

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/567

<u>Applicant</u>	Mr. MAN Nim Chi represented by Dickman L. T. Chan & Co., Solicitors
<u>Site</u>	Lot 9 S.A RP in D.D. 7, Sha Li Yuen, Chung Sum Wai, Tai Hang, Tai Po, New Territories
<u>Site Area</u>	About 91.1 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>Zonings</u>	“Agriculture” (“AGR”) (about 73%) “Village Type Development” (“V”) (about 27%)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) – Small House)

1. **The Proposal**

- 1.1 The applicant, who claims to be an indigenous villager of Tai Hang, Tai Po¹, 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, whilst ‘House (NTEH only)’ use is always permitted within the “V” zone, such use (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes) within the “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed Small House development 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 Small House, stormwater drainage proposal and sewerage plan are shown on **Drawings A-1 to A-3**.

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

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

- (a) application form with attachments received on 11.4.2019 **(Appendix I)**
- (b) Further information (FI) received on 25.4.2019 **(Appendix Ia)** providing a sewerage plan (*accepted and exempted from publication and recounting requirement*)
- (c) FI received on 2.9.2019 providing a revised sewerage plan and a stormwater drainage proposal **(Appendix Ib)** (*accepted and exempted from publication and recounting requirement*)

1.4 On 31.5.2019 and 16.8.2019, the Committee agreed to the applicant's requests to defer making a decision on the application for two months each to allow time for the preparation of FI to support the application. The latest FI was submitted on 2.9.2019 and the application is re-scheduled for consideration by the Committee on 1.11.2019.

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:

- with limited resources and ability, he would like to build an NTEH at the Site for marriage and setting up his family.

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

The applicant is the sole "current land owner" of the lot. 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 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**.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

- 6.1 There are 12 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**). Four of them were approved and eight were rejected.
- 6.2 Four applications (No. A/NE-KLH/309, 326, 331 and 452) covered the same site. Applications No. A/NE-KLH/309 and 326 were rejected by the Committee in 2003 and 2004 respectively mainly on the grounds of not complying with the Interim Criteria in that there was sufficient land available within the “V” zone of Tai Hang to meet future Small House demand at the time of consideration; and setting of undesirable precedent. Subsequently, Application No. A/NE-KLH/331 was approved with conditions in 2005 mainly for reasons of compliance with the Interim Criteria in that there was a general shortage of land in meeting the Small House demand at the time of consideration; more than 50% of the proposed Small House footprint fell within “V” zone; and the proposed development was able to be connected to the planned sewerage system in the area. Application No. A/NE-KLH/452 was also approved in 2013 mainly on sympathetic consideration as the application site was the subject of a previously approved case (No. A/NE-KLH/331).
- 6.3 For the other two approved cases, Application No. A/NE-KLH/386 was approved in 2009 with reasons similar to No. A/NE-KLH/331. For Application No. A/NE-KLH/451, although there was sufficient land available within the “V” zone in meeting the future Small House demand, it was approved in 2013 mainly on sympathetic consideration that the proposed Small House footprint fell entirely within the “V” zone and the proposed Small House could be connected to the planned sewerage system in the area.
- 6.4 The remaining six applications (No. A/NE-KLH/316, 323, 428, 454, 498 and 557) were rejected by the Committee between 2003 and 2019 mainly on the grounds of not complying with the Interim Criteria in that there was no general shortage of land to meet the Small House demand. Applications No. A/NE-KLH/316, 323, 454 and 557 were also rejected as the application sites were not able to be connected to the existing or planned sewerage system in the area. In addition, Applications No. A/NE-KLH/316, 323, 428, 454 and 557 were also rejected because the proposed development did not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside both the “V” zone and the village ‘environs’ (‘VE’) of concerned village.
- 6.5 Details of the above similar applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

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

- 7.1 The Site is:
 - (a) partly paved with asphalt sand and partly covered by weeds;
 - (b) occupied by three containers;

- (c) located near the northern fringe and outside the 'VE' of Tai Hang Village;
and
- (d) accessible by a local track branching from Tai Wo Service Road West.

7.2 The surrounding areas are predominantly rural in character comprising scattered tree groups, active/fallow agricultural land and village houses. Village clusters are mainly found to the south and east of the Site (**Plan A-2a**).

8. Planning Intentions

8.1 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.

8.2 The planning intention of the "V" zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

9. Comments from Relevant Government Departments

9.1 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 House - Application site	24% 27%	76% 73%	- The remaining portions of the Site and Small House footprint fall within the "AGR" zone.
2.	Within 'VE'? - Footprint of the Small House - Application site	- -	100% 100%	- The Site and the footprint of the proposed Small House fall entirely outside the 'VE' of Tai Hang (Plan A-1). - DLO/TP, LandsD does not support the application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?	✓		<u>Land Required</u> - Land required to meet Small House demand in Tai Hang: about 6.43 ha (equivalent to 257 Small House sites). The outstanding Small House applications are 32 ² while the 10-year Small House demand forecast for the same village is 225. <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of Tai Hang: about 7.98 ha (equivalent to 319 Small House sites) (Plan A-2b).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		
4.	Compatible with the planning intention of “AGR” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural development point of view as there are active agricultural activities in the vicinity, agricultural infrastructure such as water source and road access are available, and the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/development?	✓		- The proposed Small House is not incompatible with the surrounding areas which are predominantly rural in character mainly comprising scattered tree groups, active/fallow agricultural land and village houses.
6.	Sewerage impact?	✓		- Director of Environmental Protection (DEP) has no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at his own cost.
7.	Within Water Gathering Grounds (WGG)?	✓		- As there will be less than 50% of the proposed Small House footprint within the “V” zone on the OZP and 100% of that outside the ‘VE’ of Tai Hang, the Chief Engineer/

² Among the 32 outstanding Small House applications, 28 of them fall within the “V” zone and 4 straddle or fall outside the “V” zone. For those 4 applications straddling or being outside the “V” zone, none of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				Construction, Water Supplies Department (CE/C of WSD) objects to the application. Despite that the applicant proposes to connect his Small House with nearby public sewers, and DEP has indicated no objection to the proposals, CE/C of WSD considers that there is insufficient information in the applicant's submission to demonstrate that the proposed development would not cause adverse impact on the water quality in the area.
8.	Encroachment onto planned road networks and public works boundaries?		✓	
9.	Need for provision of fire service installations and Emergency Vehicular Access (EVA)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application.
10.	Traffic impact?		✓	- The Commissioner for Transport (C for T) has no in-principle objection to the application.
11.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint. - Approval condition on submission and implementation of drainage proposal is required.
12.	Landscape impact?		✓	- 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 adverse impact arising from the proposed development on significant landscape resources within the Site is not anticipated. - Since there is inadequate space for meaningful landscaping with the Site to benefit the public realm, should the application be approved, the

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				standard condition for submission and implementation of landscape proposal is not recommended.
13.	Geotechnical impact?		✓	
14.	Local objections conveyed by DO?		✓	

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Other detailed comments are at **Appendix IV**.

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

9.3 The following Government departments have no objection to/ no comment on the application:

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

10. Public Comments Received During Statutory Publication Period (Appendix V)

On 23.4.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received from the Hong Kong Bird Society and an individual objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; being a “destroy first, build later” case; setting an undesirable precedent; and causing adverse environmental and ecological impacts.

11. Planning Considerations and Assessments

- 11.1 The Site falls within an area partly zoned “AGR” (about 73%) and partly zoned “V” (about 27%). 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, and 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 agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as water source and road access are available; and the Site possesses potential for agricultural rehabilitation.
- 11.2 The Site is located within upper indirect WGG. CE/CM of DSD advises that there is existing public sewer in the vicinity of the Site that is available for connection. The applicant has submitted a sewerage plan for connecting the proposed Small House with the public sewer. DEP has no objection to the application provided that the applicant shall connect the proposed Small House to the existing public sewer at his own cost. However, CE/C of WSD objects to the application as there will be less than 50% of the proposed Small House footprint within the “V” zone on the OZP and 100% of that outside the ‘VE’ of Tai Hang, and in general, housing development will have the risk of pollution to the WGG. Despite that the applicant proposes to connect his Small House with nearby public sewers, and DEP has indicated no objection to the proposals, CE/C of WSD considers that the applicant fails to demonstrate that the proposed development would not cause adverse impact on the water quality in the area. Other relevant Government departments including C for T, CE/CM of DSD, CHE/NTE of HyD, H(GEO) and PM/N of CEDD and D of FS have no objection to or no adverse comment on the application.
- 11.3 According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Tai Hang is 32 while the 10-year Small House demand forecast is 225. Based on the latest estimate by the Planning Department, about 7.98 ha of land (or equivalent to about 319 Small House sites) are available within the “V” zone of Tai Hang (**Plan A-2b**). As the proposed Small House footprint falls entirely outside the ‘VE’ of the concerned village, DLO/TP of LandsD objects to the application.
- 11.4 The Site, located at the northern fringe of Tai Hang Village (**Plan A-2a**), is partly paved with asphalt sand, partly covered by weeds and occupied by three containers (**Plan A-4**). The proposed development is not incompatible with the surrounding areas which are predominantly rural in character comprising scattered tree groups, active/fallow agricultural land and village houses (**Plans A-2a** and **A-3**). CTP/UD&L of PlanD has no objection to the application as adverse impact arising from the proposed development on significant landscape resources is not anticipated.
- 11.5 Regarding the Interim Criteria (**Appendix II**), the proposed development does not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint falls outside both the ‘VE’ and the “V” zone of Tai Hang; and there is sufficient land within the “V” zone (about 7.98 ha or equivalent to about 319 Small House sites) (**Plan A-2b**) to fully meet the Small House demand of 257 houses (i.e. 32 outstanding Small House applications plus the 10-year demand forecast of 225 Small Houses). As there is no general shortage of land in meeting the demand for Small House development in the concerned “V” zone, it is considered more appropriate to concentrate the proposed Small House development within the “V”

zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

- 11.6 There are 12 similar applications within the same “AGR” zone (**Plan A-1**). Out of which, four applications (No. A/NE-KLH/331, 386, 451 and 452) were approved by the Committee between 2003 and 2013 before the adoption of a more cautious approach by the Board in recent years. Applications No. A/NE-KLH/331 and 386 were approved mainly for reasons of being in compliance with the Interim Criteria in that more than 50% of the Small House footprint fell within the “V” zone; there was a general shortage of land in meeting the Small House demand at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Applications No. A/NE-KLH/451 and 452 were approved under special circumstances that the proposed Small House footprint under No. A/NE-KLH/451 fell entirely within the “V” zone and the application site of No. A/NE-KLH/452 was the subject of a previously approved case (No. A/NE-KLH/331). The circumstances of these approved cases are not fully applicable to the current application.
- 11.7 Regarding the eight rejected cases (No. A/NE-KLH/309, 316, 323, 326, 428, 454, 498 and 557), they were rejected between 2003 and 2019 mainly on the grounds of not complying with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in the “V” zone. Applications No. A/NE-KLH/316, 323, 428, 454 and 557 were also rejected because more than 50% of the proposed Small House footprint fell outside both the “V” zone and the ‘VE’ of concerned village. The circumstances of the current application are similar to these rejected cases.
- 11.8 Regarding the public comments objecting to the application as mentioned in paragraph 10 above, Government departments’ comments and the planning assessments in above paragraphs 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 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;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that more than 50% of the footprint of the proposed Small House falls outside the “V” zone and the village ‘environs’ of Tai Hang; there is no general shortage of land in meeting the demand for Small House development in the “V” zone of Tai Hang;

- (c) the applicant fails to demonstrate that the proposed development would not cause adverse impact on the water quality in the area; and
- (d) land is still available within the “V” zone of Tai Hang 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 a more orderly development pattern, efficient use of land and provision of infrastructures and services.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **1.11.2023**, 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 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 VI**.

13. Decision Sought

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

Appendix I	Application form and attachments received on 11.4.2019
Appendix Ia	Further information received on 24.4.2019
Appendix Ib	Further information received on 2.9.2019
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories

Appendix III	Similar applications
Appendix IV	Detailed comments from relevant Government departments
Appendix V	Public comments
Appendix VI	Recommended advisory clauses
Drawings A-1 to A-3	Layout plan, stormwater drainage proposal and sewerage 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 the “V” Zone
Plan A-3	Aerial photo
Plan A-4	Site photo

**PLANNING DEPARTMENT
OCTOBER 2019**