

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/636

- Applicant** : Mr. CHEUNG Chi Lun represented by Ms. LEE Yin Ho
- Site** : Lots 702 S.A ss.3 and 704 S.A ss.3 in D.D. 19, She Shan Tsuen, Lam Tsuen, Tai Po, New Territories
- Site Area** : About 103.1m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
- Zonings** : "Agriculture" ("AGR")
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, claiming as an indigenous villager of Sha Lo Tung Cheung Uk¹, 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)' use within 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 | : | 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 development and the proposed sewerage connection are shown on **Drawings A-1** and **A-2** respectively.

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 with the attachment (**Appendix I**) and further information on a sewerage connection proposal with written consents from two affected lot owners were received on 31.5.2018 and 5.6.2018 respectively (**Appendices Ia and Ib**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the application form at **Appendix I**. They can be summarized as follows:

- (a) although the proposed Small House will be constructed within the “AGR” zone, it is located close to the “Village Type Development” (“V”) zone of She Shan Tsuen;
- (b) there is no agricultural activities on the Site, therefore the proposed development will not cause any adverse environmental impacts to the surroundings;
- (c) the Site is generally flat and located at the fringe of She Shan Tsuen with a distance away from existing village houses, and thus construction of the proposed development will not cause adverse impacts to residents nearby;
- (d) the design of the proposed Small House will be compatible with the surrounding environment;
- (e) the proposed Small House will be connected to the public sewerage system to avoid water pollution; and
- (f) the Site is an abandoned agricultural land, and using it for residential purpose can solve housing problem and revitalize the land.

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 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**

There is no previous planning application at the Site.

6. **Similar Applications**

- 6.1 There are 13 similar applications involving nine sites 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**). Nine of them were approved and the remaining four were rejected.
- 6.2 Applications No. A/NE-LT/379, 380 and 391 were approved in 2008 mainly on the grounds that the applications were in line with the Interim Criteria in that more than 50% of the Small House footprint was within the 'VE' ; there was a general shortage of land to meet the demand for Small House development in the "V" zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Application No. A/NE-LT/484 was approved in 2013 mainly on the grounds of having similar applications approved (No. A/NE-LT/379, 380 and 391) in the vicinity of the application site and being in compliance with the Interim Criteria. Despite the Board's adoption of a more cautious approach in 2015, applications No. A/NE-LT/575, 576 and 577 were approved by the Committee in 2016 mainly on sympathetic consideration as the application sites were the subject of previously approved applications (No. A/NE-LT/380, 391 and 379) and there had been no major change in planning circumstances. Application No. A/NE-LT/587 was also approved by the Committee in 2016 as only a very minor portion of the proposed Small House footprint fell outside the "V" zone.
- 6.3 Application No. A/NE-LT/397 was rejected in 2009 for the reasons of being not in line with the planning intention of "AGR" zone; and not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside both the "V" zone and the 'VE'. Subsequently, application No. A/NE-LT/414 submitted by the same applicant of No. A/NE-LT/397 was approved in 2011 for the reasons that the proposed Small House footprint had been revised so that more than 50% of the proposed footprint fell within the "V" zone; there was a general shortage of land to meet the demand for Small House development in the "V" zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area.
- 6.4 For the other three rejected applications (No. A/NE-LT/490, 492 and 493), they were rejected by the Committee/the Board upon review in 2013 to 2014 mainly on the grounds of being not in line with the planning intention of "AGR" zone; not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside both the "V" zone and the 'VE'; and the proposed development was not able to be connected to the existing or planned sewerage system. Application No. A/NE-LT/492 was

also rejected by the Committee for the reason of having adverse landscape impact on the surrounding area.

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

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) generally flat and situated to the west of She Shan Tsuen;
- (b) mainly covered with grass and weeds; and
- (c) traversed by a footpath leading to She Shan Road.

7.2 The surrounding areas are predominantly rural in character with a mix of village houses, active and fallow agricultural land and tree groups. The village proper of She Shan Tusen is to the east of the Site.

8. **Planning Intention**

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

9. **Comments from Relevant Government Departments**

9.1 The 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 proposed Small House - Application site	- -	100% 100%	- The Site and the proposed Small House footprint fall entirely within the “AGR” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
2.	<p>Within 'VE'?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small House - Application site 	<p>100%</p> <p>100%</p>	<p>-</p> <p>-</p>	<ul style="list-style-type: none"> - The Site and the proposed Small House footprint fall entirely within the 'VE' of She Shan. - District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	<p>Sufficient land in "V" zone to satisfy outstanding Small House applications and 10-year Small House demand?</p>		<p>✓</p>	<ul style="list-style-type: none"> - Land required to meet Small House demand: about 2.48 ha (or equivalent to 99 Small House sites). The outstanding Small House applications are 19² while the 10-year Small House demand forecast is 80. - Land available to meet Small House demand within the "V" zone of the village concerned: about 1.6 ha (or equivalent to 64 Small House sites) (Plan A-2b).
4.	<p>Compatible with the planning intention of "AGR" zone?</p>		<p>✓</p>	<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 there are active agricultural activities in the vicinity and agricultural infrastructure is available. The Site possesses potential for agricultural rehabilitation.
5.	<p>Compatible with surrounding area/development?</p>	<p>✓</p>		<ul style="list-style-type: none"> - The proposed Small House is not incompatible with the surrounding areas which are rural in character with active and fallow agricultural land, village houses and tree groups.

² Among the 19 outstanding Small House applications, 7 of them fall within the "V" zone and 10 straddle or outside the "V" zone and 2 have no specified location. For those applications straddling or being outside the "V" zone, 2 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
6.	Within 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 Small House is able to be connected to the existing public sewerage system. - 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) in general has reservation on the application but considers that the application only involving the development of a Small House can be tolerated.
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint but advises that the proposed sewerage alignment might have conflict with existing drainage facilities.
11.	Sewerage impact?		✓	<ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) has no objection to the application as there is public sewerage available at She Shan Tsuen and sewer connection is feasible and capacity is available.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				- Nonetheless, the sewerage connection proposal appears to have conflicts with existing DSD's facilities. The applicant should review his sewerage connection proposal.
12.	Landscape impact?	✓		- The Chief Town Planner/ Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from the landscape planning perspective as approval of the application would set an undesirable precedent to similar developments encroaching onto the "AGR" zone. The cumulative effect of approving similar applications would result in changing of landscape character and causing adverse landscape impact to the area. - Since the footprint of the proposed house covers most of the Site, there is inadequate space for landscaping within the Site. Should the application be approved, the standard condition for submission and implementation of landscape proposal is not recommended.
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 IV**.

- (a) District Lands Officer/Tai Po, Lands Department;
- (b) Director of Environmental Protection;
- (c) Commissioner for Transport;
- (d) Chief Engineer/Mainland North, Drainage Services Department;
- (e) Chief Engineer/Construction, Water Supplies Department;

- (f) Chief Town Planner/Urban Design & Landscape, Planning Department;
- (g) Director of Fire Services;
- (h) Director of Agriculture, Fisheries and Conservation; and
- (i) Director of Leisure and Cultural Services.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Director of Electrical and Mechanical Services;
- (c) Project Manager/North, Civil Engineering and Development Department;
- (d) District Officer/Tai Po, Home Affairs Department; and
- (e) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.

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

On 24.4.2018 and 15.6.2018, the application and further information were published for public inspection. During the first three weeks of the statutory public inspection periods, eight public comments were received from Resident Representative of She Shan Tsuen, indigenous villagers of She Shan Tsuen, World Wide Fund for Nature, Designing Hong Kong, Hong Kong Bird Watching Society and an individual. One of them supports the application because of inadequate private land in the village concerned, while the remaining seven object to the application for reasons that the Site is located in Fung Shui area and not within "V" zone; the applicant is of different ancestry from She Shan Tsuen villagers; the proposed development is not in line with the planning intention of "AGR" zone and would set an undesirable precedent.

11. Planning Considerations and Assessments

11.1 The Site falls entirely within the "AGR" zone. The proposed Small House 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 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 there are active agricultural activities in the vicinity and agricultural infrastructure such as footpath and water supply is available. The Site possesses potential for agricultural rehabilitation.

11.2 According to DLO/TP, LandsD's record, the total number of outstanding Small House applications for She Shan is 19 while the 10-year Small House demand forecast is 80. Based on the latest estimate by the Planning Department, about 1.6 ha (or equivalent to about 64 Small House sites) of land are available within the subject "V" zone. As the proposed Small House footprint falls entirely within the 'VE' of She Shan, DLO/TP of LandsD has no objection to the application.

- 11.3 The Site situated to the north of She Shan Tsuen (**Plan A-2a**) is mainly covered with grasses and weeds and traversed by a footpath (**Plan A-4**). The proposed development is not incompatible with the surrounding area which is predominantly rural in character with a mix of village houses, active and fallow agricultural land and tree groups. While adverse impact to landscape resources arising from the proposed development is not anticipated, CTP/UD&L of PlanD has some reservations on the application from landscape planning point of view as approval of the application would set an undesirable precedent to similar development encroaching onto the "AGR" zone, and the cumulative effect of approving similar applications would cause a change in the landscape character and adverse landscape impact to the area.
- 11.4 The Site falls within the upper indirect water gathering ground. According to DEP, there is a public sewerage system in She Shan Tsuen (**Plan A-2a**) and sewer connection is feasible and capacity is available provided that the applicant can obtain consents from the affected lot owners. In this regard, the applicant has submitted a sewerage connection proposal and written consents from two affected lot owners (**Appendices Ia** and **Ib**). 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 and adequate space within the Site will be reserved for connection. Nonetheless, the applicant should be advised to review the sewerage connection proposal as it may have conflicts with existing drainage facilities. Besides, C for T in general has reservation on the applicant but considers that the application only involving the development of a Small House can be tolerated. Other relevant Government departments including 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 She Shan (**Plan A-1**) and the proposed development would be able to be connected to public sewerage system (**Plan A-2a**). Whilst land available within the "V" zone for Small House development (about 1.6 ha or equivalent to about 64 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is capable to meet the 19 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. In this regard, 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 infrastructures and services.
- 11.6 Although there were similar approved applications for Small House development in close vicinity of the Site (**Plan A-2a**), applications No. A/NE-LT/379, 380, 391 and 484 were approved before the Board's adoption of a more cautious approach in approving applications for Small House development. For applications No. A/NE-LT/575 to 577, they were approved in 2016 mainly based on sympathetic consideration as the application sites are the subject of previous approved applications (No. A/NE-LT/380, 391 and

379). Regarding application No. A/NE-LT/492, it was rejected by the Board upon review in 2014 on the grounds of being not in line with the planning intention of the “AGR” zone and having adverse landscape impact to the surrounding areas. The circumstances of the current application is similar to this rejected application.

- 11.7 Regarding the public comments objecting to the application mainly for reasons of being not in line with the planning intention of “AGR” zone and setting undesirable precedent, 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 “AGR” 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 application does not comply with the Interim Criteria for Consideration of Applications for New Territories Exempted House/Small House in New Territories in that the proposed development would cause adverse landscape impact on the surrounding areas; and
- (c) land is still available within the “V” zone of She Shan Tsuen 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 3.8.2022, 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 drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;

- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; 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 VI**.

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 16.4.2018
Appendix Ia	Further information received on 31.5.2018
Appendix Ib	Further information received on 5.6.2018
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Similar applications
Appendix IV	Detailed comments from relevant government departments
Appendix V	Public comments
Appendix VI	Advisory clauses
Drawing A-1	Site plan submitted by the applicant
Drawing A-2	Sewerage 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 the "V" zone
Plan A-3	Aerial photo
Plan A-4	Site photo