

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/131

- Applicant** : Mr. WONG Man Kit represented by Mr. HUI Kwan Yee
- Site** : Lot 2078 S.B in D.D. 39, Yim Tso Ha Tsuen, Sha Tau Kok, New Territories
- Site Area** : 275 m² (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** : “Recreation” (“REC”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claimed to be an indigenous villager of Yim Tso Ha Village of Sha Tau Kok Heung¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Yim Tso Ha (**Plans A-1 and A-2a**). The Site falls within an area zoned “REC” on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. According to the Notes of the OZP, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in “REC” zone is a Column 2 use requiring 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 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 claimed himself to be indigenous villager of Yim Tso Ha, Sha Tau Kok Heung. His 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 4.9.2020.

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 in **Appendix I**. They can be summarised as follows:

- (a) the Site has been abandoned for years;
- (b) there are no alternative sites for the applicant to construct his own Small House development; and
- (c) there are similar Small Houses development in the vicinity of the Site.

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 at the Site.

6. Similar Applications

- 6.1 There are four similar applications involving three sites for Small House development within/partly within the same “REC” zone in the vicinity of the Site in the Luk Keng and Wo Hang area since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-1**). They were all rejected.
- 6.2 One application (No. A/NE-LK/76) was rejected by the Rural and New Town Planning Committee (the Committee) on 9.11.2012 mainly on the grounds that the proposed development was not in line with the planning intention of the “REC” zone; land was still available within the “V” zone of Yim Tso Ha Village for Small House development; and the applicant failed to demonstrate that the proposed development would not have adverse ecological impact on the surrounding area.
- 6.3 The other three applications (Nos. A/NE-LK/99, 102 and 125) were rejected by the Committee between October 2015 and December 2019 (i.e. after the cautious approach

being adopted by the Board) mainly on the grounds that the proposed development was not in line with the planning intention of the “REC” zone; land was still available within the “V” zone of Yim Tso Ha Village for Small House development; the applicant failed to demonstrate that the proposed development would not have adverse ecological impact on the surrounding area; and the setting of 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) vacant and covered by weeds (**Plan A-4**);
- (b) located to the west of the existing village cluster of Yim Tso Ha Village at a distance of about 60m (**Plan A-2a**); and
- (c) inaccessible by local road.

7.2 The surrounding area has the following characteristics:

- (a) to the further east are village houses within the “V” zone of Yim Tso Ha Village (**Plan A-2a**); and
- (b) surrounded by vegetated woodland; and
- (c) to the further southeast is a pond within “Conservation Area” (“CA”) zone (**Plans A-2a and A-3**).

8. **Planning Intention**

The planning intention of the “REC” zone in the Luk Keng and Wo Hang area is intended primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission.

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 footprint of the proposed Small House falls entirely within an area zoned "REC".
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 Yim Tso Ha.
3.	Sufficient land in "V" zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet Small House demand in Yim Tso Ha Village: about 3.25 ha (equivalent to 130 Small House sites). The outstanding Small House applications for Yim Tso Ha Village is 10 ² while the 10-year Small House demand forecast for the same village is 120.
	Sufficient land in "V" zone to meet outstanding Small House application?	✓		<u>Land Available</u> - Land available to meet Small House demand within the "V" zone of Yim Tso Ha Village: about 0.84 ha (equivalent to 33 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of "REC" zone?		✓	- The area is intended primarily for recreational developments for the use of active and/or passive recreation and tourism/eco-tourism. - Director of Leisure and Cultural Services (DLCS) has no comment on the application. - Director of Agriculture, Fisheries and Conservation (DAFC) indicates that the Site and the surrounding area seem to be an abandoned agricultural land which have become a wetland of varying degree over the years. The applicant should provide information on how the construction materials

² Among the 10 outstanding Small House applications, 6 of them fall within the "V" zone and 4 straddle or outside the "V" zone. For those 4 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>
				on how the construction materials would be transported to the Site and whether additional area would be cleared as footpath/access to the Site.
5.	Compatible with surrounding area/ development?	✓		- The proposed Small House is not entirely incompatible with the surrounding rural landscape character which comprises village houses and densely vegetated woodland.
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 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. - Notwithstanding the above, the application only involves construction of one Small House. He considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				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?	✓		- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from the landscape planning point of view. - Based on aerial photo of 2019, the Site and its surroundings are abandoned agricultural land covered by grassy vegetation, situated in an area of rural landscape character comprising village houses in "V" zone to the northeast, and densely vegetated woodland within the "SSSI" and "CA" zones to the further east of the Site. - Should the application be approved, it would set an undesirable precedent, and would encourage more similar development within the area. The cumulative impact of such approval would degrade the landscape quality and alter the landscape character of surrounding environment within the "REC" zone. Furthermore, the site stands solitarily in the middle of vegetated area and is inaccessible by existing road. The potential landscape impact arising from the construction of access could not be ascertained.
13.	Local objection conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that the Chairman of Sha Tau Kok District Rural Committee, Village Representative of Yim Tso Ha and Pok Tau Ha, and the incumbent North District Council 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. Detailed 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;
- (b) Director of Leisure and Cultural Services; and
- (c) Project Manager (North), North Development Office, Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 11.9.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received (**Appendix V**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Kadoorie Farm and Botanic Garden Corporation, the Hong Kong Bird Watching Society, Designing Hong Kong Limited, World Wide Fund For Nature Hong Kong and one individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “REC” zone; approval of the application would set an undesirable precedent to the future similar applications within the “REC” zone; land is still available within the “V” zone of Yim Tso Ha Village for Small House development; and the applicant fails to demonstrate that the proposed development would not have adverse ecological and sewerage impact on the surrounding area.

11. Planning Considerations and Assessments

11.1 The application is for a proposed Small House at the Site falling entirely within the ‘REC’ zone. The proposed use is not in line with the planning intention of the ‘REC’ zone which is primarily for recreational developments for the use of the general public and development of active and/or passive recreation and tourism/eco-tourism. The applicant has not provided strong planning justification in the submission to merit a departure from the planning intention of the “REC” zone.

11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Yim Tso Ha Village is 10 while the 10-year Small House demand forecast for the same village is 120. According to the latest estimate by PlanD, a total of about 0.84 ha (equivalent to 33 Small House sites) of land are available within

the “V” zone of Yim Tso Ha Village 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 Yim Tso Ha Village.

- 11.3 The Site is situated in an area of rural landscape character comprises village houses and densely vegetated woodland (**Plans A-3 and A-4**). CTP/UD&L, PlanD has some reservations on the application from the landscape planning perspective. Based on aerial photo of 2019, the Site and its surroundings are abandoned agricultural land covered by grassy vegetation (**Plan A-4**). The approval of the application would set an undesirable precedent for similar applications in the “REC” zone. The cumulative impact of such approval would degrade the landscape quality of the surrounding environment, alter the landscape character and cause irreversible impact on existing landscape resources of the “REC” zone. Furthermore, the Site stands solitarily in the middle of vegetated area and is inaccessible by existing road. The potential landscape impact arising from the construction of access could not be ascertained. DAFC also indicates that the Site and the surrounding area seem to be an abandoned agricultural land which have become a wetland of varying degree over the years. The applicant should provide information on how the construction materials would be transported to the Site and whether additional area would be cleared as footpath/access to the Site. C for T considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development only involve one Small House, the application could be tolerated. Other Government departments consulted, including DEP, CE/MN of DSD, HyD, WSD, FSD, LCSD and CEDD, have no comment on or no objection to the application.
- 11.4 Regarding the Interim Criteria (**Appendix II**), the whole footprint of the proposed Small House falls within the ‘VE’ of Yim Tso Ha Village (**Plan A-2a**). While land available within the “V” zone (**Plan A-2b**) is insufficient to fully meet the total Small House demand of 130 Small Houses, such available land (about 0.84 ha or equivalent to 33 Small House sites) is capable to meet the 10 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 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 four similar applications involving three sites for Small House development with/partly within the “REC” zone in the vicinity of the Site (**Plan A-1**). Of them, 1 application (No. A/NE-LK/76) was rejected in November 2012 while the other three applications (Nos. A/NE-LK/99, 102 and 125) were rejected between 2015 and 2019 respectively (i.e. after the cautious approach being adopted by the Board). Those applications were rejected mainly on the grounds of not in line with the planning intention of “REC” zone; land was still available within the “V” zone of Yim Tso Ha Village; and the setting of an undesirable precedent. The circumstances of the current application are similar to those rejected applications.
- 11.6 Regarding the adverse public comments as detailed in paragraph 10, the Government department’s comments and the planning assessment 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 "Recreation" zone in the Luk Keng and Wo Hang area which is primarily for recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. There is no strong planning justification in the submission for a departure from the planning intention;
- (b) land is still available within the "V" zone of Yim Tso Ha Village for Small House development. It is considered more appropriate to concentrate the proposed Small House within "V" zone for orderly development pattern, efficient use of land and provision of infrastructures and services; and
- (c) the approval of the application would set an undesirable precedent for similar applications in the "REC" zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

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 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 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 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.

14. Attachments

Appendix I	Application Form with Attachments received on 4.9.2020
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 "REC" Zone 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 Yim Tso Ha Village for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2020**