

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/590

- Applicant** : Mr. MAN Nim Chi represented by TriWeb Surveying Company
- Site** : Lot 9 S.A RP in D.D. 7, Tai Hang Village, Tai Po, New Territories
- Site Area** : About 91.1 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
- Zonings** : “Agriculture” (“AGR”) (about 73%)
“Village Type Development” (“V”) (about 27%)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, an indigenous villager of Tai Hang Village of 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 in the “V” zone, such use (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes) in the “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed Small House development are as follows:

Total floor area	:	195.09m ²
Number of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²

1.3 Layout of the proposed Small House, stormwater drainage proposal and sewerage plan are shown on **Drawings A-1 to A-3**.

1.4 In support of the application, the applicant has submitted the application form

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.

with attachments which was received on 1.9.2020 at **Appendix I**.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application as stated in Part 8 of the application form at **Appendix I** are summarized as follows:

- (a) the applicant is an indigenous villager entitled to a Small House grant under the Small House policy, which is a lawful traditional right and interest of the indigenous inhabitants of the New Territories under Article 40 of the Basic Law;
- (b) there is insufficient land for Small House development within the “V” zone. The use of Government land for Small House development has already been ruled out by the High Court as unconstitutional. Furthermore, Tso/Tong’s land is under multiple ownership and managed by appointed managers. It is impossible for individuals to acquire Tso/Tong’s land for Small House development. Thus, Government land and Tso/Tong’s land in the “V” zone should be excluded from the land available for the Small House development;
- (c) the requirement of not less than 50% of the proposed Small House footprint falling within the “V” zone as stipulated in the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) is arbitrary;
- (d) the applicant has submitted drawings to show that there are public sewers available for connection by the proposed Small House. Rainwater from the roof of the proposed Small House and surface run-off within the Site can be collected by impermeable concrete U-channels which is connected to the existing concrete U-channels in the vicinity; and
- (e) a portion of the Site (about 66m²) falling outside the “V” zone would pose insignificant impact to the supply of agricultural land. That portion of land has never been put into agricultural uses. Approval of the application for Small House development could better utilise land resources.

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 was first promulgated on 24.11.2000. 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/567) for proposed Small House submitted by the same applicant, which was rejected by the Rural and New Town Planning Committee (the Committee) on 1.11.2019. The application was rejected mainly on the grounds of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside the “V” zone and the village ‘environs’ (‘VE’) of the village concerned and there was no general shortage of land in meeting the demand for Small House development in the “V” zone; the applicant failed to demonstrate the proposed development would not cause adverse impact on the water quality in the area; and land being still available within the “V” zone for Small House development.
- 5.2 Compared with the previous application, the development parameters and disposition of the proposed Small House under the current application remain the same.
- 5.3 Details of the above previous application is summarized at **Appendix III** and its location is shown on **Plans A-1** and **A-2a**.

6. Similar Applications

- 6.1 There are 12 similar applications for Small House development within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-1**). Four of them were approved and eight were rejected.
- 6.2 Four applications (No. A/NE-KLH/309, 326, 331 and 452) covered the same site. Applications No. A/NE-KLH/309 and 326 were rejected by the Committee in 2003 and 2004 respectively mainly on the grounds of not complying with the Interim Criteria in that there was sufficient land available within the “V” zone of Tai Hang to meet future Small House demand at the time of consideration; and setting of undesirable precedent. Subsequently, Application No. A/NE-KLH/331 was approved with conditions in 2005 mainly for reasons of compliance with the Interim Criteria in that there was a general shortage of land in meeting the Small House demand at the time of consideration; more than 50% of the proposed Small House footprint fell within “V” zone; and the proposed development was able to be connected to the planned sewerage system in the area. Application No. A/NE-KLH/452 was also approved in 2013 mainly on sympathetic consideration as the application site was the subject of a previously approved case (No. A/NE-KLH/331).
- 6.3 For the other two approved cases, Application No. A/NE-KLH/386 was approved in 2009 with reasons similar to No. A/NE-KLH/331. For Application No. A/NE-KLH/451, although there was sufficient land available within the “V” zone in meeting the future Small House demand, it was approved in 2013 mainly on sympathetic consideration in that the proposed Small House footprint fell entirely within the “V” zone and the proposed Small

House could be connected to the planned sewerage system in the area.

- 6.4 The remaining six applications (No. A/NE-KLH/316, 323, 428, 454, 498 and 557) were rejected by the Committee or the Board on review between 2003 and 2019 mainly on the grounds of not complying with the Interim Criteria in that there was no general shortage of land to meet the Small House demand. Applications No. A/NE-KLH/316, 323 and 454 were also rejected as the application sites were not able to be connected to the existing or planned sewerage system in the area. In addition, Applications No. A/NE-KLH/316, 323, 428, 454 and 557 were also rejected because the proposed development did not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside both the “V” zone and the ‘VE’ of concerned village.
- 6.5 Details of the above similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

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

- 7.1 The Site is:
- (a) partly paved with asphalt sand and partly covered by weeds;
 - (b) occupied by three concrete barrier blocks;
 - (c) located near the northern fringe of Tai Hang Village and outside the ‘VE’ of the village concerned; and
 - (d) accessible by a local track branching from Tai Wo Service Road West.
- 7.2 The surrounding areas are predominantly rural in character comprising scattered tree groups, active/fallow agricultural land and village houses. Village clusters are mainly found to the south and east of the Site (**Plan A-2a**).

8. Planning Intentions

- 8.1 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.
- 8.2 The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

9. Comments from Relevant Government Departments

9.1 The application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - Footprint of the Small House - Application site	24% 27%	76% 73%	- The remaining portions of the Site and the Small House footprint fall 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 outside the ‘VE’ of Tai Hang (Plan A-1). - District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) does not support 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 6.43 ha (or equivalent to 257 Small House sites). The outstanding Small House applications are 32 ² while the 10-year Small House demand forecast for the same villages is 225.
	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 7.92 ha (equivalent to 316 Small House sites) (Plan A-2b).
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 is available; and the Site possesses potential for

² Among the 32 outstanding Small House applications, 27 of them fall within the “V” zone and 5 straddle or fall outside the “V” zone. For those 5 applications straddling or being outside the “V” zone, none of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character comprising scattered tree groups, active/abandoned farmland and village houses.
6.	Within WGG?	✓		- The Director of Environmental Protection (DEP) has no objection to the application as the Site is able to be connected to public sewer.
7.	Sewerage impact?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application as there will be less than 50% of the proposed Small House footprint within the “V” zone and 100% of that outside the ‘VE’ of Tai Hang. Despite that the applicant proposes to connect his Small House with nearby public sewers, and DEP has indicated no objection to the application, CE/C, WSD considers that there is insufficient information in the applicant’s submission to demonstrate that the proposed development would not cause adverse impact on the water quality in the area.
8.	Encroachment onto planned road networks and public works boundaries?		✓	
9.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application.
10.	Traffic impact?		✓	- Commissioner for Transport (C for T) has no in-principle objection to the application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
11.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint. - Approval condition on submission and implementation of drainage proposal is required.
12.	Landscape impact?		✓	- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning point of view as adverse impact arising from the proposed development on significant landscape resources within the Site is not anticipated.
13.	Geotechnical impact?		✓	
14.	Local objection received from DO?		✓	

9.2 Comments from the following Government departments have been incorporated in the paragraph 9.1 above. Other 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/Construction, Water Supplies Department;
- (g) Director of Agriculture, Fisheries and Conservation;
- (h) Director of Fire Services; and
- (i) Director of Electrical and Mechanical Services.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager/New Territories East, Civil Engineering and Development Department;
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department; and

(d) District Officer/Tai Po, Home Affairs Department.

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

On 8.9.2020, the application was published for public inspection. During the statutory public inspection period, two public comments were received from World Wide Fund for Nature Hong Kong (WWF - Hong Kong) and an individual objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR”; the proposed Small House footprint falls entirely outside the ‘VE’ of Tai Hang and less than 50% of the footprint falls within the “V” zone; being located within the upper indirect WGG and risk of pollution to the WGG; and land being still available within the “V” zone.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House development at the Site falling within an area partly zoned “AGR” (about 73%) and partly zoned “V” (about 27%) 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 agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as water source and road access is available; and the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention.
- 11.2 According to DLO/TP of LandsD’s records, the total number of outstanding Small House applications for Tai Hang is 32 while the 10-year Small House demand forecast is 225. Based on the latest estimate by PlanD, about 7.92 ha of land (equivalent to about 316 Small House sites) are available within the “V” zone concerned. As the proposed Small House footprint falls entirely outside the ‘VE’ of the concerned village, DLO/TP of LandsD objects to the application.
- 11.3 The Site, located at the northern fringe of Tai Hang Village, is partly paved with asphalt sand, partly covered by weeds and occupied by three concrete barrier blocks. The proposed development is not incompatible with the surrounding areas which are predominantly rural in character comprising scattered tree groups, active/fallow agricultural land and village houses (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no objection to the application from the landscape planning point of view as significant adverse impact on existing landscape resources arising from the proposed development is not anticipated.
- 11.4 The Site is within the upper indirect WGG. The applicant has proposed to connect the proposed Small House to the existing public sewerage system near the Site (**Plan A-2a**). CE/MN of DSD advises that the applicant’s sewerage connection proposal is technically feasible. DEP has no objection to the

application provided that the applicant shall connect the proposed Small House to the public sewer at his own cost. However, CE/C of WSD objects to the application as there will be less than 50% of the proposed Small House footprint within the “V” zone and 100% of that outside the ‘VE’ of Tai Hang. Despite that the applicant proposes to connect his Small House with nearby public sewers, and DEP has indicated no objection to the application, CE/C of WSD considers that the applicant fails to demonstrate that the proposed development would not cause adverse impact on the water quality in the area. Other relevant government departments including C for T, CHE/NTE of HyD, D of FS, DO/TP of HAD, DEMS and H(GEO) and PM/N of CEDD have no objection to/adverse comment on the application.

- 11.5 Regarding the Interim Criteria (**Appendix II**), the proposed development does not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint falls outside both the ‘VE’ and the “V” zone of Tai Hang; and there is sufficient land within the “V” zone (about 7.92 ha or equivalent to 316 Small House sites) (**Plan A-2b**) to fully meet the Small House demand of 257 houses (i.e. 32 outstanding Small House applications plus the 10-year demand forecast of 225 Small Houses). There is no general shortage of land in meeting the demand for Small House development in the concerned “V” zone.
- 11.6 The applicant claims that Government land in the “V” zone should not be counted as available land for Small House development in view of the High Court Judgement on the Judicial Review of the Small House Policy. It should be noted that the said High Court Judgement relates to the Small House Policy implemented by LandsD, which does not affect the Board’s functions under the Town Planning Ordinance. Pursuant to section 16 of the Town Planning Ordinance, the Board shall consider applications for planning permission for Small House development, and decide whether to grant or refuse to grant planning permission taking into account the relevant planning considerations. Besides, land ownership is not a material consideration as it could be subject to change and land parcel could be subdivided to suit development needs.
- 11.7 The Site is the subject of a previous application (No. A/NE-KLH/567) submitted by the same applicant for the same use. The application was rejected by the Committee on 1.11.2019 mainly on the grounds of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside the “V” zone and the ‘VE’ of the village concerned; the applicant failed to demonstrate the proposed development would not cause adverse impact on the water quality in the area; and land being still available within the “V” zone for Small House development. As there is no change in the planning circumstance, rejection of the application is in line with the Committee’s previous decision.
- 11.8 There are 12 similar applications within the same “AGR” zone (**Plan A-1**). Out of which, four applications (No. A/NE-KLH/331, 386, 451 and 452) were approved by the Committee between 2003 and 2013 before the adoption of a more cautious approach by the Board in recent years. Applications No. A/NE-KLH/331 and 386 were approved mainly for reasons of being in compliance

with the Interim Criteria in that more than 50% of the Small House footprint fell within the “V” zone; there was a general shortage of land in meeting the Small House demand at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Applications No. A/NE-KLH/451 and 452 were approved under special circumstances that the proposed Small House footprint under No. A/NE-KLH/451 fell entirely within the “V” zone and the application site of No. A/NE-KLH/452 was the subject of a previously approved case (No. A/NE-KLH/331). Regarding the eight rejected cases (No. A/NE-KLH/309, 316, 323, 326, 428, 454, 498 and 557), they were rejected between 2003 and 2019 mainly on the grounds of not complying with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in the “V” zone. Applications No. A/NE-KLH/316, 323, 428, 454 and 557 were also rejected because more than 50% of the proposed Small House footprint fell outside both the “V” zone and the ‘VE’ of concerned village. The circumstances of the current application are similar to these rejected cases.

- 11.9 Regarding the public comments on the application as detailed in paragraph 10, Government departments’ comments and the planning assessments 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;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that more than 50% of the footprint of the proposed Small House falls outside the “Village Type Development” (“V”) zone and the village ‘environs’ of Tai Hang; and there is no general shortage of land in meeting the demand for Small House development in the “V” zone of Tai Hang;
 - (c) the applicant fails to demonstrate that the proposed development would not cause adverse impact on the water quality in the area; and
 - (d) land is still available within the “V” zone of Tai Hang which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development

within the “V” zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **23.10.2024**, 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 systems 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**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application form and attachments received on 1.9.2020
Appendix II	Relevant revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
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	Stormwater drainage proposal submitted by the applicant
Drawing A-3	Sewerage plan submitted by the applicant
Drawing A-4	Land status 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" zones
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
OCTOBER 2020**