

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/634

<u>Applicant</u>	Mr. YIP Terry Mou Fung
<u>Site</u>	Lots 1287 S.A and 1287 S.D in D.D. 8, Lam Tsuen, Tai Po, New Territories
<u>Site Area</u>	About 166m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
<u>Zonings</u>	“Village Type Development” (“V”) (about 54.4%) and “Agriculture” (“AGR”) (about 45.6%)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, claiming as an indigenous villager of Tung Tsz¹, seeks planning permission to build an NTEH (Small House) on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in the “AGR” zone requires planning permission from the Town Planning Board (the Board).

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

Total floor area	:	175.71m ²
No. of storeys	:	3
Building height	:	8.23m
Roofed over area	:	58.57m ²

1.3 Layout of the proposed Small House development and the proposed sewerage connection are shown on **Drawings A-1** and **A-2** respectively. The uncovered area is proposed for garden and agricultural purposes.

¹ The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the indigenous villager status of the applicant has not yet been ascertained.

- 1.4 In support of the application, the applicant has submitted an application form dated 25.1.2018 with the attachment (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application stated in Part 9 of the application form at **Appendix I** are summarized as follows:

- (a) the applicant is an indigenous villager of Tai Po and is entitled for construction of a Small House under the Small House Policy;
- (b) the Site falls within an area partly zoned “V” and partly zoned “AGR”. A planning application was once submitted by the applicant with a proposed footprint of Small House straddling the “V” and “AGR” zones, which was rejected by the Board. The applicant has revised the layout so that the Small House footprint is now entirely within the “V” zone in the current application;
- (c) the applicant could obtain the written consents from the adjacent lot owners for laying the sewer pipes for connection with the public sewerage system constructed by the Drainage Services Department in the area to ensure that no pollution occurs to the Water Gathering Ground (WGG); and
- (d) should the application be approved by the Board with conditions, the applicant will submit a sewerage connection proposal for DSD’s approval.

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 for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. On 23.8.2002, criterion (i) which requires that the application site, if located within 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 Applications

- 5.1 Part of the Site (i.e. Lot 1287 S.A in D.D. 8) is the subject of two previous applications (No. A/NE-LT/522 and 557) submitted by the same applicant for the same use which were rejected by the Committee on 12.12.2014 and 18.12.2015 mainly for the reasons of being not in line with the planning intention of “AGR” zone and non-compliance 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 of the concerned villages and land being still available within the “V” zone of the concerned villages for Small House development. Application No. A/NE-LT/522 was also rejected on the ground of not being able to be connected to the existing or planned sewerage system. Compared with two previously rejected applications, about 57% of the proposed Small House footprint was within the “V” zone under the previous application, whilst the site area has been enlarged and the Small House footprint is slightly reduced under the current application. The Small House footprint is now entirely within the “V” zone.

- 5.2 Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plans A-1 and A-2a**.

6. Similar Applications

- 6.1 There are 14 similar applications for Small House development in the vicinity of the Site and within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plans A-1 and A-2a**).
- 6.2 Nine applications (No. A/NE-LT/280, 296, 335, 429 and 478 to 482) for Small House developments were approved with conditions by the Committee between 2003 and 2013 mainly on the grounds that the proposed developments were in compliance with the Interim Criteria in that more than 50% of the proposed Small Houses fell within the village ‘environs’ (‘VE’); there was a general shortage of land to meet the Small House demand in the “V” zone of the concerned villages; and the proposed developments were able to be connected to the planned sewerage system. Applications No. A/NE-LT/478 to 482 were also approved for the reason of being the subject of previously approved application.
- 6.3 Five applications (No. A/NE-LT/287, 505, 521, 556 and 604) were rejected by the Committee/the Board upon review between 2003 and 2017. Apart from the reason of being not in line with the planning intention of the “AGR” zone, Applications No. A/NE-LT/287, 505 and 521 were also rejected on the grounds of being not able to be connected to the existing or planned sewerage system; and Applications No. A/NE-LT/505, 521, 556 and 604 were also rejected for the reason of not complying with the Interim Criteria in that there was no general shortage of land for Small House development in the “V” zone; and/or land was still available for Small House development within the “V” zone of the concerned villages.
- 6.4 Another similar application (No. A/NE-LT/633) will be considered at the same meeting.
- 6.5 Details of the above similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1 and A-2a**.

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

7.1 The Site is:

- (a) a piece of fallow agricultural land; and
- (b) located at the northwestern fringe of Lam Tsuen San Tsuen.

7.2 The surrounding areas are predominantly rural in character with a mix of village houses, agricultural land and vegetated fields. Lam Tsuen River is about 50m to the west. Area to the north of the Site is being used for parking of vehicles and a row of village houses located on a higher platform is found about to the immediate east of the Site.

8. **Planning Intentions**

8.1 The planning intention of the “V” zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. 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.

8.2 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. **Comments from Relevant Government Departments**

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

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - Footprint of the Small House - Application site	100% 54.4%	- 45.6%	- The remaining portion of the Site falls entirely within the “AGR” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	100% 54.4%	- 45.6%	- More than 50% of the Site and the footprint of the proposed Small House fall entirely within ‘VE’. District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD)

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				has no objection to the application.
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	<ul style="list-style-type: none"> - Land required to meet Small House demand in Lam Tsuen San Tsuen and San Tsuen Lo Wai is about 3.48 ha (or equivalent to 139 Small House sites). The outstanding Small House applications are 39² while the 10-year Small House demand forecast for the same village is 100. - Land available to meet Small House demand within the “V” zone of the villages concerned: about 2.64 ha (or equivalent to 105 Small House sites) (Plan A2-b).
4.	Compatible with the planning intention of “AGR” zone?		✓	<ul style="list-style-type: none"> - The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from the agricultural development point of view as agricultural infrastructure such as road access and water supply is available and the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		<ul style="list-style-type: none"> - The proposed Small House is not incompatible with the surrounding area which is rural in landscape character occupied by farmland, tree groups and village houses. Village cluster is formed in close proximity of the Site.
6.	Within Water Gathering Ground (WGG)?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application as the proposed

² Among the 39 outstanding Small House applications, there is one Small House application straddling or outside the “V” zone that has already obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>sewer connection is feasible and capacity is available.</p> <ul style="list-style-type: none"> - Approval conditions on connection to public sewers and provision of protective measures to WGG are required.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	<ul style="list-style-type: none"> - The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?		✓	<ul style="list-style-type: none"> - The Commissioner for Transport (C for T) has no in-principle objection to the application.
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application from public drainage viewpoint. - Approval condition on submission and implementation of drainage proposal is required.
11.	Sewerage impact?	✓		<ul style="list-style-type: none"> - The applicant has proposed to connect the proposed Small House to the existing public sewerage at Tong Min Tsuen (Plan A-2a). The Site is about 5530m from the public sewer manhole which has a level difference with the Site. The Director of Environmental Protection (DEP) advises that sewer connection is feasible and capacity is available for the proposed Small House development provided that the applicant can ensure the sewer

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>connection can overcome the level difference, and can obtain consent from the adjacent lot owners for laying and maintaining sewage pipes. He has no objection to the application on condition that the applicant shall connect the proposed Small House to public sewer at his own cost.</p> <p>- Approval conditions on connection to public sewers and provision of protective measures to WGG are required.</p>
12.	Landscape impact?	✓		<p>- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning point of view as no trees are found within the Site and adverse impact on significant landscape resources is not anticipated.</p> <p>- Approval condition on submission and implementation of landscape proposal is recommended.</p>
13.	Geotechnical impact		✓	
14.	Local objections conveyed by DO?		✓	

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Other detailed comments are at **Appendix V**.

- (a) District Lands Officer/Tai Po, Lands Department;
- (b) Director of Environmental Protection;
- (c) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (d) Chief Highway Engineer/New Territories East, Highways Department;
- (e) Chief Engineer/Mainland North, Drainage Services Department;

- (f) Chief Engineer/Project Management, Drainage Services Department;
- (g) Director of Agriculture, Fisheries and Conservation;
- (h) Director of Fire Services;
- (i) Chief Engineer/Construction, Water Supplies Department; and
- (j) Director of Electrical and Mechanical Services.

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

- (a) Commissioner for Transport;
- (b) Project Manager (North), 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 Comments Received During Statutory Publication Period (Appendix VI)

On 2.2.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received from the World Wide Fund For Nature Hong Kong and individuals objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zones; not complying with the Interim Criteria in that there was no general shortage of land within the “V” zone for Small House development; land being still available within “V” zone for Small House development; having adverse environmental impact; and setting of undesirable precedent.

11. Planning Considerations and Assessments

11.1 The Site falls partly within an area zoned “V” (about 54.4%) and partly within the “AGR” zone (about 45.6%) (**Plan A-2a**). 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. DAFC does not support the application from the agricultural development point of view as agricultural infrastructure such as road access and water supply is available and the Site possesses potential for agricultural rehabilitation.

11.2 According to the DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Lam Tsuen San Tsuen is 39 while the 10-year Small House demand forecast is 100. Based on the latest estimate by the Planning Department, about 2.64 ha (or equivalent to about 105 Small House sites) of land are available within the “V” zone of the concerned villages. As more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of the concerned village, DLO/TP, LandsD has no objection to the application.

- 11.3 The Site is a piece of fallow agricultural land located on the northwestern fringe of Lam Tsuen San Tsuen (**Plan A-2a**). There are village houses situated about to the immediate east of the Site. The proposed development is not incompatible with the surrounding area which is predominantly rural in character with a mix of farmland, tree groups and village houses (**Plan A-3**). CTP/UD&L of PlanD has no objection to the application from landscape planning point of view as adverse impact on significant landscape resources from the proposed development is not anticipated. Though the Site is located adjacent to the existing village cluster, they are separated by a man-made slope with a level difference (**Plans A-2a and A-4**).
- 11.4 The Site falls within the upper indirect WGG. CE/MN, DSD advises that the Site is within an area where connections to existing sewerage networks are available in the vicinity (**Plan A-2a**) and the applicant has proposed to connect the proposed Small House to the existing public sewerage system at Tong Min Tsuen (**Drawing A-2**). Both DEP and CE/C of WSD have no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at his own cost. However, DEP advises that sewer connection is feasible and capacity is available provided that the applicant can ensure that the sewer connection can overcome the level difference, and can obtain consent from the adjacent lot owners for laying and maintaining sewage pipes. It is noted that the proposed sewerage connection involves a few private lots (**Plan A-2a**) and no owners' consents of the concerned lots have been provided by the applicant. Other relevant Government departments including C for T, CE/MN of DSD, CHE/NTE of HyD, H(GEO) of CEDD and D of FS have no objection to or adverse comment on the application.
- 11.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the 'VE' of Lam Tsuen San Tsuen and the proposed development within WGG would be able to be connected to the public sewerage system (**Plan A-2a**). While land available within the "V" zone (about 2.64 ha or equivalent to about 105 Small House sites) is insufficient to fully meet the future Small House demand, it is capable to meet the 39 outstanding Small House applications (**Plan A-2b**). 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. In this regard, it is considered more appropriate to concentrate the proposed Small House developments within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 11.6 The Site is the subject of two previous applications (No. A/NE-LT/522 and 557) for the same use submitted by the same applicant. Amongst other reasons, Application No. A/NE-LT/522 was rejected in 2014 on the ground of not being able to be connected to the existing or planned sewerage system in the area. In 2015, Application No. A/NE-LT/557 was submitted with the same layout of proposed Small House that about 57% of the proposed Small House footprint was within the "V" zone. That application was rejected mainly for

reasons of being not in line with the planning intention of the “AGR” zone; and 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” zone³. The circumstances of the current application are different from the previous applications. Although the revised footprint of the proposed Small House is now entirely within the “V” zone, and there is general shortage of land in the “V” zone of concerned villages for Small House development, land available within the “V” zone is still able to meet the outstanding applications. As mentioned above, the Board has in recent years adopted a more cautious approach in considering Small House application.

- 11.7 Out of 14 similar applications within the same “AGR zone, there are 12 applications located in close vicinity of the Site (**Plan A-2a**). Seven of them (Applications No. A/NE-LT/335, 429 and 478 to 482) were approved by the Committee with conditions mainly on the grounds that the proposed developments were generally in line with the Interim Criteria. Applications No. A/NE-LT/478 to 482 were also approved on sympathetic consideration for being the subject of a previously approved application. For the five rejected cases (Applications No. A/NE-LT/287, 505, 521, 556 and 604), they were rejected mainly for the reasons of being not in line with planning intention of the “AGR” zone; and/or being not in compliance with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in “V” zone at the time of consideration and land was still available for Small House development within the “V” zone of the concerned villages; and/or not being able to be connected to the existing or planned sewerage system. The circumstances of the current application is similar to Application No. A/NE-LT/604 which was recently rejected by the Committee in April 2017 based on a more cautious approach.
- 11.8 Regarding the public comments objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zones; not complying with the Interim Criteria in that there was no general shortage of land within the “V” zone for Small House development; land being still available within “V” zone for Small House development; and setting of undesirable precedent, Government departments’ comments and the planning assessments and considerations 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 which is primarily to retain and safeguard good quality

³ According to the information provided by LandsD for application No. A/NE-LT/557 on 5.11.2015, the total number of outstanding Small House applications for Lam Tsuen San Tsuen was 40 while the 10-year Small House demand forecast was 62 at that time. Based on the estimate by Planning Department, about 2.95ha (or equivalent to about 118 Small House sites) of land was available within the “V” zone of the concerned villages.

agricultural land/farm/fish ponds for agricultural purposes and 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 current submission for a departure from the planning intention; and

- (b) land is still available within the “V” zone of Lam Tsuen San Tsuen and San Tsuen Lo Wai which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **16.3.2022**, 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 submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (d) 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 approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form and attachment received on 25.1.2018
Appendix II	Relevant Revised Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories (promulgated on 7.9.2007)
Appendix III	Previous applications
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses
Drawing A-1	Site plan submitted by the applicant
Drawing A-2	Sewerage connection proposal submitted by the applicant
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within "V" zone
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MARCH 2018**