

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/570

<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 Small House development 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 plan and sewerage connection plan of the proposed Small House are shown on **Drawings A-1** and **A-2** respectively.
- 1.4 In support of the application, the applicant has submitted application form and attachments on 24.6.2019 (**Appendix I**).

2. Justifications from the Applicant

The justifications puts forth by the applicant in support of the application are detailed

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

in Appendix 4 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the applicant is an indigenous villager of Tai Wo Village and the Site falls within the village 'environs' ('VE') of Tai Wo Village;
- (b) land available for Small House development becomes less. There are similar applications in the surrounding area which were approved by the Board in the past few years, and existing Small Houses are found to the north and west of the Site;
- (c) the applicant's previous application (No. A/NE-KLH/445) was rejected in 2013 due to Drainage Services Department (DSD)'s objection in that public sewers were not available for connection. The last previous application (No. A/NE-KLH/543) was also rejected in 2018 although the applicant had submitted sewerage connection proposal and obtained consent from relevant lot owners as well as all Government departments including DSD had no objection to the application;
- (d) under the last previous application No. A/NE-KLH/543, land available within the "V" zone (i.e. blue cloud areas) of Yuen Leng for Small House development as estimated by PlanD was incorrect. The blue cloud areas can only accommodate 50 Small Houses as most of them are used as access roads/private gardens or owned by Tso Tong. Moreover, most of the blue cloud areas are private land and the availability of Government land is very limited. According to the information provided by the three Indigenous Inhabitant Representatives (IIRs) of Yuen Leng (Lei Uk and Yip Uk) to Lands Department in 2017, the 10-year Small House demand for Yuen Leng is 257. Hence, it is obvious that land available within the "V" zone (50 Small House sites) is insufficient to meet the Small House demand of 257 houses; and
- (e) there are Small Houses to the north and west of the Site, and pedestrian walkway and local track to the east and south respectively. The surrounding area has been developed or is being developed. The Site has no water supply and hence no potential for agricultural rehabilitation.

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 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. **Background**

The Site is currently not subject to any active enforcement action. However, it was the subject of a previous enforcement case 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.

6. **Previous Applications**

6.1 The Site is the subject of three previous applications (No. A/NE-KLH/275, 445 and 543) for Small House development. Application No. A/NE-KLH/275 submitted by a different applicant was approved with conditions by the Committee on 21.9.2001 before criterion (i) of the Interim Criteria came into effect on 23.8.2002 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 Applications No. A/NE-KLH/445 and 543 were submitted by the same applicant of the current application. Application No. A/NE-KLH/445 was rejected by the Board on review on 22.2.2013 mainly for the reason of not complying 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 implementation programme at that juncture. For Application No. A/NE-KLH/543, it was rejected by the Board on review on 14.12.2018 mainly on the grounds of being not in line with the planning intention of "AGR" zone and land still being available within the "V" zone. Compared with the last previous application (No. A/NE-KLH/543), there is no change to the footprint and major development parameters of the proposed Small House under the current application.

6.3 Details of the previous applications are summarized at **Appendix III** and the location is shown on **Plans A-1 and A-2a**.

7. **Similar Applications**

7.1 There are 50 similar applications for Small House development within the same "AGR" zone in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Out of them, 29 cases were approved and 21 were rejected.

7.2 Among the 29 approved applications, seven of them (No. A/NE-KLH/245, 271, 272, 273, 277, 279 and 281) were approved with conditions by the Committee before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Another 15 applications (No. A/NE-KLH/304, 328, 339, 341, 345, 346, 368, 378, 379, 391, 392, 402, 403, 409, 410) were approved with conditions by the Committee between 2003 and 2010, before the planned

sewerage scheme for Yuen Leng Village was degazetted on 29.10.2010, 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 time of consideration; and the proposed developments were able to be connected to the planned sewerage system. The remaining seven applications (No. A/NE-KLH/438, 459, 467, 482, 487, 488 and 491) were approved with conditions by the Committee between 2012 and May 2015 mainly on considerations that there was a general shortage of land in meeting the demand for Small House development in the "V" zone at the time of consideration; no adverse traffic, landscape, sewerage and drainage impacts on the surrounding area; and the application sites of No. A/NE-KLH/438, 459 and 491 were the subject of previous approvals (No. A/NE-KLH/345, 339 and 346) submitted by the same applicants. Moreover, although the planned sewerage scheme serving Yuen Leng Village was degazetted in 2010, Environmental Protection Department (EPD) and Water Supplies Department (WSD) indicated that stakeholders would continue to be consulted with a view to gazetting the scheme again and they had no objection to the applications provided that the construction of the Small House would not commence before the completion of the planned sewerage system and the proposed houses should be connected to future public sewers when available.

7.3 For the 21 rejected applications (No. A/NE-KLH/299, 300, 303, 312, 321, 360, 362, 374, 380, 430, 439, 443, 444, 455, 478, 479, 483², 484, 526, 544 and 548), they were rejected by the Committee or the Board on review between 2003 and 2018 mainly on the grounds of being not in compliance with the Interim Criteria in that the proposed developments located within WGG were not able to be connected to the planned sewerage system in the area either because the application sites were not covered by any planned public sewers or there was no fixed programme for implementation of the planned sewerage system serving Yuen Leng Village, and/or being not in line with the planning intention of "AGR" zone. Applications No. A/NE-KLH/526, 544 and 548 were also rejected after the Board's adoption of the more cautious approach in August 2015 as land was still available within the "V" zone for Small House development.

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

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.

² Application No. A/NE-KLH/483 is the subject of an appeal lodged by the applicant in 2015, which was dismissed by the Town Planning Appeal Board on 1.9.2016.

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 House - Application site		100% 100%	- Both the Site and the proposed Small House footprint fall entirely within “AGR” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	100% 100%		- Both the Site and the proposed Small House footprint fall entirely 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 meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet Small House demand: about 16.75 ha (equivalent to 670 Small House sites). The outstanding Small House applications are 176 ³ while the 10-year Small House demand forecast is 494.

³ Among the 176 outstanding Small House application, 102 of them fall within the “V” zone and 74 straddle or outside the “V” zone. For those 74 applications straddling or being outside the “V” zone, 16 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the villages concerned: about 9.25 ha (equivalent to about 369 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 surrounded by domestic structures and the potential for agricultural rehabilitation is considered low.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character comprising village houses and fallow agricultural land.
6.	Within WGG?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application subject to the proposed house would be connected to the public sewer at his own cost (Plan A-2a).
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 but considers that the application only involving development of a Small House can be tolerated on traffic grounds.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				objection to the application from public drainage viewpoint. - Approval condition on the submission and implementation of drainage proposal is required.
11.	Sewerage impact?	✓		- The Director of Environmental Protection (DEP) has no objection to the application as the applicant has proposed to connect the proposed Small House to the existing public sewer at his own cost. - The Chief Engineer/Consultant Management, Drainage Services Department (CE/CM, DSD) has no comment on the application subject to the applicant's completion of the necessary sewerage works to connect the discharge from the proposed development to the public sewerage at his own cost.
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) District Lands Officer/Tai Po, Lands Department;
- (b) Director of Agriculture, Fisheries and Conservation;
- (c) Commissioner for Transport;
- (d) Director of Environmental Protection;

- (e) Chief Engineer/Construction, Water Supplies Department;
- (f) Chief Engineer/Mainland North, Drainage Services Department;
- (g) Chief Engineer/Consultants Management, Drainage Services Department;
- (h) Director of Fire Services; 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;
- (d) Director of Electrical and Mechanical Services; and
- (e) District Officer/Tai Po, Home Affairs Department.

11. Public Comment Received During Statutory Publication Period (Appendix VI)

On 2.7.2019, the application was published for public inspection. During the statutory public inspection period, one public comment was received from MTR Corporation Limited raising concern that the proposed development would be subject to potential noise impact from the East Rail Line (EAL).

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed Small House development at the Site falling entirely within “AGR” zone on the OZP. The proposed 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, and also 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 the DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Yuen Leng, Kau Lung Hang and Tai Wo Villages is 176 while the 10-year Small House demand forecast for the same villages is 494. Based on the latest estimate by PlanD, about 9.25 ha of land (or equivalent to about 369 Small House sites) is available within the “V” zones of the concerned villages (**Plan A-2b**). As the proposed Small House footprint falls entirely within the ‘VE’ of the concerned village, DLO/TP, LandsD has no objection to the application.
- 12.3 The Site, located at the southern fringe of Yuen Leng, is currently 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 are no trees within the Site and adverse impact on landscape resources due to the proposed development is not anticipated.

- 12.4 The Site falls within the upper indirect WGG. The applicant proposes to connect the proposed Small House to the existing public sewer at a considerable distance of about 150m to the west of the Site (**Plan A-2a**). Both DEP and CE/C of WSD have no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at their own cost, and adequate space within the Site will be reserved for connection. Other Government departments consulted including C for T, CE/MN and CE/CM of DSD, D of FS, CHE/NTE of HyD and H(GEO) of CEDD have no objection to/ no adverse comment on the application.
- 12.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the 'VE' of Tai Wo (**Plan A-1**) and the proposed development located within WGG would be able to be connected to public sewerage system (**Plan A-2a**). While land available within the "V" zones (about 9.25 ha or equivalent to about 369 Small House sites) is insufficient to fully meet the future Small House demand, it is capable to meet the outstanding 176 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 2015. 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 more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 12.6 The applicant points out that land available within the "V" zone of Yuen Leng as estimated by PlanD under the previous application No. A/NE-KLH/543 could only accommodate 50 Small Houses as most of the available land are owned by Tso Tong or used as access roads or private gardens, and hence it could not meet the 10-year Small House demand of Yuen Leng Village (i.e. 257 Small Houses)⁴ as provided by the IIRs. It should be noted that PlanD, in estimating land available for Small House development in the "V" zone, has adopted a consistent approach and would make use of the latest available information. In general, land occupied by road, existing and approved village houses, steep slope, major tree cluster and stream buffer will be deducted from the area available for Small House development. Land ownership is not a material consideration as it could be subject to change and land parcel could be subdivided to suit development needs. For land currently being occupied by private gardens of local villagers or other temporary uses, they will be included as a source of land supply.
- 12.7 The Site is the subject of three previous applications (No. A/NE-KLH/275, 445 and 543). Application No. A/NE-KLH/275 submitted by a different applicant was approved in 2001 before criterion (i) of the Interim Criteria came into

⁴ The 10-year Small House demand figure of 257 was quoted by the applicant in his submission whereas the recent figure of 261 was provided by the IIRs as at 11.5.2019 via DLO/TP under the current application.

effect on 23.8.2002. For applications No. A/NE-KLH/445 and 543, they were submitted by the same applicant of the current application and were rejected by the Board on review on 22.2.2013 and 14.12.2018 respectively. While the former application was rejected mainly because the proposed development would not be able to be connected to the planned sewerage system, the latter application was rejected mainly because land was still available within the "V" zone. Compared with the last previous application (No. A/NE-KLH/543), there is no change to the footprint and development parameters of the proposed Small House under the current application.

- 12.8 As shown on **Plan A-2a**, there are 30 similar applications in close vicinity of the Site with 16 cases approved and 14 cases rejected. Of the approved cases, six of them (No. A/NE-KLH/271, 272, 273, 277, 279 and 281) were approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Another eight applications (No. A/NE-KLH/328, 341, 345, 346, 391, 392, 402 and 409) were approved between 2004 and 2010 before the planned sewerage scheme for Yuen Leng Village was degazetted on 29.10.2010, mainly on the considerations that 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 developments were able to be connected to the planned sewerage system. The remaining two applications (No. A/NE-KLH/438 and 491) were approved in 2012 and 2015 respectively mainly on considerations that there was a general shortage of land in meeting the demand for Small House development in the "V" zone at the time of consideration; the application sites were the subject of previous approvals (applications No. A/NE-KLH/345 and 346) submitted by the same applicants; and EPD and WSD had no objection to the applications provided that the construction of the Small House would not commence before the completion of the planned sewerage system and the proposed houses should be connected to future public sewers when available.
- 12.9 For the 14 rejected applications (No. A/NE-KLH/299, 303, 321, 360, 362, 374, 380, 444, 455, 478, 479, 484, 526 and 548), they were rejected between 2003 and 2018 mainly on the grounds that the proposed developments located within WGG were not able to be connected to the planned sewerage system in the area either because the application sites were not covered by any planned public sewers or there was no fixed programme for implementation of the planned sewerage system serving Yuen Leng Village. Applications No. A/NE-KLH/526 and 548 were also rejected after the Board's adoption of a more cautious approach in August 2015 as land was still available within the "V" zone for Small House development. The planning circumstances of the current application are similar to these two rejected applications (No. A/NE-KLH/526 and 548) in that land was still available within the "V" zone for Small House development.
- 12.10 Regarding the public comment raising concerns on the application on the grounds as detailed in paragraph 11 above, Government departments' comments and the planning assessments 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 comment 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 16.8.2023, 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 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 reject the application, Members are invited to

advise what reason(s) for rejection should be given to the applicant.

- 14.3 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.

15. Attachments

Appendix I	Application form and attachments received on 24.6.2019
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 comment
Appendix VII	Recommended advisory clauses
Drawings A-1 and A-2	Layout plan and sewerage connection proposal 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
AUGUST 2019**