

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/616

- Applicant** : Mr. LEE For Tai represented by Glister Engineering Consultants Company
- Site** : Lots 1088 S.A ss.1 S.H and 1089 S.H in D.D. 82, Tong Fong Tsuen, Ta Kwu Ling, New Territories
- Site Area** : 121.2 m²(about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ping Che and Ta Kwu ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claimed to be indigenous villager¹, seek planning permission to build a proposed NTEH (Small House) on the application site (the Site) in Tong Fong Village, Ta Kwu Ling (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Ping Che and Ta Kwu ling OZP No. S/NE-TKL/14. 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 the proposed NTEH (Small House) is 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

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.

1.3 The Site is the subject of a previously approved planning application No. A/NE-TKL/401 for the development of a Small House submitted by same applicant as the current application. The application was approved on 11.1.2013 by the Rural and New Town Planning Committee (the Committee) and the validity of the planning

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant has been certified by the Indigenous Inhabitants Representative in statutory declaration that the applicant is an indigenous villager of Lei Uk in Ta Kwu Ling Heung.

permission was extended once until 11.1.2019 under the application No. A/NE-TKL/401-1. The planning permissions lapsed on 12.1.2019. According to DLO/N, LandsD, the Small House application at the Site was approved in principle in 2016 but yet to be executed. Compared with the last previous application, major development parameters including the layout of the proposed Small House under the current application remain unchanged (**Plan A-2a**).

- 1.4 In support of the application, the applicant has submitted the application form with attachment (**Appendix I**) which was received by the Board on 10.5.2019.

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 is indigenous villager and entitled for Small House grant under the Small House Policy;
- (b) the subject site falls within the village 'environs' ('VE');
- (c) the proposed Small House development is compatible with the surrounding area and there are similar Small House applications approved in the vicinity of the Site; and
- (d) the applicant is the registered owner of the subject lot.

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 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 Applications

- 5.1 The Site is the subject or part of the subject of three previous planning applications (No. A/NE-TKL/317, 330 and 401) (**Plans A-1b and A-2a**). The former two applications were for temporary open storage of construction machinery and construction materials whereas the latter one for Small House development.
- 5.2 Application No. A/NE-TKL/317 was rejected by the Board on review on 11.9.2009 on the grounds that the proposed development was not in line with the planning intention of the "AGR" zone; the application did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses in that no previous planning approval had been granted to the application site and there were adverse departmental comments on the application; and it would generate adverse environmental and landscape impacts on the surrounding areas. Application No. A/NE-TKL/330 was

also rejected by the Committee on 18.12.2009 on the similar grounds of Application No. A/NE-TKL/317 (**Plan A-1b**).

- 5.3 The application site is subject of the previous application No. A/NE-TKL/401 for the development of a Small House submitted by same applicant as the current application. The application was approved on 11.1.2013 by the Committee mainly on the grounds that the application generally complied with the Interim Criteria in that the footprint of the proposed Small House fell mostly within the ‘VE’ and there was a general shortage of land within the “Village Type Development” (“V”) zone at the time of consideration; the proposed development was not incompatible with the surrounding area; and significant adverse environmental, drainage, traffic and landscape impact were not anticipated. The validity of the planning permission was extended once until 11.1.2019 under the application No. A/NE-TKL/401-1. The planning permission lapsed on 12.1.2019.
- 5.4 Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plans A-1b and A-2a**.

6. **Similar Applications**

- 6.1 There are 24 similar applications for Small House development within / partly within the “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1a**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 A total of 23 applications involving 18 sites were approved with conditions by the Committee between August 2011 and May 2019 mainly on the considerations that the applications 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 Small House developments were not incompatible with the surrounding rural and village environment; the proposed developments were not expected to have significant adverse impacts on the surrounding area; and previous/similar applications were approved by the Committee. All the approval cases are in the vicinity of the Site (**Plan A-2a**).
- 6.3 One application No. A/NE-TKL/576 which is located near Ping Che Road and away from the approval case site (**Plan A-1a**) was rejected by the Committee on 22.12.2017 mainly on the considerations that the proposed development was not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone. It was considered more appropriate to concentrate the proposed Small House development close to the existing village cluster.
- 6.4 Details of the applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1a**.

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

- 7.1 The Site is:
- (a) vacant and flat (**Plan A-4**);
 - (b) located in close proximity to the village proper of Tong Fong Village; and

- (c) accessible via a local access road from Ping Che Road.

7.2 The surrounding areas have the following characteristics (**Plan A-2a**):

- (a) rural landscape character dominated by village houses, temporary structures, active/ fallow agricultural land and vacant land;
- (b) to the north and east are village houses under construction / vacant land with Small House applications approved by the Committee (**Plan A-2a**); and
- (c) to the further west are Ping Che Road and to the further north are village proper of Tong Fong Village.

8. Planning Intention

The planning intention of the “AGR” zone in the Ta Kwu Ling and Ping Che 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 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	- -	100% 100%	- The Site of the proposed Small House fall entirely within the “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	96.8% 100%	3.2% -	- DLO/N, LandsD advises that the footprint of the proposed Small House falls wholly within the ‘VE’ of Tong Fong, but a slight portion of the Site falls outside the ‘VE’.

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 Tong Fong: about 4.025 ha (equivalent to 161 Small House sites). The outstanding Small House applications for Tong Fong Village are 27 ² while the 10-year Small House demand forecast for the same village is 134.
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		- Land available to meet the Small House demand within the “V” zone of Tong Fong Village : about 1.39 ha (equivalent to 55 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 are active in the vicinity and agricultural infrastructure such as road access and water source are available. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agriculture 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 village houses, temporary structures and clustered tree groups (Plan A-2a).
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 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.

² Among the 27 outstanding Small House applications, 13 of them fall within the “V” zone and 14 straddle or outside the “V” zone. For those 14 applications straddling or being outside the “V” zone, there is no valid planning approval from the Board.

9.	Traffic impact?	✓		<ul style="list-style-type: none"> - 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 an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial. - Notwithstanding the above, the application only involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - 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?		✓	<ul style="list-style-type: none"> - 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.
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 point of view. - The Site is located in the rural landscape character comprises village houses, temporary structures and clustered tree groups. The proposed Small House is considered not incompatible with the surrounding environment.

				<p>- The Site is hard paved and no significant landscape resources of high sensitivity are observed within the Site. Moreover, there are at least 15 approved planning applications for development of Small Houses in the close proximity of the Site. Significant adverse impact on existing landscape resources arising from the proposed developments are not anticipated.</p> <p>- In consideration of the limited space within the Site, 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 1st Vice-Chairperson of Ta Kwu Ling District Rural Committee and the Resident Representative (RR) of Tong Fong Village supported the proposal while the incumbent North District Council (NDC) member of the subject constituency and the Indigenous Inhabitant Representative (IIR) of Tong Fong had no comments on the proposal.</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 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 17.5.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee and a NDC member indicate no

comment on the application. Designing Hong Kong Limited and an individual object to each of the application mainly on the ground that there is high potential for agricultural rehabilitation of the Site; land is still available in the “V” zone of Tong Fong Village; 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 Site falls entirely within an area zoned “AGR” on the OZP. The proposed Small House 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. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agriculture point of view as the Site possesses potential for agricultural rehabilitation.
- 11.1 The application is cross-village Small House application. Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Tong Fong Village is 27 while the 10-year Small House demand forecast for the same village is 134. According to the latest estimate by PlanD, about 1.39 ha (equivalent to about 55 Small House sites) of land are available in the “V” zone of Tong Fong Village for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the footprint of the proposed House falls wholly within the ‘VE’ of Tong Fong, but a slight portion of the Site falls outside the ‘VE’.
- 11.2 The Site is situated to the south of the “V” zone of Tong Fong Village, which is currently vacant, flat and partly covered with grass. There are approved Small House applications to the immediate north and east of the Site (**Plans A-2a and A-4**). The proposed Small House is not incompatible with the surrounding rural setting comprising village houses, temporary structures and clustered tree groups. Significant adverse landscape impact arising from the proposed 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 has reservation on the application and considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed developments involve one Small House, it could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment on or no objection to the application.
- 11.3 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprints of the proposed Small House fall within the ‘VE’ of Tong Fong (**Plan A-2a**). While land available within the “V” zone is insufficient to fully meet total future Small House demand of 161 Small Houses, it is noted that land (about 1.39 ha or equivalent to 55 Small House sites) is still available within the “V” zone to meeting the outstanding 27 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. Nevertheless, it is noted that the Site is subject of a previously approved planning application submitted by the same applicant and the processing of the Small House grant is already at an advance stage. According to DLO/N, LandsD, the Small House application at the Site was approved in principle in 2016 but yet to be executed.

Besides, the Site is bounded by approved Small Houses to its north and east, the implementation of which are forming a new village cluster in the locality (**Plans A-2a and A-2b**). In this regard, sympathetic consideration might be given to the applicant.

- 11.4 It is noted that there are 24 similar applications for Small House developments in the vicinity of the Site (**Plan A-2a**) and 23 of them were approved between 2011 and 2019 mainly on the considerations that the applications 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 Small House developments were not incompatible with the surrounding rural and village environment; the proposed developments were not expected to have significant adverse impacts on the surrounding area; and previous/similar applications were approved by the Committee. All the approval cases are in the vicinity of the Site (**Plan A-2a**). The only rejected application No. A/NE-TKL/576 which is located near Ping Che Road and away from the approved cases was rejected by the Committee on 22.12.2017 mainly on the considerations that the proposed development was not in line with the planning intention of the "AGR" zone; and land was still available within the "V" zone. It was considered more appropriate to concentrate the proposed Small House development close to the existing village cluster. There has been no any major change in planning circumstances of the area since the approval of the similar applications.
- 11.5 Regarding the adverse public comments as detailed in paragraph 10, the Government department's comments and the planning assessment 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 has no objection to the application.
- 12.2 Should the Committee decide to approve the application, 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**.

12.3 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 "AGR" zone in the Ping Che and Ta Kwu Ling 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 Tong Fong 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. 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 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.

13.3 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.

14. Attachments

Appendix I	Application Form with attachments received on 10.5.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Previous Applications
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 Site in the Ping Che and Ta Kwu Ling area
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1a	Location Plan
Plan A-1b	Previous Applications Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the "V" zone of Tong Fong Village for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photo