

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-LT/638**

<b><u>Applicant</u></b>	Mr. CHAN Harvey Ka Shing represented by T.H. & Associates Limited
<b><u>Site</u></b>	Lot 1148 RP in D.D. 19, Lam Tsuen San Tsuen, Tai Po, New Territories
<b><u>Site Area</u></b>	About 122.8m <sup>2</sup>
<b><u>Lease</u></b>	Block Government Lease (demised for agricultural purpose)
<b><u>Plan</u></b>	Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
<b><u>Zoning</u></b>	“Agriculture” (“AGR”)
<b><u>Application</u></b>	Proposed House (New Territories Exempted House (NTEH) - Small House)

**1. The Proposal**

- 1.1 The applicant, who claims to be an indigenous villager (IV) of Lam Tsuen San Tsuen<sup>1</sup>, 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 <sup>2</sup> |
| Number of storeys | : | 3                    |
| Building height   | : | 8.23m                |
| Roofed over area  | : | 65.03m <sup>2</sup>  |
- 1.3 Layout of the proposed Small House and the proposed sewerage connection are shown on **Drawings A-1** and **A-2** respectively.
- 1.4 In support of the application, the applicant has submitted an application form dated 8.6.2018 with the attachment (**Appendix I**).

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<sup>1</sup> The District Lands Officer/ Tai Po, Lands Department (DLO/TP, LandsD) advises that the eligibility of Small house grant has yet to be ascertained.

## **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 Lam Tsuen San Tsuen;
- (b) about 12% of the proposed Small House falls within the village 'environs' ('VE') of Lam Tsuen San Tsuen;
- (c) there is limited land available for Small House development in the "V" zone of Lam Tsuen San Tsuen and there is a high demand of Small House application. The applicant is nearly impossible to acquire land within the "V" zone for Small House development;
- (d) the proposed development is compatible with the rural environment and will not create any adverse visual impact to the surrounding area. No tree felling is required for the proposed Small House development and there is no ditch or stream course within 30m of the Site;
- (e) at present, there is no vehicular access leading to the Site and it can only be accessed on foot. Therefore, the proposed development would not cause any adverse traffic impacts to the surrounding; and
- (f) a similar application (No. A/NE-LT/408) for Small House development within the "AGR" zone was approved by the Board in the past.

## **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. Background**

The Site has not been involved in any previous nor active enforcement action.

## 6. Previous Application

There is no previous application at the Site.

## 7. Similar Applications

- 7.1 There are 52 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**).
- 7.2 Regarding the approved applications, six of them (No. A/NE-LT/273, 328, 329, 334, 355 and 364) were approved with conditions by the Committee between 2002 and 2006 mainly for reasons of being generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the 'VE'; there was a general shortage of land to meet the demand for Small House development in the concerned "V" zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area (except application No. A/NE-LT/273<sup>2</sup>). Subsequently, four applications (No. A/NE-LT/408, 464, 467 and 624), which were the subject of previously approved cases, were approved between 2010 and 2017 based on sympathetic consideration. The remaining three applications (No. A/NE-LT/452, 456 and 593) were approved between 2012 and 2016 mainly for the reasons that the proposed house was considered as an infill development.
- 7.3 For application No. A/NE-LT/459 which involved two proposed Small Houses, House No. 1 was approved in 2012 under sympathetic consideration that the majority of the footprint of the proposed Small House fell within the "V" zone (about 83%) whereas House No. 2 with less than 50% of its footprint falling within the "V" zone was rejected as it did not warrant the same sympathetic consideration. Subsequently, application No. A/NE-LT/475 covering the rejected Small House site with more than 50% its footprint within the "V" zone was approved in 2013 under sympathetic consideration.
- 7.4 For the 36 rejected applications, 20 of them (applications No. A/NE-LT/281 to 285, 302 to 306, 319 to 327 and 337) were rejected by the Committee/the Board on review between 2003 and 2005 for the reason of not being able to be connected to existing or planned sewerage system in the area. In 2011, application No. A/NE-LT/435 was rejected mainly for the reasons of not being able to be connected to existing or planned sewerage system in the area; and there was no general shortage of land in meeting the demand for Small House development in the concerned "V" zone(s) at the time of consideration. Another ten applications (No. A/NE-LT/488, 491, 496, 500, 509, 552, 563, 566, 567 and 602) were rejected on the ground of being not in line with the planning intention of the "AGR" zone; there was no general shortage of land in meeting the demand for Small House development in the concerned "V" zone(s) at the time of consideration; and land was still available within the concerned "V" zone(s) for Small House development. Applications No.

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<sup>2</sup> Application No. A/NE-LT/273 had been approved before the incorporation of criterion (i) on sewerage connection requirement in August 2002.

A/NE-LT/566 and 567 were also rejected as the applicant failed to demonstrate that the proposed development located within WGG would not cause adverse impact on the water quality in the area. The other five applications (No. A/NE-LT/589, 590, 591, 612 and 613) were rejected between December 2016 and July 2017 mainly for the reason that land was still available within the concerned “V” zone(s) for Small House development. Besides, application No. A/NE-LT/589 was also rejected on the ground of failing to demonstrate that the proposed development located within WGG would not cause adverse impact on the water quality in the area whereas applications No. A/NE-LT/612 and 613 having adverse landscape impact on the surrounding areas.

- 7.5 Another similar application (No. A/NE-LT/639) for the same use, which is situated to the immediate northwest of the Site, will be considered at the same meeting.
- 7.6 Details of the above similar applications are summarized at **Appendix III** and their locations are shown on **Plans A-1 and A-2a**.

## 8. **The Site and Its Surrounding Areas** (Plans A-1, A-2a and Photos on Plans A-3b and A-4)

8.1 The Site is:

- (a) generally flat, partly covered with weeds and partly hard-paved;
- (b) situated to the eastern fringe of Lam Tsuen San Tsuen and located to the immediate east of an approved application No. A/NE-LT/408 for development of a Small House and south of some temporary structures; and
- (c) connected by a local track leading to Lam Kam Road.

8.2 The surrounding areas are predominantly rural in character with a mix of village houses, fallow agricultural land and scattered tree groups. The village cluster of Lam Tsuen San Tsuen is situated about 10m to the west of the Site.

## 9. **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.

## 10. **Comments from Relevant Government Departments**

10.1 The application have 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.	<p>Within “V” zone ?</p> <ul style="list-style-type: none"> <li>- Footprint of the proposed Small House</li> <li>- Application site</li> </ul>	-	100%	- The Site and the footprint of the proposed Small House fall entirely within the “AGR” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> <li>- Footprint of the proposed Small House</li> <li>- Application site</li> </ul>	7.9%	92.1%	<ul style="list-style-type: none"> <li>- More than 50% of the Site and the footprint of the proposed Small House falls outside the ‘VE’ of San Tsuen Lo Wai and Lam Tsuen San Tsuen (<b>Plan A-2a</b>).</li> <li>- DLO/TP, LandsD does not support the application.</li> </ul>
3.	<p>Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?</p>		✓	<ul style="list-style-type: none"> <li>- Land required to meet Small House demand in Lam Tsuen San Tsuen: about 3.53 ha (or equivalent to 141 Small House sites). The outstanding Small House applications are 41<sup>3</sup> while the 10-year Small House demand forecast for the same village is 100.</li> <li>- Land available to meet Small House demand within the “V” zone of the village concerned: about 2.61 ha (or equivalent to 104 Small House sites) (<b>Plan A-2b</b>).</li> </ul>
4.	<p>Compatible with the planning intention of “AGR” zone?</p>		✓	<ul style="list-style-type: none"> <li>- 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, agricultural infrastructure such as road access is available and the Site possesses potential for agricultural rehabilitation.</li> </ul>

<sup>3</sup> Among the 41 outstanding Small House applications, 29 of them fall within the “V” zone and 12 straddle or outside the “V” zone. For those 12 applications straddling or being outside the “V” zone, one of them has obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
5.	Compatible with surrounding area/development?	✓		- The proposed Small House is not incompatible with the surrounding areas which are predominantly rural in character mainly occupied with village houses, agricultural land and tree groups.
6.	Within WGG?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application as it does not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint falling outside both the 'VE' and the "V" zone.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) has general reservation on the application but considers the application only involving development of a Small House can be tolerated.
10.	Drainage impact?	✓		- 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?		✓	- The Director of Environmental Protection (DEP) has no objection

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				to the application as the applicant has proposed to connect the Small House to the public sewerage at Lam Tsuen San Tsuen ( <b>Plan A-2a</b> ) and sewer connection is feasible and capacity is available for the proposed Small House development.
12.	Landscape impact?	✓		<ul style="list-style-type: none"> <li>- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&amp;L, PlanD) has some reservations on the application from landscape planning point of view as vegetation has been cleared within the Site since 2014 prior to the submission of application and approval of this application would set an undesirable precedent to encourage such unauthorized removal of vegetation.</li> <li>- Since the footprint of proposed Small House covers most of the Site, there is inadequate space for landscaping within the Site. Should the application be approved by the Board, approval condition on submission and implementation of landscape proposal is not recommended.</li> </ul>
13.	Geotechnical impact?		✓	
14.	Local objection received from DO?		✓	

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

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

- (f) Chief Town Planner/Urban Design & Landscape, Planning Department;
- (g) Commissioner for Transport;
- (h) Director of Agriculture, Fisheries and Conservation;
- (i) Director of Electrical and Mechanical Services; and
- (j) Director of Fire Services.

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

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

## 11. Public Comments Received During Statutory Publication Period

On 15.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received from Designing Hong Kong Limited, The Hong Kong Bird Watching Society and an individual (**Appendix V**) objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; loss of agricultural land; adverse landscape impact; land being still available within the “V” zone at Lam Tsuen San Tsuen for Small House development; being an suspected unauthorized development; and setting of undesirable precedent.

## 12. Planning Considerations and Assessments

12.1 The Site falls entirely within the “AGR” zone (**Plan A-2a**). 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, agricultural infrastructure such as road access is available, and the Site possesses potential for agricultural rehabilitation.

12.2 According to DLO/TP, LandsD’s record, the total number of outstanding Small House applications for Lam Tsuen San Tsuen is 41 while the 10-year Small House demand forecast is 100. Based on the latest estimate by the Planning Department, about 2.61 ha (or equivalent to about 104 Small House sites) of land is available within the “V” zone concerned (**Plan A-2b**). Since more than 50% of the footprint of the proposed Small House falls outside the ‘VE’ of San Tsuen Lo Wai and Lam Tsuen San Tsuen, DLO/TP, LandsD does not support the application. CE/C of WSD also objects to the application as it does not comply with the Interim Criteria in that more than 50% of the



proposed Small House footprint falling outside both the 'VE' and the "V" zone.

- 12.3 The Site located at the eastern fringe of Lam Tsuen San Tsuen (**Plan A-2a**) is generally flat, partly covered with weeds and partly hard-paved (**Plan A-4**). The village cluster of Lam Tsuen San Tsuen is situated about 10m to the west of the Site. The proposed development is not incompatible with the surrounding area which is predominantly rural in character with a mix of village houses, agricultural land and tree groups (**Plan A-3b**). Whilst there is no existing tree within the Site, CTP/UD&L of PlanD has some reservations on the application from landscape planning point of view as there has been clearance of vegetation within the Site (**Plans A-3a and A-3b**) and approval of the application will set an undesirable precedent to encourage such unauthorized removal of vegetation and the cumulative effect would lead to degradation of landscape character and cause adverse impact on landscape resources.
- 12.4 The Site falls within the upper indirect WGG. The applicant has proposed to connect the proposed Small House to the existing public sewerage system at Lam Tsuen San Tsuen, which is located 15m away from the Site (**Plan A-2a**). DEP has no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at his own cost and adequate space within the Site will be reserved for connection. Besides, C for T has general reservation on the application but considers the application only involving the development of a Small House can be tolerated. Other relevant Government departments including CE/MN and CE/PM of DSD, CHE/NTE of HyD, H(GEO) of CEDD and D of FS have no objection to or adverse comment on the application.
- 12.5 Regarding the Interim Criteria (**Appendix II**), although the proposed development within WGG would be able to be connected to the public sewerage system (**Plan A-2a**), it does not comply with the Interim Criteria in that more than 50% of the footprint of the proposed Small House development falls outside the "V" zone and 'VE' of the concerned villages. While land available within the "V" zone (about 2.61 ha or equivalent to about 104 Small House sites) is insufficient to fully meet the future Small House demand, it is capable to meet the 41 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 development within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 12.6 There are 52 similar applications within the same "AGR" zone, of which 13 cases are in close proximity to the Site (**Plan A-2a**). Out of the 13 applications, four of them (applications No. A/NE-LT/334, 355, 408 and 456) were approved between 2005 and 2012 before the adoption of a more cautious approach by the Board in approving applications for Small House

development in recent years. For application No. A/NE-LT/593, it was approved in 2016 on special consideration of being bounded by existing village houses. Regarding the eight rejected cases, six of them (applications No. A/NE-LT/496, 509, 552, 563, 566 and 567) were rejected between 2014 and 2016 mainly on the ground of not complying with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration. For the other two applications No. A/NE-LT/612 and 613, they were rejected in July 2017, mainly for the reason of land being still available within the “V” zone for Small House development.

- 12.7 Regarding the public comments objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; loss of agricultural land; land being still available within the “V” zone at Lam Tsuen San Tsuen for Small House development; being an suspected unauthorized development; and setting of undesirable precedent, Government departments’ comments and the planning assessments above are relevant.

### 13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, 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 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 more than 50% of the footprint of the proposed Small House falls outside the “V” zone and the ‘VE’ of Lam Tsuen San Tsuen and San Tsuen Lo Wai; and
- (c) land is still available within the “V” zones 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.

- 13.2 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 the Town Planning Board.

Advisory Clauses

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

**14. Decision Sought**

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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.
- 14.3 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.

**15. Attachments**

Appendix I	Application form and attachments received on 8.6.2018
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	Similar applications
Appendix IV	Detailed comments from relevant Government departments
Appendix V	Public comments
Appendix VI	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
Plans A-3a and A-3b	Aerial photos
Plan A-4	Site photo

**PLANNING DEPARTMENT  
AUGUST 2018**