

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/543

| | |
|---------------------------|----------------------------------------------------------------------|
| <u>Applicant</u> | Mr. Chan Wah Kwong represented by Rocky Fung Surveying Company |
| <u>Site</u> | Lot 857 RP in D.D. 9, Tai Wo Village, Tai Po, New Territories |
| <u>Site Area</u> | About 149.4m ² |
| <u>Lease</u> | Block Government Lease (demised for agricultural use) |
| <u>Plan</u> | Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11 |
| <u>Zoning</u> | “Agriculture” (“AGR”) |
| <u>Application</u> | Proposed House (New Territories Exempted House (NTEH) - Small House) |

1. The Proposal

1.1 The applicant, an indigenous villager of Tai Wo Village¹ as confirmed by the Indigenous Inhabitant Representative (IIR), seeks planning permission to build an NTEH (Small House) on the application site (the Site)(**Plan A-1**). 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)’ within “AGR” zone requires planning permission from the Town Planning Board (the Board).

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

| | | |
|-------------------|---|----------------------|
| Total floor area | : | 195.09m ² |
| Number of storeys | : | 3 |
| Building height | : | 8.23m |
| Roofed over area | : | 65.03m ² |

1.3 Layout of the proposed Small House including sewer connection proposal is shown on **Drawing A-1**.

1.4 In support of the application, the applicant has submitted the following documents:

- | | |
|---------------------------------------------------------------------------------------|--------------------|
| (a) Application form and attachments | Appendix I |
| (b) Further information on owners’ consent on sewer connection submitted on 21.2.2018 | Appendix Ia |

¹ The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the eligibility of Small House grant has yet to be ascertained.

2. **Justifications from the Applicant**

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

- (a) the applicant is an indigenous villager of Tai Wo Village;
- (b) the proposed Small House footprint falls within the village 'environs' ('VE') and the proposed development is compatible with other Small House developments in the surroundings; and
- (c) the proposed Small House is able to be connected to the existing public sewerage system as shown on the submitted sewer plan (**Drawing A-2**).

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 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. On 23.8.2002, criterion (i) which requires that the application site, if located within WGG, should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

5. **Background**

The application was subject to a previous enforcement action against parking of vehicles (Ref. E/NE-KLH/65). Enforcement Notice was issued on 4.10.2010 and Compliance Notice was issued on 7.3.2011 upon discontinuance of the parking of vehicles. No active enforcement is being taken at this stage.

6. **Previous Applications**

6.1 The Site is the subject of two previous planning applications (No. A/NE-KLH/275 and 445). The former application (No. A/NE-KLH/275) submitted by a different applicant before criterion (i) of the Interim Criteria came into effect on 23.8.2002 was approved with conditions by the Committee on 21.9.2001 mainly on the grounds that the site fell within the 'VE' and there was a general shortage of land in meeting the Small House demand at the time of consideration.

- 6.2 The latter application (No. A/NE-KLH/445) submitted by the same applicant was rejected by the Board on review on 22.2.2013 for the reason that the proposed development did not comply with the Interim Criteria in that the proposed Small House located within the WGG would not be able to be connected to the planned sewerage system in the area as there was no fixed programme for implementation of such system at that juncture.
- 6.3 Details of the previous applications are summarized at **Appendix III** and the location is shown on **Plan A-1**.

7. Similar Applications

- 7.1 There are 49 similar applications for Small House development within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-1**). Among those applications located in close vicinity of the Site, 16 were approved with conditions and 13 were rejected by the Rural and New Town Planning Committee (the Committee)/Board on review (**Plan A-2a**).
- 7.2 Six similar applications (No. A/NE-KLH/271, 272, 273, 277, 279 and 281) was approved with conditions by the Committee before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Other ten similar applications (No. A/NE-KLH/328, 341, 345, 346, 391, 392, 402, 409, 438 and 491) covering eight sites were approved with conditions by the Committee between 2004 and 2015 mainly on the considerations of being generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the times of consideration; and the proposed developments were able to be connected to the planned sewerage system.
- 7.3 Six similar applications (No. A/NE-KLH/299, 321, 360, 362, 374 and 380) were rejected by the Committee or the Board on review between 2003 and 2009 mainly on the grounds that the proposed developments did not comply with the Interim Criteria in that there was insufficient information in the submission to demonstrate that the proposed developments located within WGG would not cause adverse impact on water quality in the area; and/or they were not in line with the planning intention of the “AGR” zone.
- 7.4 Another seven similar applications (No. A/NE-KLH/303, 444, 455, 478, 479, 484 and 526) were rejected by the Committee or the Board on review between 2003 and 2017 mainly on the grounds that the proposed Small Houses located within the WGG would not be able to be connected to the planned sewerage system in the area as there was no fixed programme for implementation of such system and/or the applicants failed to demonstrate that the water quality in the area would not be adversely affected. An additional rejection reason for Application No. A/NE-KLH/526 was that land was still available within the concerned “V” zone for Small House development.

7.5 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1** and **A-2a**.

7.6 Another two new similar applications No. A/NE-KLH/542 and 544 will be considered by the Committee at the same meeting.\

8. The Site and Its Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3 and A-4)

8.1 The Site is:

- (a) hard paved and partly fenced off;
- (b) a piece of residual land bounded by footpaths and local tracks; and
- (c) accessible by a local track.

8.2 The surrounding areas are predominantly rural in character occupied by village houses, temporary domestic structures and abandoned agricultural fields.

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 summarized in the following table:

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|----|----------------------------------------------------------------------------|--------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Within “V” zone? - Footprint of the Small Houses - Application sites | | 100% 100% | - The Site falls entirely within “AGR” zone. |
| 2. | Within ‘VE’? - Footprint of the Small Houses - Application sites | 100% 100% | | - The Site and footprint of the proposed Small House fall entirely within ‘VE’. The District Lands Officer/ Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application. |

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|----|-------------------------------------------------------------------------------------------------------------|------------|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3. | Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand? | | ✓ | <ul style="list-style-type: none"> - Land required to meet Small House demand in Yuen Leng, Kau Lung Hang Lo Wai and San Wai and Tai Wo Village: about 18.58 ha (or equivalent to 743 Small House sites). The outstanding Small House applications are 197² while the 10-year Small House demand forecast is 546. - Land available to meet Small House demand within the “V” zone of the villages concerned: about 10.19 ha (or equivalent to 407 Small House sites). |
| 4. | Compatible with the planning intention of “AGR” zone? | | ✓ | <ul style="list-style-type: none"> - The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application as the Site is surrounded by domestic structures and the potential for agricultural rehabilitation is considered low. |
| 5. | Compatible with surrounding area/ development? | ✓ | | <ul style="list-style-type: none"> - The surrounding areas are predominantly rural in character comprising village houses and fallow agricultural land. |
| 6. | Within WGG? | ✓ | | <ul style="list-style-type: none"> - The Chief Engineer/Construction of Water Supplies Department (CE/C, WSD) has no objection to the application subject to the proposed house would be able to be connected to the planned sewerage system (Plan A-2a). |
| 7. | Encroachment onto planned road networks and public works boundaries? | | ✓ | |

² Among the 197 outstanding Small House applications, there are 41 Small House applications straddling or outside the “V” zone that have already 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 services installations and emergency vehicular access (EVA)? | | ✓ | The Director of Fire Services (D of FS) has no in-principle objection to the application. |
| 9. | Traffic impact? | ✓ | | - The Commissioner for Transport (C for T), in general, has reservation on the application but considers that the application only involving development of a Small House can be tolerated unless it is rejected on other grounds. |
| 10. | Drainage impact? | ✓ | | The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application and advises that an approval condition on drainage proposal is required. |
| 11. | Sewerage impact? | | ✓ | <ul style="list-style-type: none"> - The Chief Engineer / Consultant Management, Drainage Services Department (CE/CM, DSD) advises that according to the proposed sewerage scheme under North District Sewerage, Stage 2 Phase 1 for Yuen Leng Village, public sewerage connection point will be provided adjacent to the Site. Nevertheless, since this sewerage scheme was degazetted on 29.10.2010, there is no fixed programme at this juncture for the implementation of the concerned sewerage works. - The applicant proposed to connect the Small House to a recently completed public sewer manhole at a distance of about 200m from the Site. Sewer connection is feasible and capacity is available. Provided that consent from adjacent lot owner(s) could be obtained, Director of Environmental |

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|-----|----------------------------------|------------|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | | Protection (DEP) has no objection to the application subject to connection of the proposed house to public sewers. |
| 12. | Landscape impact? | | ✓ | - 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 as adverse impact on landscape resources due to the proposed development is not anticipated. |
| 13. | Geotechnical impact? | | ✓ | |
| 14. | Local objections conveyed by DO? | | ✓ | |

10.2 Comments from the following government departments have been incorporated in paragraph 10.1 above. Other detailed comments are at **Appendix V**.

- (a) Chief Engineer/Consultants Management, Drainage Services Department;
- (b) Chief Engineer/Construction, Water Supplies Department;
- (c) Chief Engineer/Mainland North, Drainage Services Department;
- (d) Commissioner for Transport;
- (e) Director of Agriculture, Fisheries and Conservation;
- (f) Director of Environmental Protection;
- (g) Director of Fire Services;
- (h) District Lands Officer/Tai Po, Lands Department; and
- (i) Chief Town Planner/Urban Design and Landscape, Planning Department.

10.3 The following government departments have no objection to/no comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) Project Manager/North, Civil Engineering and Development Department; and
- (d) District Officer/Tai Po, Home Affairs Department.

11. Public Comments Received During Statutory Publication Period

On 6.2.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received. MTR Corporation Limited raises concern that the proposed development would be subject to potential noise impact from the East Rail Line (EAL). An individual objects to the application mainly for reason of non-compliance with the Interim Criteria in that the proposed Small House would not be able to be connected to the planned sewerage system in the area as there is no fixed programme for implementation of such system at this juncture (**Appendix VI**).

12. Planning Considerations and Assessments

- 12.1 The Site falls entirely within “AGR” zone. The proposed Small House development is not in line with the planning intention of “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. Nevertheless, DAFC has no strong view on the application as the Site is surrounded by domestic structures and the potential for agricultural rehabilitation is considered low.
- 12.2 According to DLO/TP, LandsD’s record, the total number of outstanding Small House applications for Yuen Leng, Kau Lung Hang San Wai and Lo Wai and Tai Wo Villages is 197 while the 10-year Small House demand forecast is 546. Based on the latest estimate by the Planning Department, about 10.19 ha (or equivalent to about 407 Small House sites) of land are available within the “V” zones of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai. As the footprint of the proposed Small House falls entirely within the ‘VE’ of the concerned village, DLO/TP has no objection to the application.
- 12.3 The Site is located at the southern fringe of Yuen Leng surrounded by active/fallow agricultural land and existing village houses mainly to the north (**Plan A-2a**). At present, it is vacant and hard paved (**Plans A-2a and A-4**). The proposed development is not incompatible with the surrounding area which is predominantly rural in character with active/fallow agricultural land and village houses (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no objection to the application from the landscape planning perspective as there is no trees within the and adverse impact on landscape resources due to the proposed development is not anticipated.

- 12.4 The Site is located within the upper indirect WGG. CE/CM of DSD advises that the sewerage scheme planned for Yuen Leng Village was degazetted on 29.10.2010 and there is no fixed programme at this juncture for the concerned public sewerage works (**Plan A-2a**). Nevertheless DEP advises that the applicant proposed to connect the proposed Small House to a recently completed public sewer at about 200m to the west. As advised by DEP, provided that the applicant can obtain consent from the adjacent lot owner(s) for laying and maintaining sewer pipes, sewer connection is feasible and capacity is available. Hence, both DEP and CE/C of WSD have no objection to the application. Other Government departments consulted including C for T, CE/MN of DSD, D of FS, CHE/NTE of HyD and H(GEO) of CEDD have no objection to/adverse comment on the application.
- 12.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the 'VE' of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai and Tai Wo (**Plan A-1**) and the proposed development would be able to be connected to public sewerage system (**Plan A-2a**). While land available (about 10.19 ha or equivalent to about 407 Small House sites) within the "V" zones is insufficient to fully meet the future Small House demand, it is capable to meet the outstanding 197 Small House applications (**Plan A-2b**). 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. In this regard, it is considered more appropriate to concentrate the proposed Small House development within the "V" zone for orderly development pattern, efficient use of land and provision of infrastructures and services.
- 12.6 The Site is the subject of two previous applications (No. A/NE-KLH/275 and 445). Whilst Application No. A/NE-KLH/275 was approved before criterion (i) was in place, A/NE-KLH/445 was rejected because it would not be able to be connected to the planned sewerage system in the area. Under the current application, the applicant proposes to connect the proposed house to public sewer 200m to the west and obtained owners' consent from affected lots, and relevant Government departments including EPD and WSD have raised no objection to the application.

- 12.7 There are 29 similar applications in close vicinity of the Site within the same “AGR” zone. Six of them (No. A/NE-KLH/271, 272, 273, 277, 279 and 281) were approved by the Committee before criterion (i) of the Interim Criteria came into effect on 23.8.2002. The other ten approved applications ((No. A/NE-KLH/328, 341, 345, 346, 391, 392, 402, 409, 438 and 491) covering eight sites were approved with conditions by the Committee between 2004 and 2015 mainly on the considerations of being generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the times of consideration; and the proposed developments were able to be connected to the planned sewerage system. The latest similar application (No. A/TP/526) in the vicinity of the Site was rejected by the Committee on 18.8.2017 and one of the rejection reasons was that land was still available within the “V” zone of Yuen Leng and Kau Lung Hang which was primarily intended for Small House development. Small House development should concentrate within the “V” zone and special consideration cannot be given to the application having regard to the cautious approach.
- 12.8 Regarding the public comments that the proposed development would be subject to potential noise impact from EAL and the proposed Small House would not be able to be connected to the planned sewerage system in the area, the comments from relevant Government departments and planning assessments as mentioned in above paragraphs are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “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. 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 Yuen Leng, Kau Lung Hang and Tai Wo 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.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 16.3.2022, 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 submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies 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 permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses 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 and attachments received on 30.1.2018 |
| Appendix Ia | Further information submitted by the applicant |
| Appendix II | Interim Criteria for Consideration of application for NTEH/Small House in New Territories |
| Appendix III | Previous applications |
| Appendix IV | Similar applications |
| Appendix V | Government departments' detailed comments |
| Appendix VI | Public comments |
| Appendix VII | Recommended advisory clauses |

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|-------------|--------------------------------------------------------------------------------|
| Drawing A-1 | Layout plan submitted by the applicant |
| Plan A-1 | Location plan |
| Plan A-2a | Site plan |
| Plan A-2b | Estimated amount of land available for Small House development within "V" zone |
| Plan A-3 | Aerial photo |
| Plan A-4 | Site photo |

**PLANNING DEPARTMENT
MARCH 2018**