

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/571

<u>Applicant</u>	Mr. CHEUNG Kevin, Yet Fong represented by Mr. HUI Kwan Yee
<u>Site</u>	Lots 971 S.A ss.3 and 971 S.C ss.1 in D.D. 7, Wai Tau Tsuen, Kau Lung Hang, Tai Po, N.T.
<u>Site Area</u>	About 120m 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>	“Village Type Development” (“V”) (about 70%) and “Agriculture” (“AGR”) (about 30%)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, an indigenous villager of Wai Tau Tsuen, Tai Po as confirmed by the respective Indigenous Inhabitant Representative (IIR)¹, 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 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 of the proposed Small House including the proposed sewerage connection is shown on **Drawing A-1**.

1.4 The Site is part of the subject of a previous application No. A/NE-KLH/389 for two proposed Small Houses submitted by two applicants, one of whom is the

¹ 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.

same applicant of the current application. Application No. A/NE-KLH/389 was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 20.11.2009. Compared with the previous application (No. A/NE-KLH/389), there is no change to the proposed Small House footprint and the major development parameters, except that the applicant has proposed to connect the proposed Small House to public sewer instead of using septic tank for sewage disposal.

- 1.5 In support of the application, the applicant has submitted an application form with attachment on 5.7.2019 (**Appendix I**).

2. Justifications from the Applicant

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

- (a) the proposed Small House will be built on vacant agricultural land;
- (b) there is no alternative land available to the applicant;
- (c) there are similar houses built in the vicinity of the Site; and
- (d) a previous application (No. A/NE-KLH/389) had been approved by the Board in 2009. However, the applicant has missed to apply for extension of validity of the planning permission and now submits a fresh application for consideration by the Board.

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. 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 (WGGs), 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. Previous Application

- 5.1 The Site is part of the subject of a previous application No. A/NE-KLH/389 for two proposed Small Houses submitted by two applicants, one of whom is the same applicant of the current application. Application No. A/NE-KLH/389

was approved with conditions by the Committee on 20.11.2009 mainly for reasons of complying with the Interim Criteria in that more than 50% of the footprint of the proposed Small Houses was located within “V” zone; there was a general shortage of land in meeting the demand of Small House development in the concerned “V” zone; and being able to be connected to the planned sewerage system. Compared with the previous application (No. A/NE-KLH/389), there is no change to the proposed Small House footprint and the major development parameters, except that the applicant has proposed to connect the proposed Small House to public sewer instead of using septic tank for sewage disposal.

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

6. Similar Applications

- 6.1 There are five similar applications in the vicinity of the Site within the same “AGR” zone (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. Out of them, two cases were approved and three were rejected.
- 6.2 Applications No. A/NE-KLH/248 and 427 were approved with conditions by the Committee in 2001 and 2011 respectively. Application No. A/NE-KLH/248 was approved mainly on the considerations that there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration; and there would be no significant adverse traffic and drainage impact on the surrounding areas. Another application (No. A/NE-KLH/427) was approved mainly on the grounds of being generally in line with the Interim Criteria in that more than 50% of the proposed Small House footprint was located within the “V” zone; there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration; and the proposed development would be able to be connected to the planned sewerage system.
- 6.3 Regarding the three rejected applications, application No. A/NE-KLH/302 was rejected by the Committee in 2002 for reasons of being not in line with the planning intention of “AGR” zone; and not complying with the Interim Criteria in that the application site was located mostly outside the ‘VE’ and the “V” zone. The other two applications (No. A/NE-KLH/453 and 501) covering the same site were rejected by the Committee in 2013 and the Board on review in 2016 mainly for reasons of not complying with the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding area. Application No. A/NE-KLH/501 was also rejected as land was still available within the “V” zone for Small House development.
- 6.4 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1** and **A-2a**.

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) fenced off, vacant and covered with groundcovers and numbers of existing trees;
- (b) located at the northern fringe of Wai Tau Tsuen;
- (c) entirely outside the ‘VE’ of Wai Tau Tsuen; and
- (d) accessible via a local access.

7.2 The surrounding areas are predominantly rural in character comprising scattered tree groups, village houses, active and abandoned farmlands. Village clusters are mainly found to the east and south of the Site.

8. Planning Intentions

8.1 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.

8.2 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.

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	88% 70%	12% 30%	- The remaining portions of the Site and the Small House footprint fall within the “AGR” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
2.	<p>Within 'VE'?</p> <ul style="list-style-type: none"> - Footprint of the Small House - Application site 	-	100%	<ul style="list-style-type: none"> - The Site and the Small House footprint fall entirely outside the 'VE' of Wai Tau Tsuen. - District Lands Officer/ Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	<p>Sufficient land in "V" zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?</p>		✓	<p><u>Land Required</u></p> <ul style="list-style-type: none"> - Land required to meet Small House demand: about 7.25 ha (equivalent to 290 Small House sites). The outstanding Small House applications are 28² while the 10-year Small House demand forecast is 262.
	<p>Sufficient land in "V" zone to meet outstanding Small House applications?</p>	✓		<p><u>Land Available</u></p> <ul style="list-style-type: none"> - Land available to meet Small House demand within the "V" zone of the village concerned: about 2.91 ha (equivalent to about 116 Small House sites) (Plan A-2b).
4.	<p>Compatible with the planning intention of "AGR" zone?</p>		✓	<ul style="list-style-type: none"> - 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 and agricultural infrastructure such as water source and footpath is available, and the Site possesses potential for agricultural rehabilitation.
5.	<p>Compatible with surrounding area/ development?</p>	✓		<ul style="list-style-type: none"> - The surrounding areas are predominantly rural in character comprising scattered tree groups, village houses, active and abandoned farmlands.

² Among the 28 outstanding Small House applications, 26 of them fall within the "V" zone, two straddle or outside the "V" zone. For those two applications straddling or being outside the "V" zone, none of them has obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
6.	Within WGG?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application as the proposed Small House is able to be connected to public sewerage system. - Approval conditions on connection to public sewers and provision of protective measures to WGG are required.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	<ul style="list-style-type: none"> - Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?		✓	<ul style="list-style-type: none"> - The Commissioner for Transport (C for T) has no in-principle objection to the application.
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - 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.
11.	Sewerage impact?	✓		<ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) has no objection to the application as the applicant has proposed to connect the Small House to the newly constructed public sewerage (Plan A-2a) which has sufficient capacity to accommodate discharge from the proposed Small House.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				- The Chief Engineer/ Consultant Management, Drainage Services Department (CE/CM, DSD) advises that the public sewerage system will be available for connection in late 2019.
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. Although the proposed layout is in direct conflict with existing trees, given the affected trees are common species and can be easily found in local market, significant adverse impact on landscape resources due to the proposed development is not anticipated. - should the application be approved, given that the proposed Small House footprint covers most of the Site, there is inadequate space for meaningful landscape to benefit the public realm, landscape condition 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. Detailed comments from Government departments are at **Appendix V**.

- (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) Chief Engineer/Consultant Management, Drainage Services Department;

- (g) Director of Agriculture, Fisheries and Conservation;
- (h) Director of Fire Services; and
- (i) Chief Engineer/Construction, Water Supplies Department.

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

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

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

On 12.7.2019, the application was published for public inspection. During the statutory public inspection period, two public comments were received from Designing Hong Kong Limited and an individual objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land being available within the “V” zone for Small House development; and setting undesirable precedent.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House development at the Site mainly zoned “AGR” (about 70%) and partly zoned “V” (about 30%) 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. 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 According to DLO/TP, LandsD’s record, the total number of outstanding Small House applications for Wai Tau Tsuen is 28 while the 10-year Small House demand forecast for the concerned village is 262. Based on the latest estimate by the PlanD, about 2.91 ha of land (equivalent to about 116 Small House sites) are available within the “V” zone of Wai Tau Tsuen. As more than 50% of the Small House footprint is within the “V” zone, DLO/TP, LandsD has no objection to the application.
- 11.3 The Site, located at the northern fringe of Wai Tau Tsuen, is fenced off, vacant and covered with groundcovers and numbers of existing trees. The proposed development is not incompatible with the surrounding environment which is predominantly rural in character comprising scattered tree groups, village houses, active and abandoned farmlands (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no objection to the application from landscape planning perspective, and advises that although the proposed layout is in direct conflict with existing

trees, given the affected trees are common species, significant adverse impact on landscape resources due to the proposed development is not anticipated.

- 11.4 The Site falls within the upper indirect WGG and the applicant has proposed to connect the proposed Small House to the newly constructed public sewerage system (**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 relevant Government departments including C for T, CE/CM and CE/MN 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.
- 11.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the “V” zone of Wai Tau Tsuen and the proposed development located within WGG would be able to be connected to public sewerage system (**Plan A-2a**). Whilst land available within the “V” zone (about 2.91 ha or equivalent to about 116 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is capable to meet the 28 outstanding Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in August 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. As such, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. Nevertheless, the Site is part of the subject of a previous application No. A/NE-KLH/389 for two proposed Small Houses approved by the Committee on 20.11.2009, and one of the applicants is the same applicant of the current application. Compared with the previous approved application No. A/NE-KLH/389, there is no change to the proposed Small House footprint and major development parameters, except that the applicant has proposed to connect the proposed Small House to public sewer instead of using septic tank for sewage disposal. Moreover, according to DLO/TP of LandsD, the Small House grant application is under processing. Hence, sympathetic consideration could be given to the current application.
- 11.6 As shown on **Plan A-2a**, there are two similar applications (No. A/NE-KLH/302 and 427) for Small House development within the same “AGR” zone in close vicinity of the Site. Application No. A/NE-KLH/302 was rejected by the Committee in 2001 mainly for reasons of not complying with the Interim Criteria in that the application site was located mostly outside the ‘VE’ and the “V” zone. For application No. A/NE-KLH/427, it was approved by the Committee in 2011 mainly on the considerations that the proposed Small House is generally in line with the Interim Criteria in that more than 50% of the proposed Small House footprint was located within the “V” zone; there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the time of consideration; and the proposed development would be able to be connected to the planned sewerage system.

The planning circumstances of the current application are different from the above similar applications.

- 11.7 Regarding the public comments raising objection to the application on the grounds as detailed 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 has no objection to the application.
- 12.2 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 the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VII**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (a) the proposed development is not in line with the planning intention of the "AGR" zone, 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 "Village Type Development" ("V") zone of Wai Tau Tsuen which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small

House development within “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

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 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.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form and attachments received on 5.7.2019
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
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
AUGUST 2019**