

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/572

<u>Applicant</u>	Mr. LI Ting Kwan represented by Rocky Fung Surveying Company
<u>Site</u>	Lot 310 S.B in D.D.9, Kau Lung Hang Village, Kau Lung Hang, Tai Po, N.T.
<u>Site Area</u>	About 143.2m 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 Village, 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, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ use in 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 The applicant proposes to use the uncovered area of the Site as garden. Layout of the proposed Small House and the proposed sewerage connection are shown on **Drawings A-1** and **A-2** respectively.
- 1.4 The Site is the subject of a previous application (No. A/NE-KLH/426) for the same use submitted by the same applicant, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on

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.

28.1.2011. However, the planning permission lapsed on 29.1.2015 as the approved development did not commence within the validity period.

- 1.5 In support of the application, the applicant has submitted an application form with attachment on 10.7.2019 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the land owner is an indigenous villager of Yuen Leng Village;
- (b) there is a shortage of land in the “Village Type Development” (“V”) zone, and the Site is the only land available to the applicant for Small House development;
- (c) the Site falls within the village ‘environs’ (‘VE’) of Yuen Leng and Kau Lung Hang villages; and
- (d) the proposed Small House can be connected to the existing public sewerage system and the applicant has prepared a sewerage connection plan with consent from relevant lot owner.

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

5. Previous Application

- 5.1 The Site is the subject of a previous application (No. A/NE-KLH/426) for the same use submitted by the same applicant, which was approved with conditions by the Committee on 28.1.2011 mainly on considerations of being generally in compliance with the Interim Criteria in that the Small House footprint fell entirely within the ‘VE’; there is a general shortage of land in meeting the demand for Small House development in the concerned “V” zones at the time of consideration; the proposed development would be able to be

connected to the planned public sewerage system in the area; and there would be no significant adverse landscape, traffic and drainage impact on the surrounding areas. However, the planning permission lapsed on 29.1.2015 as the approved development did not commence within the validity period. Compared with the previous application (No. A/NE-KLH/426), there is no change in major development parameters and the proposed Small House footprint.

- 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 103 similar applications for Small House development within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-1**). Among them, eight applications (No. A/NE-KLH/245, 259, 273, 277, 279, 281, 283 and 284) were approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Since then, 64 applications were approved, 30 applications were rejected and one application was partially approved and partially rejected.
- 6.2 A total of 47 applications (No. A/NE-KLH/304, 310, 311, 328, 339, 341, 343 – 347, 351, 352, 368, 370, 372, 375, 378, 379, 397, 400, 403, 406, 407, 409, 410, 415 – 417, 432, 433, 438, 442, 450, 459, 467, 469 – 473, 481, 482, 487, 488, 491 and 494) were approved by the Committee or the Board upon review between 2003 and 2015 before the adoption of a more cautious approach by the Board. These applications were approved 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” zones at the time of consideration; the proposed development was able to be connected to the planned sewerage system; the application site was the subject of a previously approved case; and/or the proposed house was considered as an infill development.
- 6.3 After the Board’s adoption of a more cautious approach, there are 17 applications (No. A/NE-KLH/503, 504, 519, 523, 529 – 531, 533, 535, 540 – 542, 553 – 555, 563 and 564) approved with conditions by the Committee between 2016 and 2019. While land was still available within the “V” zones to meet the outstanding Small House applications being processed by LandsD, applications No. A/NE-KLH/503, 504, 523, 529, 530, 531, 535, 541, 542, 553 – 555, 563 and 564 were approved mainly because there was previous approval whereas applications No. A/NE-KLH/519, 533 and 540 were approved mainly because the proposed house was considered as an infill development.
- 6.4 Application No. A/NE-KLH/358 for four Small Houses was partially approved with conditions by the Committee on 23.3.2007. Two proposed Small Houses were approved for being in compliance with the Interim Criteria in that more than 50% of the proposed Small House footprints locating 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 being able to be connected to the planned sewerage system. The other two proposed Small Houses were rejected mainly because they were not able to be connected to the existing or planned sewerage system in the area. Subsequently, application No. A/NE-KLH/527, being the subject of the approved portion of application No. A/NE-KLH/358, was approved by the Committee on 12.5.2017 mainly on sympathetic consideration as there was previous approval from the same applicant.

- 6.5 The remaining 29 applications (No. A/NE-KLH/300, 303, 312, 314, 315, 333, 334, 361, 380, 430, 439 – 441, 443, 444, 455, 478, 479, 483², 484, 521, 526, 537, 538, 544, 546, 549, 558 and 559) were rejected by the Committee or the Board on review between 2002 and 2019 mainly on the grounds of not being able to be connected to the planned sewerage system in the area as there was no fixed programme for implementation of such system at that juncture. Applications No. A/NE-KLH/440 and 441 were also rejected on the ground that the applicant failed to demonstrate that the proposed development would have no adverse drainage and sewerage impacts on the surrounding areas. For applications No. A/NE-KLH/521, 526, 537, 538, 544, 546, 549, 558 and 559 rejected between 2017 and 2019, one of the rejection reasons was that land was still available within “V” zone for Small House development and it was considered more appropriate to concentrate the proposed Small House within “V” zone.
- 6.6 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-4a to 4b)

- 7.1 The Site is:
- (a) located on flat land with groundcovers and weeds;
 - (b) entirely within the ‘VE’ of Yuen Leng, Kau Lung Hang San Wai and Lo Wai; and
 - (c) accessible via a local access.
- 7.2 The surrounding areas are predominantly rural in character comprising scattered tree groups, village houses and active/abandoned farmland. Village clusters are mainly found to the south and north of the Site. A streamcourse flowing from east to west is less than 30m to the south of the Site.

² Application No. A/NE-KLH/483 is the subject of Town Planning Appeal No. 8 of 2015, which was dismissed by the Town Planning Appeal Board on 1.9.2016 mainly on the same rejection reasons of the application by the Board on review.

8. 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.

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	- -	100% 100%	- The Site and the proposed Small House footprint fall entirely within the “AGR” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	100% 100%	- -	- The Site and the proposed Small House footprint fall entirely within the ‘VE’ of Yuen Leng, Kau Lung Hang San Wai and Lo Wai. - 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 12.35 ha (equivalent to 494 Small House sites). The outstanding Small House applications are 133 ³ while the 10-year Small House demand forecast is 361.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<u>Land Available</u> - Land available within the “V” zone to meet Small House demand: about 6.43 ha (equivalent to about 256 Small House sites) (Plan A-2b).

³ Among the 133 outstanding Small House applications, 80 of them fall within the “V” zone and 53 straddle or outside the “V” zone. For those 53 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>
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 footpath is available; and the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character comprising scattered tree groups, village houses and active/abandoned farmland.
6.	Within WGG?	✓		- 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)?		✓	- 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 the development of a Small House can be tolerated on traffic grounds.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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 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 existing public sewer (Plan A-2a), which has sufficient capacity to accommodate the discharge from the proposed Small House and there is sufficient level drop in between the connection.
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 perspective as no tree is found within the Site and significant adverse impact on landscape resources is not anticipated.
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 19.7.2019, the application was published for public inspection. During the statutory public inspection period, three public comments were received from Designing Hong Kong Limited, The Hong Kong Bird Watching Society 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; setting undesirable precedent; and causing adverse environmental and ecological impacts.

11. Planning Considerations and Assessments

11.1 The application is for a proposed Small House development at the Site zoned “AGR” on the OZP. 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, 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 Yuen Leng and Kau Lung Hang is 133 while the 10-year Small House demand forecast for the same villages is 361. Based on the latest estimate by the PlanD, about 6.43 ha of land (equivalent to about 256 Small House sites) are available within the “V” zones of Yuen Leng and Kau Lung Hang (**Plan A-2b**). As the proposed Small House footprint falls entirely within the ‘VE’ of the concerned villages, DLO/TP of LandsD has no objection to the application.

11.3 The Site is located on flat land with groundcovers and weeds. The proposed development is not incompatible with the surrounding area which is predominantly rural in character comprising scattered tree groups, village houses and active/abandoned farmland (**Plans A-2a and A-3**). CTP/UD&L of

PlanD has no objection to the application from landscape planning perspective as no tree is found within the Site and significant adverse impact on landscape resources arising from 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 existing public sewer (**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 his own cost and adequate space within the Site will be reserved for connection. Besides, C for T has general reservation on the application but considers that the application only involving the development of a Small House can be tolerated on traffic grounds. Other relevant Government departments including 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 'VE' of Yuen Leng, Kau Lung Hang San Wai and Lo Wai and the proposed development within WGG would be able to be connected to the public sewerage system (**Plan A-2a**). Whilst land available within the "V" zones (about 6.43 ha or equivalent to about 256 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is capable to meet the 133 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 the subject of a previous application No. A/NE-KLH/426 for the same use submitted by the same applicant, which was approved with conditions by the Committee on 28.1.2011. Compared with the previous application (No. A/NE-KLH/426), there is no change in major development parameters and the proposed Small House footprint. Moreover, according to DLO/TP of LandsD, the Small House grant application is still under processing. Hence, sympathetic consideration could be given to the current application.
- 11.6 According to **Plan A-2a**, there are 18 similar applications for Small House development in close proximity to the Site. Application No. A/NE-KLH/259 was approved before criterion (i) of the Interim Criteria came into effect on 3.8.2002; and three applications (No. A/NE-KLH/310, 311 and 358⁴) were approved in 2003 and 2007 before the Board's adoption of a more cautious approach in August 2015. After that, three applications (No. A/NE-KLH/527, 563 and 564) were approved in 2017 and 2019 mainly on sympathetic consideration as the application sites were the subject of previously approved cases (No. A/NE-KLH/310, 311 and 358). The remaining 11 applications were rejected between 2003 and 2019. Applications No. A/NE-KLH/314, 315, 333,

⁴ Application No. A/NE-KLH/358 was for four Small Houses. Two proposed Small Houses were approved whereas the other two proposed Small Houses were rejected on 23.3.2007.

334 and 361 were rejected between 2003 and 2007 mainly on the grounds of not being able to be connected to the planned sewerage system in the area while applications No. A/NE-KLH/521, 537, 538, 549, 558 and 559 were rejected between 2017 and 2019 mainly because land was still available within the concerned "V" zones to meet the outstanding Small House applications received by LandsD. The planning circumstances of the current application are similar to applications No. A/NE-KLH/527, 563 and 564, which were approved on sympathetic consideration as the sites were the subject of previous approvals from the same applicants.

- 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 6.9.2023, 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 “V” zones of Yuen Leng and Kau Lung 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 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 10.7.2019
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
Drawing A-2	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” zones
Plan A-3	Aerial photo
Plans A-4a to 4b	Site photos