

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/544

<u>Applicant</u>	Mr. LEE Wai Yip represented by Rocky Fung Surveying Company
<u>Site</u>	Lot 521 S.A in D.D.9, Yuen Leng Village, Tai Po, New Territories
<u>Site Area</u>	About 153 m 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 Yuen Leng Lei Uk Village of Tai Po as confirmed by the Indigenous Inhabitant Representative (IIR) of the concerned village¹, seeks planning permission to build an NTEH (Small House) on the application site (the Site). The Site falls within an area zoned “AGR” on the approved Kau Lung Hang OZP No. S/NE-KLH/11 (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only)’ within the “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
No. of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²

Layout of the proposed development (including septic tank) is shown on **Drawing A-1**.

1.3 In support of the application, the applicant has submitted the application form with attachments (**Appendix I**).

¹ As advised by DLO/TP, Lands D, the indigenous villager status of the applicant has yet to be ascertained.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application as mentioned in Part 9 of the application form at **Appendix I** are summarized as follows:

- (a) the applicant is an indigenous villager of Yuen Leng Village;
- (b) about 50% of the proposed Small House footprint falls within the village 'environs' ('VE') of Yuen Leng Village. There was a shortage of land in meeting the demand for Small House development in the "Village Type Development" ("V") zone of Yuen Leng Village;
- (c) the proposed development is compatible with other Small House developments in the surroundings; and
- (d) the proposed Small House is able to be connected to the planned public sewerage system in the area and the land owner will connect the whole of its foul water drainage system to the public sewers.

3. **Compliance with the "Owner's Consent/Notification" Requirements**

The applicant is the sole "current land owner" of the Site. Detailed information would be deposited at the meeting for Members' inspection.

4. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site formed part of to a previous planning enforcement action against unauthorised parking of vehicles. Enforcement Notice (EN) was issued on 17.2.2017 and Compliance Notice was issued on 20.12.2017 upon discontinuance of the parking of vehicles (**Plan A-2a**). However, it was recently noticed that unauthorised parking of vehicles occurred again at the Site (**Plan A-4**). EN was issued on 2.3.2018 against unauthorised parking of vehicles and storage use with expiry date on 2.5.2018.

5. **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 water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

6. Previous Application

- 6.1 The Site is the subject of a previous application (No. A/NE-KLH/410) submitted by a different applicant for a Small House development. The previous application was approved with conditions by the Committee on 30.7.2010 mainly on the grounds that it generally complied with the Interim Criteria in that more than 50% of the Site fell within the 'VE' of Yuen Leng Village; there was general shortage of land in meeting the demand for Small House development within "V" zone; and the proposed Small House would be able to be connected to the planned public sewerage scheme. The planning permission subsequently lapsed on 31.7.2014.
- 6.2 Details of the previous application are summarized at **Appendix III**.

7. Similar Applications

- 7.1 There are 50 similar applications for Small House development within the same "AGR" zone and in the vicinity of the Site 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, 7 were approved with conditions and 5 were rejected by the Rural and New Town Planning Committee (the Committee)/Board on review (**Plan A-2a**).
- 7.2 One similar application (No. A/NE-KLH/245) was approved with conditions by the Committee before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Other six similar applications (No. A/NE-KLH/304, 339, 378, 379, 403 and 459) covering four sites were approved with conditions by the Committee between 2003 and 2014 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 The other five similar applications (No. A/NE-KLH/300, 312, 404, 430 and 443) covering four sites were rejected by the Committee between 2002 and 2012. Two of them (No. A/NE-KLH/300 and 312) were rejected by the Committee in 2002 and 2003 mainly because the proposed houses were not able to be connected to the existing or planned sewerage system in the area. Application No. A/NE-KLH/404 for development of six NTEHs was rejected by the Committee on 11.6.2010 because of not being in line with the planning intention of the "AGR" zone; affecting the existing trees on the site and adverse noise impact from the East Rail nearby; adverse impact on the water quality in the area; and setting an undesirable precedent for similar applications. Applications No. A/NE-KLH/430 and 443 were rejected by the Committee in 2011 and 2012 mainly on the grounds of not being able to be connected to the planned sewerage system in the area which has no fixed programme for implementation; and/or adverse impact on water quality in the area; and/or more than 50% of the footprint of the proposed Small House fell outside both 'VE' and "V" zone.

- 7.4 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1** and **A-2a**.
- 7.5 Another two new similar applications No. A/NE-KLH/542 and 543 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) located at the western fringe of Yuen Leng Village;
 - (b) partly within the village ‘environs’ (‘VE’) of Yuen Leng, Kau Lung Hang Lo Wai and Kau Lung Hang San Wai;
 - (c) a piece of paved land currently used for parking of vehicles without valid planning permission; and
 - (d) accessible by a local track and footpath.
- 8.2 The surrounding areas are predominantly rural in character with village houses, fallow agricultural fields and some temporary structures. Village houses are mainly found to the east and the south of the Site in Yuen Leng Village. The MTR East Rail Line (EAL) and Fanling Highway are located about 70m and 120m on the west respectively, separated by a road, temporary structure, some trees and village houses (**Plans A-1** and **A-2a**).

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 Proposed Small	-	100%	- The Site and the footprint of the proposed Small House fall entirely

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	House - Application site	-	100%	within the “AGR” zone.
2.	Within village ‘environs’ (‘VE’)? - Footprint of the Small House - Application site	56% 73%	44% 27%	- The Site and the footprint of the proposed Small House fall partly within ‘VE’. - The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	- Land required to meet Small House demand : about 12.13 ha (equivalent to 485 Small House sites). The outstanding Small House applications are 128 ² while the 10-year Small House demand forecast for the same villages is 357. - Land available to meet Small House demand within the “V” zone of the villages concerned : about 6.75 ha (equivalent to 270 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application as the Site is paved and has low potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character comprising village houses, fallow agricultural fields and some temporary structures.
6.	Within Water	✓		- The Director of Environmental

² Among the 128 outstanding Small House applications, there are 29 Small House applications straddling or outside the “V” zone that have already obtained planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Gathering Ground (WGG)?			<p>Protection (DEP) does not support the application as the Site falls completely outside the "V" zone and within the WGG, and no public sewerage will be available to serve the proposed Small House in the short term. The proposed use of septic tank and soakaway system to handle wastewater is not acceptable.</p> <p>- The Chief Engineer/Construction of Water Supplies Department (CE/C, WSD) advises that the Site is located within the upper indirect WGG and raises objection to the application as there is no programme for the construction of planned public sewers to serve Yuen Leng Village. Sewer connectivity is thus in question and it is considered that compliance with criterion (i) of the Interim Criteria cannot be established.</p>
7.	Encroachment onto planned road networks and public works boundaries?		✓	
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 and advises that such type of development should be confined within the "V" zone as far as possible, but considers that the application only involving development of a Small House can

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				be tolerated unless it is rejected on other grounds.
10.	Drainage impacts?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the proposed Small House from public drainage viewpoint. - approval condition on submission and implementation of drainage proposal is required.
11.	Sewerage impacts?	✓		<ul style="list-style-type: none"> - The Chief Engineer / Consultants 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 (Plan A-2a). However, 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.
12.	Landscape 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 as no adverse impact on landscape resources from the proposed development is anticipated.
13.	Geotechnical impact		✓	
14.	Environmental impact	✓		<ul style="list-style-type: none"> - DEP does not support the

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				application as the proposed development would be subject to significant railway noise impact, and the application does not contain any information to confirm full compliance with the Noise Control Ordinance (Cap. 400) (NCO) and the Hong Kong Planning Standards and Guidelines (HKPSG) requirements from noise perspective.
15.	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/Construction, Water Supplies Department;
- (b) Chief Engineer/Consultants Management, Drainage Services Department;
- (c) Chief Engineer/Mainland North, Drainage Services Department;
- (d) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (e) Commissioner for Transport;
- (f) Director of Agriculture, Fisheries and Conservation;
- (g) Director of Environmental Protection;
- (h) Director of Fire Services;
- (i) Director of Electrical and Mechanical Services; and
- (j) District Lands Officer/Tai Po, Lands Department.

10.3 The following Government departments have no comment on / no objection to the applications:

- (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 Comment 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 (**Appendix VI**). While MTR Corporation Limited raises concerns on operational railway noise, the other public comment from an individual raising objection to the application mainly for the reasons of being not in line with the planning intention of “AGR” zone, no shortage of land in “V” zone and setting of undesirable precedent.

12. Planning Considerations and Assessments

- 12.1 The Site falls within the “AGR” zone. The proposed NTEH (Small House) is not in line with the planning intention of the “AGR” zone which is primarily intended to retain and safeguard good quality agricultural land for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC has no strong view on the application as the Site is paved and has low potential for agricultural rehabilitation.
- 12.2 According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai Villages is 128 while the 10-year Small House demand forecast is 357. Based on the latest estimate by the Planning Department, about 6.75 ha (equivalent to about 270 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 more than 50% of the proposed Small House footprint falls within the ‘VE’ of the concerned villages, DLO/TP of LandsD has no objection to the application.
- 12.3 The Site, located at the western fringe of Yuen Leng Village, is paved and currently used as vehicle park (**Plans A-1 and A-4**). The proposed development is not incompatible with the surrounding areas which are predominantly rural in character comprising village houses, fallow agricultural fields and some temporary structures (**Plans A-2a and A-4**). CTP/UD&L, PlanD has no objection to the application from the landscape planning point of view as no adverse impact on landscape resources from the proposed development is anticipated.
- 12.4 The Site is within the upper indirect WGG. The planned sewerage scheme for Yuen Leng Village was degazetted on 29.10.2010 and there is still no fixed implementation programme at this juncture for the concerned public sewerage works (**Plan A-2a**). DEP does not support the application as the Site falls completely outside the “V” zone and within the WGG, and no public sewerage will be available to serve the proposed Small House in the short term. DEP advises that the proposed use of septic tank and soakaway system to handle wastewater is not acceptable. CE/C, WSD advises that the Site is located within the upper indirect WGG and objects to the application as there is no programme for the construction of planned public sewers to serve Yuen Leng Village; and sewer connectivity is thus in question and it is considered that

compliance with criterion (i) of the Interim Criteria cannot be established.

- 12.5 The proposed Small House is located at about 70m from the East Rail Line (EAL). Despite the low trackside noise barriers installed at the concerned section of EAL, EPD's crude assessment indicated that the exposed facades of the proposed Small House facing the EAL would still be subject to significant railway noise impact. DEP does not support the application as the proposed development would be subject to significant railway noise impact, and the application does not contain any information e.g. self-protecting building design and/or noise impact assessment, to confirm full compliance with the NCO and the HKPSG requirements from noise perspective. C for T has reservation on the application as such development should be confined within "V" zone as far as possible but considers that the proposed development involving one Small House only can be tolerated. Other Government departments consulted including CE/CM and CE/MN, DSD, CHE/NTE, HyD and D of FS have no objection to/adverse comment on the application.
- 12.6 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 Villages (**Plan A-1**). While land available (about 6.75 ha or equivalent to about 270 Small House sites) within the "V" zones is insufficient to fully meet the future Small House demand, it is capable to meet the outstanding 128 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.
- 12.7 The Site is the subject of a previous application (No. A/NE-KLH/410) submitted by a different applicant for a Small House development, which was approved by the Committee on 30.7.2010 mainly on the grounds that it generally complied with the Interim Criteria in that more than 50% of the Site fell within 'VE' of Yuen Leng Village; there was general shortage of land in meeting the demand for Small House development within "V" zone; and the proposed Small House would be able to be connected to the planned public sewerage scheme at the time of consideration. The planning permission subsequently lapsed on 31.7.2014. However, the planned public sewerage scheme was degazetted on 29.10.2010 and there is still no fixed implementation programme. In view of the changes in circumstances, the current application was not supported by DEP and CE/C, WSD.
- 12.8 There are 12 similar applications in close vicinity of the Site within the same "AGR" zone. One of them (No. A/NE-KLH/245) was approved by the Committee before criterion (i) of the Interim Criteria came into effect on 23.8.2002. The other six approved applications (No. A/NE-KLH/304, 339, 378, 379, 403 and 459) were approved by the Committee between 2003 and 2014 mainly on the considerations of being generally in compliance 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 time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. For the five rejected applications (No. A/NE-KLH/300, 312, 404, 430 and 443), they were rejected by the Committee/the Board on review between 2002 and 2012 mainly on the grounds of not being able to be connected to the existing or planned sewerage system in the area; and there was insufficient information to demonstrate that the proposed development located within WGG would have no adverse impact on water quality in the area. Application No. A/NE-KLH/404 for six proposed houses (NTEHs) was also rejected for the reasons of not being in line with the planning intention of the "AGR" zone; affecting the existing trees on the Site; adverse noise impact from the East Rail nearby; and setting of undesirable precedent. The circumstances of these rejected cases are similar to the current application.

- 12.9 Regarding the public comments raising concerns on the operational railway noise and objection to the application mainly for the reasons of being not in line with the planning intention of "AGR" zone, no shortage of sites in "V" zone and setting of undesirable precedent, the planning assessments and comments of concerned Government departments in above paragraphs are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments 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 justification in the current submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that the proposed Small House located within the water gathering ground is not able to be connected to the existing/planned sewerage system in the area as there is no fixed programme for implementation of such system at this juncture;
 - (c) the applicant fails to demonstrate that the proposed development located within the water gathering ground would not cause adverse impact on the water quality in the area;
 - (d) the proposed development would be subject to adverse noise impact

generated by the East Rail nearby, and there is no information in the submission to demonstrate that the proposed development will be in compliance with the Noise Control Ordinance (Cap. 400); and

- (e) land is still available within the “Village Type Development” (“V”) zone of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai 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.

Attachments

Appendix I	Application form and attachments
Appendix II	Interim Criteria
Appendix III	Previous application
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses
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 photos

**PLANNING DEPARTMENT
MARCH 2018**