

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/587

<u>Applicants</u>	Messrs Lam Lin Shing, Lam Ling Hing, Lam Yau Hing and Lam Yau Shing represented by Centaline Commercial (Centaline Property Agency Limited)
<u>Site</u>	Lot 95 in D.D. 16, Lam Tsuen, Tai Po, New Territories
<u>Site Area</u>	About 1,926.6m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use only)
<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 9 Houses (New Territories Exempted Houses)

1. The Proposal

- 1.1 The applicants seek planning permission to build nine New Territories Exempted Houses (NTEHs) on the application site (the Site), which is zoned “AGR” on the approved Kau Lung Hang OZP No. S/NE-KLH/11 (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ is a Column 2 use within the “AGR” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed development are as follows:
- | | | |
|------------------|---|---|
| Number of houses | : | 9 |
| Total floor area | : | 1,755.81m ² (195.09m ² for each NTEH) |
| No. of storeys | : | 3 |
| Building height | : | 8.23m |
- 1.3 No vehicular access and parking space will be provided. The uncovered area will be used for circulation area. The layout plan, elevation plan and tree survey plan of the proposed development are shown on **Drawings A-1 to A-3** respectively.

1.4 In support of the application, the applicants have submitted the following documents:

- (a) application form with attachments received on **(Appendix I)**
28.5.2020
- (b) supplementary planning statement **(Appendix Ia)**
- (c) further information received on 8.6.2020 clarifying **(Appendix Ib)**
the tree survey plan and layout plan ^
- (d) further information received on 8.7.2020 providing **(Appendix Ic)**
responses to departmental comments ^

^ accepted and exempted from publication

1.5 In light of the special work arrangement for Government departments due to the novel coronavirus infection, the meeting originally scheduled for 24.7.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. The application is now scheduled for consideration by the Rural and New Town Planning Committee (the Committee) at this meeting.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the application are stated in the supplementary planning statement and the further information (**Appendices Ia and Ic**). They can be summarized as follows:

- (a) there are no agricultural activities at the Site or its vicinity;
- (b) the loss of agricultural land will be compensated by buildings with proper architectural materials and features that could blend-in with the surrounding environment;
- (c) the proposed development will allow land utilization with proper planning and design, enhancing the overall environment of the area by replacing an abandoned land;
- (d) the proposed development will provide residential units at the peripheral parts of rural townships, locating away from existing residential areas yet supported by adequate infrastructure. The design of the proposed NTEHs is rural in nature, with a height similar to that of the surrounding trees. No major landscape or environmental impact is anticipated;
- (e) septic tank and soakaway systems and small sewage treatment plants are proposed for discharging wastewater; and
- (f) the Site has been vacant for over 40 years and is within the village boundary of Wai Tau Tsuen. The proposed development would revitalise the use of land to

accommodate additional population in the area.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicants are the sole “current land owners”. 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. On 23.8.2002, criterion (i) which requires that the application site, if located within the 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

The Site is the subject of a previous application (No. A/NE-KLH/578), submitted by one of the applicants of the current application, for a proposed solar panel system. On 29.11.2019, the Committee decided to defer the consideration of the application pending the formulation of assessment criteria on applications for installation of solar panel system. The said assessment criteria was subsequently promulgated by the Board on 21.7.2020. On 21.8.2020, the Board, at the request of the applicant, agreed to defer making a decision on the application for two months in order to allow time for the applicant to submit additional information to support the application. The location of the previous application is shown on **Plans A-1 and A-2**.

6. Similar Applications

6.1 There are six similar applications for NTEH/Small House developments within the same “AGR” zone. Four applications (No. A/NE-KLH/2, 349, 381 and 545), each for eight NTEHs, involved the same site. Applications No. A/NE-KLH/2 and 349 were rejected by the Board upon review on 21.4.1995 and 17.8.2007 respectively mainly for reasons that there were adverse impacts on existing mature trees and traffic; the site was subject to traffic noise; and the proposed development within WGG was unable to connect to public sewers. Applications No. A/NE-KLH/381 and 545 were approved with conditions by the Committee on 22.5.2009 and 4.5.2018 respectively mainly for considerations that the traffic and landscape impacts and the concern on traffic noise had been addressed with mitigation proposals; a proposal for connection with future public sewers was made; and also on a sympathetic ground that the subject lots had building entitlement. Application No. A/NE-KLH/545 was also approved as it had previous approval.

6.2 The remaining two applications (No. A/NE-KLH/453 and 501) involved a

proposed Small House on the same site. Both applications were rejected by the Committee and the Board upon review on 19.7.2013 and 2.9.2016 respectively, mainly on the grounds that the proposed development involved tree felling and adverse landscape impact on the surrounding areas. Application No. A/NE-KLH/501 was also rejected as land was still available within the “Village Type Development” (“V”) zone of the concerned village for Small House development.

6.3 Details of the applications are summarized at **Appendix III** and the locations are shown on **Plan A-1**.

7. The Site and Its Surrounding Area (Plans A-1, A-2 and photos on Plans A-3 and A-4)

7.1 The Site is:

- (a) currently vacant, and covered mainly by weeds and trees. A vacant temporary structure and ruins are found near the southern and northern boundary of the Site respectively;
- (b) not accessible by vehicles. A footpath runs close to the southern boundary of the Site; and
- (c) within upper indirect WGG and less than 30m from the nearest streamcourse.

7.2 The surrounding areas are predominantly rural in character with active/fallow agricultural land, temporary structures for domestic uses and scattered tree groups.

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 following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) does not support the application;
- (b) Lot No. 95 in D.D. 16 is held under Block Government Lease demised for agriculture use only. The subject lot has no building status;
- (c) no Modification of Tenancy or Building License was issued at the Site;
- (d) the Site falls outside both the “V” zone and the village ‘environs’ (‘VE’). No Small House or NTEH development is allowed in the Site; and
- (e) the ‘village boundary’ of Wai Tau Tsuen as indicated by the applicants in the further information (**Appendix Ic**) is just a delineation of area of the village by Home Affairs Department for the purpose of election of Resident Representative. It is not the ‘VE’ for the village.

Agricultural

9.1.2 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- The Site is overgrown with weeds. Nevertheless, there are active agricultural activities in the vicinity and agricultural infrastructure such as footpath and water source is available. The Site possesses potential for agricultural rehabilitation. As such, the application is not supported from agricultural point of view.

Environment

9.1.3 Comments of the Director of Environmental Protection (DEP):

- (a) does not support the application;
- (b) the Site falls within WGG. There is no existing or planned public sewer in the immediate vicinity of the Site. The applicants proposes the use of septic tank and soakaway system to treat wastewater generated on-site, which should be avoided within WGG according to Chapter 9 of the Hong Kong Planning Standards and Guidelines; and

- (c) regarding the applicants' proposal to also adopt small sewage treatment plants to discharge the treated effluent to the stream nearby (**Appendix Ic**), there is inadequate information in the applicants' submission to prove that the sewage treatment plants have a capacity to treat the sewage to meet the required standards of the Technical Memorandum - Standards for Effluents Discharged into Drainage and Sewerage Systems, Inland and Coastal Waters consistently. Furthermore, the applicants shall assess the potential water quality impact during the operation of the small sewage treatment plants and the risk of negative impact on water environment and water quality due to failure of the plants. Relevant regulations and guidelines such as Guidelines for the Design of Small Sewage Treatment Plants, etc. shall be followed.

Urban Design and Landscape

9.1.4 Comments of Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

Landscape

- (a) some reservations on the application from the landscape planning perspective;
- (b) the Site is situated in an area of settled valleys landscape character comprising clusters of trees, densely vegetated hillslopes linking to Lam Tsuen Country Park, temporary structures and abandoned farmlands. Existing trees of common species in good to fair condition were observed within the Site. As per the layout plan and elevation provided by the applicants, site formation works are required for the proposed development, and some existing trees are observed to be in close proximity to the proposed houses within the Site; adverse landscape impact on existing landscape resources within the Site arising from the construction and site formation works is anticipated;
- (c) the Site is located in close proximity to natural hillslopes linking to Lam Tsuen Country Park. No similar application was approved by the Board in vicinity of the Site within the western portion of the same "AGR" zone; the proposed development is considered not entirely compatible with the landscape character within and surrounding the site. The proposed development, if approved, would set an undesirable precedent and encourage more similar development within the area. The cumulative impact of such approval would alter the landscape character and degrade the landscape quality of the environment;
- (d) the Site is not connected by existing access, potential adverse impact on existing landscape resources within and adjacent to the

Site and Lam Tsuen Country Park arising from the associated infrastructure works cannot be ascertained;

- (e) noting that there is no major public frontage along the site boundary, should the Board approve the application, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent;
- (f) should the application be approved by the Board, the applicants should be advised that approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. Tree removal applications should be submitted direct to District Lands Office for approval; and

Visual

- (g) the Site and its surroundings are currently rural in character with scattered temporary structures in the vicinity. Clusters of low-rise residential developments or village houses of 1-3 storeys are only situated in the “Residential (Group D)” zone and “V” zone to the further northeast and southeast away from the Site (**Plan A-1**). The proposed development would cause a change to the visual landscape on the surrounding environment dominated by active/fallow agricultural land in the vicinity.

Traffic

9.1.5 Comments of the Commissioner for Transport (C for T):

- (a) in general, he has reservation on the application. Such type of development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the “V” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial; and
- (b) notwithstanding the above, the application only involves development of nine NTEHs and he considers that this application can be tolerated on traffic grounds.

Drainage

9.1.6 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) no in-principle objection to the application from public

drainage viewpoint;

- (b) if the application is approved, a condition should be included to request the applicants to submit and implement drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area;
- (c) there is no public drains maintained by DSD in the vicinity of the Site. The proposed houses should have its own stormwater collection and discharge systems to cater for the runoff generated within the Site and overland flow from the surrounding of the Site. The proposed development is located on the unpaved ground. It will increase the impervious area, resulting in a change of the flow pattern and an increase of the surface runoff and thus the flooding risk in the area. The applicants should take this into account when preparing the drainage proposal. The applicants are also required to maintain such systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicants shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (d) the applicants should note that they should design the drainage proposal based on the actual site condition for DSD's comment/ agreement. DSD would not assist the applicants to their drainage proposal. In the design, the applicants should consider the workability, the impact to the surrounding environment and seek comments from other concerned parties/ departments if necessary. The applicants should make sure no adverse impact will be caused to the area due to the proposed works. The existing natural streams, village drains, ditches in the adjacent areas should not be adversely affected; and
- (e) there is no public sewer connection available in the vicinity of the proposed development.

Water Supply

9.1.7 Comment of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) objects to the application; and
- (b) the Site is located within upper indirect WGG and is less than 30m from the nearest stream. There is no existing or planned public sewer in the immediate vicinity of the Site. The wastewater generated from the proposed houses will have the

potential to cause water pollution to the WGG. It is noted that the applicants proposed the use of septic tank systems and small sewerage treatment plants for foul water disposal. However, there is no sufficient information, in particular to the small sewage treatment plants, to prove and demonstrate that the proposed development would cause no material increase in pollution effect to the WGG.

Geotechnical

9.1.8 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

- (a) it is apparent that parts of the Site exceed 15° gradient and hence this would meet criterion 1(i) in the GEO Advice Note for Planning Applications under Town Planning Ordinance (CAP. 131) for a Geotechnical Planning Review Report (GPRR). The applicants shall review the application. If affirmative, a GPRR should be submitted in support of the planning application; and
- (b) as the applicants have not submitted a GPRR to demonstrate that the proposed development will not cause adverse geotechnical impact within the Site and on the surrounding areas, he does not support the application from geotechnical engineering point of view.

Building Matters

9.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) no comment on the application;
- (b) if the proposed buildings fall within the definition of NTEH under the Building Ordinance (Application to the New Territories) Ordinance (Cap. 121), he is not in a position to offer comment on the application under Buildings Ordinance (Cap. 123); and
- (c) in case no certificate of exemption for the proposed buildings including the associated site formation works and/or drainage works under Cap. 121 is granted, such building works will require prior approval and consent under Cap. 123. In this circumstance, an Authorized Person should be appointed to coordinate such works.

Fire Safety

9.1.10 Comment of Director of Fire Services (D of FS)

- (a) no in-principle objection to the application; and
- (b) the applicants are reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

Electricity Safety

9.1.11 Comment of Director of Electrical and Mechanical Services (DEMS):

- (a) no comment on the application from electricity supply safety aspect; and
- (b) in the interests of public safety and ensuring the continuity of electricity supply, the applicants concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the mentioned application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the concerned site. The applicants should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager (North), Civil Engineering and Development Department; and
- (c) District Officer/Tai Po, Home Affairs Department.

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

On 5.6.2020, 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; causing adverse environmental impacts; setting of an undesirable precedent; and the Site being remote

from any village settlement should not be allowed for NTEH development.

11. Planning Considerations and Assessments

- 11.1 The application is for nine proposed NTEHs (not Small Houses) at the Site zoned “AGR” on the OZP (**Plan A-1**). 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 it is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Since there are active agricultural activities in the vicinity and agricultural infrastructure such as footpath and water source is available, the Site possesses potential for agricultural rehabilitation. As such, DAFC does not support the application from agricultural point of view. There is no strong planning justification in the submission for a departure from the planning intention.
- 11.2 The Site falls entirely outside the ‘VE’ and the “V” zone and does not have any building entitlement. DLO/TP, LandsD advises that no Small House or NTEH development is allowed at the Site and does not support the application.
- 11.3 The Site is currently vacant, and covered mainly by weeds and trees, and is not accessible by vehicles. The surrounding areas are predominantly rural in character with active/fallow agricultural land, temporary structures for domestic uses and scattered tree groups (**Plans A-3 and A-4**). CTP/UD&L of PlanD has some reservations on the application from the landscape planning perspective. As site formation works are required for the proposed development, and some existing trees are observed to be in close proximity to the proposed houses within the Site, adverse landscape impact on existing landscape resources is anticipated. The proposed development is considered not entirely compatible with the landscape character within and surrounding the site. Also, the proposed development if approved would set an undesirable precedent for similar development within the western portion of the “AGR” zone. The cumulative impact of such approval would alter the landscape character and degrade the landscape quality of the environment.
- 11.4 The Site falls within the upper indirect WGG and is less than 30m away from the nearest streamcourse. There is no existing or planned public sewer in the immediate vicinity of the Site, and the effluent generated from the proposed development will have the potential to cause water pollution to the WGG. The applicants propose to adopt septic tank and soakaway systems and small sewage treatment plants to discharge the effluent. DEP advises that the use of septic tank and soakaway systems should be avoided within WGG. Furthermore, there is insufficient information to prove that the small sewerage treatment plants proposed by the applicants have a capacity to treat the sewage to meet the required standards under the relevant Technical Memorandum. Both DEP and CE/C of WSD object to the application.
- 11.5 H(GEO) of CEDD advises that parts of the Site exceed 15° gradient and hence a GPRR should be submitted to demonstrate that the proposed development

will not cause adverse geotechnical impact on the Site and its surrounding areas. As the applicants have not submitted a GPRR, H(GEO) of CEDD does not support the application from geotechnical engineering point of view. C for T advises that the application only involving development of nine NTEHs can be tolerated on traffic grounds. Other departments consulted, including CE/MN of DSD, D of FS, CHE/NTE of HyD, PM/N of CEDD, DO/TP of HAD and DEMS have no adverse comments on the application.

- 11.6 Regarding the Interim Criteria, the proposed development does not comply with the Interim Criteria in that the Site located within WGG would not be able to be connected to the existing or planned public sewerage system in the area, and the proposed development would cause adverse landscape and geotechnical impacts on the surrounding area. The applicants fail to demonstrate that the proposed development would not cause adverse landscape, geotechnical and water quality impacts in the area.
- 11.7 There are six similar applications for NTEH/Small House developments in the “AGR” zone. Two of them were for Small House and were both rejected. For the other four applications, each was for the development of eight NTEHs involving the same site (**Plan A-1**). Two of them (No. A/NE-KLH/2 and 349) were rejected by the Board upon review on 21.4.1995 and 17.8.2007 respectively mainly for reasons that there were adverse impacts on existing mature trees and traffic; the site was subject to traffic noise; and the proposed development within WGG was unable to connect to public sewers. Applications No. A/NE-KLH/381 and 545 were approved with conditions by the Committee on 22.5.2009 and 4.5.2018 respectively mainly for considerations that the traffic and landscape impacts and the concern on traffic noise had been addressed with mitigation proposals; a proposal for connection with future public sewers was made; and also on a sympathetic ground that the subject lots had building entitlement. Application No. A/NE-KLH/545 was also approved as it had previous approval. The grounds for approval of those two previous applications are not applicable to the current case.
- 11.8 Regarding the public comments as detailed in paragraph 10 above, Government departments’ comments and the planning assessments in the above 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 “Agriculture” 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) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that the Site located within WGG would not be able to be connected to the existing or planned public sewerage system in the area. The applicants also fail to demonstrate that the proposed development would not cause adverse landscape, geotechnical and water quality impacts in the area.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 1.9.2024, 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 a 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;
- (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; and
- (d) the submission of a geotechnical assessment report and the implementation of slope remedial/upgrading works identified therein before the construction of the proposed development to the satisfaction of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department or of the Town Planning Board.

Advisory Clauses

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

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 applicants.
- 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 attachment received on 28.5.2020
Appendix Ia	Supplementary planning statement
Appendix Ib	Further information received on 8.6.2020
Appendix Ic	Further information received on 8.7.2020
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
Appendix III	Similar applications
Appendix IV	Public comments
Appendix V	Recommended advisory clauses
Drawing A-1	Layout plan submitted by the applicants
Drawing A-2	Elevation submitted by the applicants
Drawing A-3	Tree survey plan submitted by the applicants
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
SEPTEMBER 2020**