the Interim Criteria in that most of the footprints of the proposed Small Houses fell within the village ‘environs’ (‘VE’) and the land available within the “Village Type Development” (‘V’) zone could not fully meet the future Small House demand; the proposed Small House developments were generally compatible with the surrounding

rural and village environment; and the proposed Small Houses would unlikely have significant adverse environmental, drainage and traffic impacts on the surrounding areas. The validity of the planning permission was extended once until 15.4.2012 under the application No. A/NE-LYT/299-2. The planning permission lapsed on 16.4.2012. Compared with the previous application, major development parameters remain unchanged whilst the layouts of the proposed Small Houses under the current applications are different from the previous application in terms of deposition of balcony and septic tank (**Plans A-1b and A-2a**).

- 5.2 Details of the previous application are summarized at **Appendix III** and its locations shown on **Plan A-1b**.

6. Similar Applications

- 6.1 There are 94 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 since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-1a**).

- 6.2 Of 85 approved applications, 53 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-1a**) 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 32 applications were approved between December 2015 and April 2019 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1a**) mainly for reasons of being the subject of previously approved application; being situated in close proximity to existing village houses, the implementation of new Small House under construction and approved Small House development nearby was forming a new village cluster in the locality, and the processing of Small House grant was already at an advance stage.

- 6.3 The other 9 applications were rejected by the Committee or the Board on review between September 2003 and December 2017 mainly on the considerations 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-1a**.

7. The Sites and Their Surrounding Areas (**Plans A-1a, A-2a and A-2b, and aerial photo on Plan A-3 and site photos on Plans A-4**)

- 7.1 The Sites are:

- (a) a piece of flat and vacant land with wild grasses (**Plan A-4**);
- (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) to the immediate north is fallow agricultural land and to its further north across Sha Tau Kok Road – Ma Mei Ha is the “V” zone of Leng Tsai Tsuen (**Plan A-2a**);
- (b) to the immediately west is fallow agricultural land and further west are sites of planning application No. A/NE-LYT/434 for eight Small House developments approved by the Committee in 2011 (**Plan A-2a**);
- (c) to the immediately east is vacant and clustered tree groups and further east are sites of planning applications No. A/NE-LYT/593 to 595 for Small House developments rejected by the Committee in 2016 (**Plan A-2a**); and
- (d) to the immediately south are fallow agricultural land and to its further south are village houses in “V” zone of Kan Tau Tsuen (**Plan A-2a**).

8. Planning Intention

The planning intention of the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South area 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.

9. Comments from Relevant Government Departments

9.1 The applications have 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 Sites - Footprints of the proposed Small Houses	- -	100% 100%	- The Sites and the footprints of the proposed Small Houses fall entirely within the “AGR” zone.
2.	Within ‘VE’? - The Sites (i) Application No. A/NE-LYT/695 (ii) Application No. A/NE-LYT/697	42.9% 100%	57.1% -	- DLO/N, LandsD advises that the footprint of the proposed Small House under application No. A/NE-LYT/695 partly falls within the ‘VE’ of Kan Tau Tsuen while the footprint of application No. A/NE-LYT/697 falls within the ‘VE’ of the same village.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	- Footprints of the proposed Small Houses (i) Application No. A/NE-LYT/695 (ii) Application No. A/NE-LYT/697	66.9% 100%	33.1% -	
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 the Small House demand in Kan Tau Tsuen: about 4.08 ha (equivalent to 163 Small House sites). The outstanding Small House applications for Kan Tau Tsuen are 67 ² while the 10-year Small House demand forecast for the same village is 96.
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		- Land available to meet the Small House demand within the “V” zone of Kan Tau Tsuen: about 2.05 ha (equivalent to 82 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) states that the agricultural activities in the vicinity are active. Agricultural infrastructure such as road access and water supply are available. As the Sites possess potential for agricultural rehabilitation, the applications are not supported from agriculture point of view.
5.	Compatible with surrounding area/ development?	✓		- The proposed Small Houses are not incompatible with the surrounding rural setting and environment dominated by agricultural land and village houses (Plan A-2a).
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	

² Among the 67 outstanding Small House applications, 10 of them fall within the “V” zone and 57 straddle or outside the “V” zone. For those 57 applications straddling or being outside the “V” zone, 28 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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 applications. The applicants are 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 applications and advises that Small House developments should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed developments are not expected to be significant, such type of developments 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 applications involve construction of two Small Houses. She considers that the applications can be tolerated unless they are rejected on other grounds.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the applications 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 developments, the applications alone are unlikely to cause major pollution.
12.	Landscaping impact?		✓	The Chief Town Planner / Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the applications from the landscape planning point of view.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>- The Sites are situated in an area of rural landscape character surrounded by village houses and clustered tree groups. No significant landscape resource of high sensibility is observed within the Sites. According to the proposed layouts in the submissions, significant adverse impact on existing landscape resources arising from the applications is not anticipated.</p> <p>- In consideration of the limited space within the Sites, it is considered not necessary to impose a landscape condition.</p>
13.	Local objections conveyed by DO?	✓		<p>- District Officer (North) (DO(N)) advises that he has consulted the locals. The Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Kan Tau Tsuen support the applications as the Sites are adjacent to the 'VE'. The first Vice Chairman and the Vice Chairman of Fanling District Rural Committee object to the applications on the grounds that the applicants are not indigenous villagers of Kan Tau Tsuen and adverse traffic impact on the surrounding areas is anticipated from the proposed development.</p>

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Details of 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 applications:

- (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 14.5.2019, the applications were published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received for each application (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the applications. The remaining comments from Vice Chairman of Fanling District Rural Committee, Designing Hong Kong Limited and an individual object to the applications mainly on the grounds that the applicants are not the indigenous villagers of Kan Tau Tsuen, adverse traffic impact on the surrounding areas caused by the proposed Small House developments; proposed developments were previously approved in 2005 which is not appropriate for reference; there is high potential for agricultural rehabilitation of the Site, land is still available within the “V” zone of Kan Tau Tsuen; and the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone.

11. Planning Considerations and Assessments

- 11.1 The applications are for Small House developments at the Sites which fall entirely within an area zoned “AGR” on the OZP. The proposed developments are not in line with the planning intention of the “AGR” zone which is intended 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 applications from the agriculture point of view as the Sites possess potential for agricultural rehabilitation.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Kan Tau Tsuen is 67 while the 10-year Small House demand forecast for the same village is 96. According to the latest estimate by PlanD, about 2.05 ha (equivalent to 82 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 the footprints of the proposed Small Houses partly and entirely fall within the ‘VE’ of Kan Tau Tsen under applications No. A/NE-LYT/695 and 697 respectively.
- 11.3 The Sites are situated to the northwest of the “V” zone of Kan Tau Tsuen, which are currently vacant, flat and covered with grasses. The village proper of Kan Tau Tsuen is located to the southeast and there are approved and rejected Small House applications to the west and east respectively (**Plans A-2a and A-4**). The proposed Small Houses are not incompatible with the surrounding rural setting comprising village houses and clustered tree groups. Significant adverse landscape impact arising from the proposed developments is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the applications from the landscape planning perspective. C for T has reservation on the applications and considers that Small House developments should be confined within the “V” zone as far as possible but given that the proposed development involves two Small Houses, they 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 applications.
- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprints of the proposed Small Houses fall within the ‘VE’ of Kan Tau Tsuen (**Plan A-2a**). While the land available within the “V” zone is insufficient to fully meet the future Small House demand, it is noted that land (about 2.05 ha or equivalent to 82 Small House sites) is still available within the “V” zone to meet the outstanding 67 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 developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

- 11.5 The Sites are the subject of a previous planning application (No. A/NE-LYT/299) for development of four Small Houses submitted by different applicants. That application was approved by the Committee in 2005 before the Board has adopted a more cautious approach in considering Small Houses application in recent years. The validity of the planning permission was extended once until 15.4.2012. The planning permission lapsed on 16.4.2012. Whilst the Sites are the subject of a previously approved application, it should be noted that the planning permission had lapsed and the current applications should be assessed as fresh application based on the prevailing circumstances according to the Interim Criteria.
- 11.6 There are 12 similar applications for Small House development within/partly within the “AGR” zone in the vicinity of the Sites (**Plan A-2a**). Of them, 9 to the west of the Sites were approved. Four applications (No. A/NE-LYT/354, 389, 410 and 434) were approved with conditions by the Committee between April 2007 and January 2011 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-2a**) 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 at the time of consideration. Five other applications (No. A/NE-LYT/679-681, 687 and 688) were approved by the Committee between December 2018 and April 2019 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-2a**) mainly on sympathetic consideration that the processing of Small House grants was already at an advance stage. In this regard, the circumstances of those approved similar applications are not relevant to the subject applications. As such, sympathetic consideration as given to the five similar approved applications to the West of the Sites may not be applicable to the current applications.
- 11.7 The remaining 3 similar applications No. A/NE-LYT/593 to 595 to the east of the Sites were rejected by the Committee in 2016 (**Plan A-2a**). Applications No. A/NE-LYT/594 and 595 did not comply with the Interim Criteria as the footprints of the proposed Small House fell entirely outside the ‘VE’ of a recognized village and “V” zone. As for application No. A/NE-LYT/593, it was rejected mainly on the grounds that land was still available within the “V” zone and it was considered more appropriate to concentrate Small House development within the “V” zone. It is considered that the circumstances of the current applications are more similar to the rejected application No. A/NE-LYT/593.
- 11.8 There are two objecting locals conveyed by DO(N), HAD in paragraph 9 above and three public comments objecting to the applications as detailed in paragraph 10 above, 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 public comments mentioned in paragraph 10, the Planning Department does not support the applications for the following reasons:

- (a) the proposed development is not in line with the planning intention of the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South area 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 Kan Tau Tsuen which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 12.2 Alternatively, should the Committee decide to approve the applications, it is suggested that each of the permissions 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. Decision Sought

- 13.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to reject the applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.
- 13.3 Alternatively, should the Committee decide to approve the applications, 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

Appendices Ia to Ib	Application Forms with attachments received on 7.5.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Previous Application
Appendix IV	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
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawings A-1 to A-2	Layout Plans
Plan A-1a	Location Plan
Plan A-1b	Previous Application Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the “V” zone of Kan Tau Tsuen for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JULY 2019**