

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/114

- Applicant** : Mr. CHEUNG Steven Pak Hung represented by Mr. YEUNG Siu Fung
- Site** : Lot 1356 S.B in D.D. 39, Ma Tseuk Leng San Uk Ha, Sha Tau Kok, New Territories
- Site Area** : 130.06m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claims himself an indigenous villager of Ma Tseuk Leng of Sha Tau Kok Heung¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ma Tseuk Leng, Sha Tau Kok (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. 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 “AGR” zone, which requires planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) are as follows:

Total Floor Area	: 195.09 m ²
Number of Storeys	: 3
Building Height	: 8.23 m
Roofed Over Area	: 65.03 m ²

1.3 The applicant indicates that the uncovered area of the Site would be used as garden for the proposed Small House. Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**.

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant’s eligibility for Small House grant has yet to be ascertained.

1.4 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received by the Board on 16.7.2018.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Appendix V of the Application Form in **Appendix I**. They can be summarised as follows:

- (a) the applicant is an indigenous villager of Ma Tseuk Leng Ha Tsuen;
- (b) the applicant has no private land within the “Village Type Development” (“V”) zone and he has to apply for building a Small House on the Site to live near his relatives whose current and/or future houses located adjacent to the Site;
- (c) planning approval was granted to the applicant’s relatives for Small House developments at Lots 1356 S.A, 1368 S.A, S.B and RP in D.D. 39 (Application No. A/NE-LK/79) (**Plan A-1**) in which the locations of these Small House are further away from the “V” zone and ‘Village Environs’ (‘VE’) and closer to the Sha Tau Kok Road; and
- (d) landscaping and drainage proposals will be submitted upon the approval of the application and the applicant is willing to adopt any measures that the Board and other Government departments deem necessary.

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

The applicant is the sole “current land owner” of the lot. Detailed information would be deposited at the meeting for Members’ inspection.

4. Assessment Criteria

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (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. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

5. Previous Application

There is no previous application of the Site.

6. Similar Applications

6.1 There are 39 similar applications involving 33 sites for Small House development within/partly within the “AGR” zones in the vicinity of the Site in the Luk Keng and Wo Hang area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.

- 6.2 Among these similar cases, 31 applications were approved by the Committee between February 2001 and January 2015 (i.e. before the cautious approach being adopted by the Board) (**Plan A-1**). One of them (Application No. A/NE-LK/79 for four proposed Small Houses), which located to the immediately west and south across two existing village houses, was approved by the Committee on 19.7.2013 (**Plan A-2a**). These applications were approved by the Committee mainly on the considerations that the application generally complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell within the ‘VE’ and there was a general shortage of land within the “V” zone at the time of consideration; the proposed Small House development was not incompatible with the surrounding rural and village environment; and the proposed development was not expected to have significant adverse impacts on the surrounding area. Five other applications No. A/NE-LK/106, 107, 109, 111 and 112 (**Plan A-1**) were also approved by the Committee between December 2016 and April 2018 (i.e. after the cautious approach being adopted by the Board) mainly for reason of being the subject of previously approved applications (No. A/NE-LK/30, 73, 77 and 80).
- 6.3 The other three applications No. A/NE-LK/78, 92 and 93 were rejected by the Committee between March 2013 and October 2014 for reasons that proposed Small House was not in line with the planning intentions of “AGR” and “Green Belt” (“GB”) zones; the proposed development might have adverse impact on a natural stream in the vicinity; the application did not comply with the Interim Criteria and TPB PG-No. 10 on application for development within “GB” zone in that the proposed development would involve vegetation clearance and hence affect these existing natural landscape; land was still available within the “V” zone of Ma Tseuk Leng for Small House development; and the approval of the application would set an undesirable precedent for similar applications in the area.
- 6.4 Details of these applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

7. The Site and Its Surrounding Area (Plans A-1, A-2a and A-2b, aerial photo on Plan A-3 and site photo on Plan A-4)

- 7.1 The Site is:
- (a) partly paved and partly grown with fruit trees (**Plan A-4**);
 - (b) located in close proximity to the village cluster of Ma Tsuek Leng San Uk Ha (**Plan A-2a**); and
 - (c) accessible by a local road leading to Sha Tau Kok Road – Wo Hang to its immediately north.
- 7.2 The surrounding area has the following characteristics:
- (a) to the north are temporary structures for storage purpose or vacant, and to the further north are unused land and fallow agricultural land;
 - (b) to the east are fallow agriculture land while to the northeast is the village cluster of Ma Tseuk Leng San Uk Ha within the “V” zone (**Plan A-2a** and **A-2b**);

- (c) to the immediately south and southwest are two village houses and further south are fallow agricultural land, one of the sites of an approved Small House application No. A/NE-LK/79, open storage of construction material and the Sha Tau Kok Road – Wo Hang; and
- (d) to the immediately west is a garden which is one of the sites of an approved Small House application No. A/NE-LK/79, and beyond the local road are vacant land, and fallow agricultural land with two village houses.

8. Planning Intention

The planning intention of the “AGR” zone in the Luk Keng and Wo Hang area 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 summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	- -	100% 100%	- The Site and the footprint of the proposed Small House falls entirely within the “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%	- -	- DLO/N, LandsD advises that the footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	- Land required to meet Small House demand in Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster ² : about 14 ha (equivalent to 561 Small House sites). The outstanding Small House applications for Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha

² Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster comprises Sheung Ma Tseuk Leng Village, Ha Ma Tseuk Leng Village and Shek Kiu Tau Village.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				and Shek Kiu Tau village cluster are 66 ³ while the 10-year Small House demand forecast for the same villages is 495. - Land available to meet Small House demand within the “V” zone of the villages concerned: about 2.37 ha (equivalent to 94 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view against the application from agriculture point of view as the Site is a fenced backyard and is relatively small in size, which possesses low potential for agricultural rehabilitation.
5.	Compatible with surrounding area/development?	✓		- The proposed Small House is not entirely incompatible with the surrounding rural setting and environment dominated by fallow/active agricultural land, tree groups, vacant/unused land, village houses and vacant temporary structures.
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	- Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by LandsD.
9.	Traffic impact?	✓		- Commissioner for Transport (C for T) has reservation on the application and advises that Small House development

³ Among the 66 outstanding Small House applications, 15 of them fall within the “V” zone and 51 straddle or outside the “V” zone. For those 51 applications straddling or being outside the “V” zone, 9 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>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.</p> <p>- Notwithstanding the above, the application only involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.</p>
10.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required.
11.	Sewage impact?		✓	- Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping impact?	✓		<p>- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has reservation on the application from the landscape planning point of view.</p> <p>- A group of fruit trees providing some amenity to the area are in conflict with the proposed Small House within the Site. They have to be removed for the Small House development if permission is granted. Yet, according to the layout plan (Drawing A-1), there is no room for compensatory tree planting within the Site.</p> <p>- If the application is approved, landscape condition is considered not practicable given there is inadequate planting space for tree planting works.</p>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
13.	Local objection conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that the Indigenous Inhabitant Representative of Ma Tseuk Leng Ha supports the application while the Chairman of Sha Tau Kok District Rural Committee and the incumbent North District Council (NDC) member of subject constituency have no comment on the application.

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Details of comments from Government departments are at **Appendix IV**.

- (a) District Lands Officer/North, Lands Department;
- (b) Director of Agriculture, Fisheries and Conservation;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Director of Fire Services;
- (e) Commissioner for Transport;
- (f) Chief Engineer/Mainland North, Drainage Services Department;
- (g) Director of Environmental Protection;
- (h) Chief Town Planner/Urban Design and Landscape, Planning Department; and
- (i) District Officer (North), Home Affairs Department.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department ; and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 27.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received (**Appendix V**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Hong Kong Bird Watching Society and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; approval of the application would set an undesirable precedent to the future similar applications within the “AGR” zone; land is still available within the “V” zone of Ma Tseuk Leng for Small House development; and approval of Small House application with septic tank is undesirable.

11. Planning Considerations and Assessments

11.1 The Site falls entirely within an area zoned “AGR” on the OZP. The proposed Small House development is not in line with the planning intention of the “AGR” zone which is intended 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. As the Site is a fenced backyard and is small in size, DAFC considers that the Site possesses low potential for agricultural rehabilitation and therefore has no strong view against the application from agriculture point.

- 11.2 Based on DLO/N, LandsD's records, the total number of outstanding Small House applications for Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is 66 while the 10-year Small House demand forecast for the same village cluster is 495. According to the latest estimate by PlanD, a total of about 2.37 ha (equivalent to 94 Small House sites) of land are available within the "V" zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the footprint of the proposed Small House falls entirely within the 'VE' of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.
- 11.3 The Site is situated in an area of rural landscape character consisted of dominated by fallow/active agricultural land, tree groups, vacant/unused land, village houses and vacant temporary structures. The proposed Small House development is not entirely incompatible with the surrounding environment (**Plans A-2a** and **A-3**). CTP/UD&L, PlanD has reservation on the application from landscape planning perspective as the proposed Small House would lead to vegetation clearance of a group of existing fruit tress found within the Site. Compensatory planting will not be practicable due to space limitation. As such, the application does not meet the Interim Criteria in that the applicant fails to demonstrate that the proposed development would not cause adverse landscape impacts on the surrounding area. C for T has reservation on the application and considers that Small House development should be confined within the "V" zone as far as possible but given that the proposed development involves one Small House only, it could be tolerated. Other Government departments consulted, including DEP, CE/MN of DSD and D of FS, have no adverse comment on or no objection to the application.
- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the 'VE' of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong (**Plan A-2a**). Whilst land available within the "V" zone is insufficient to fully meet the total Small House demand (in total about 14 ha or equivalent to 561 Small House sites), it is noted that land (about 2.37 ha or equivalent to 94 Small House sites) is still available within the "V" zone to meet the outstanding 66 Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. 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 infrastructure and services.
- 11.5 There are 18 similar applications for Small House development in the vicinity of the Site as shown on **Plan A-2a**. Fifteen of them (including Application No. A/NE-LK/79 for four proposed Small Houses located to the west and south of the Site) were approved by the Committee between 2001 and 2014 (i.e. before the cautious approach being adopted by the Board) mainly on the considerations that the application generally complied with the Interim Criteria in that more than 50% of the footprint of

the proposed Small House fell within the ‘VE’ and there was a general shortage of land within the “V” zone at the time of consideration; the proposed Small House development was not incompatible with the surrounding rural and village environment; and the proposed development was not expected to have significant adverse impacts on the surrounding area. After the adoption of cautious approach, only one similar application (No. A/NE-LK/109) was approved in 2017 mainly for the reason of being the subject of a previously approved application (No. A/NE-LK/30). The other two similar applications (No. A/NE-LK/92 and 93) straddling “AGR” and “GR” zones were rejected by the Committee in 2014 mainly on the grounds that the proposed Small House was not in line with the planning intentions; the application did not comply with the Interim Criteria and TPB PG-No. 10 on application for development within “GB” zone in that the proposed development would involve vegetation clearance and hence affect these existing natural landscape; land was still available within the “V” zone of Ma Tseuk Leng for Small House development; and the approval of the application would set an undesirable precedent for similar applications in the area. The circumstances of the current application are different from those approved and rejected applications.

- 11.6 Regarding the public comments objecting to application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; approval of the application would set an undesirable precedent to the future similar applications within the “AGR” zone; land is still available within the “V” zone of Ma Tseuk Leng for Small House development; and approval of Small House application with septic tank is undesirable, Government departments’ comments and 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 “AGR” zone in the Luk Keng and Wo Hang area which is primarily to retain and safeguard good quality agricultural land / farm / fish ponds for agricultural purposes and 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 New Territories Exempted House/Small House in New Territories in that the proposed development would involve vegetation clearance and hence affect the existing natural landscape; and
 - (c) land is still available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for 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 7.9.2022, 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 provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, 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 with Attachments received on 16.7.2018
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Similar s.16 Applications within/partly within the "AGR" Zones in the vicinity of the Site on the Luk Keng and Wo Hang OZP
Appendix IV	Detailed Comments from Relevant Government Departments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the "V" zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos