

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANING ORDINANCE

APPLICATION NO. A/NE-LT/658

<u>Applicant</u>	Mr. CHEUNG Chun Chung represented by Ms. CHAN Kwai Ying
<u>Site</u>	Lots 161 S.A ss.6 and 162 S.A ss.5 in D.D 19, Tong Min Tsuen, Lam Tsuen, Tai Po, New Territories
<u>Site Area</u>	About 130m 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>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, an indigenous villager of Tong Min Tsuen of Tai Po Heung, 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
No. of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²
- 1.3 Layout and section of the proposed Small House as well as the proposed sewerage connection are shown on **Drawings A-1** and **A-2** respectively.
- 1.4 The Site is the subject of a previous application (No. A/NE-LT/429) for the same use submitted by the same applicant, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 6.12.2011. The planning permission subsequently lapsed on 7.12.2015. Compared with the previous application (No. A/NE-LT/429), the footprint and development parameters of the proposed Small House under current application remain the same.

1.5 In support of the application, the applicant has submitted the following documents:

- (a) application form and attachments received on **(Appendix I)** 6.11.2018
- (b) further information providing revised justification **(Appendix Ia)** and minor clarification on sewerage proposal (with written consent of the concerned lot owners) received on 14.11.2018 (*accepted and exempted from publication and recounting requirement*)

2. **Justification from the Applicant**

The justification put forth by the applicant in support of the application as given in Part 9 of the application form at **Appendix I** can be summarized as follows:

- as the existing house is in deteriorating condition, the applicant wishes to seek planning permission from the Board to construct a Small House at the Site.

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**

5.1 The Site is the subject of a previous application (No. A/NE-LT/429) for Small House development submitted by the same applicant, which was approved with conditions by the Committee on 6.12.2011 mainly on the grounds that the proposed development generally complied with the Interim Criteria in that more than 50% of the proposed Small House footprint was within the village ‘environs’ (‘VE’) of Tong Min Tsuen; there was a general shortage of land to meet the demand for Small House development in the “V” zones of the concerned villages at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. The planning permission subsequently lapsed on 7.12.2015.

- 5.2 Details of the above previous application are summarized at **Appendix III** and its location is shown on **Plans A-1** and **A-2a**.

6. Similar Applications

- 6.1 There are nine similar applications for Small House development in the vicinity of the Site within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 A total of eight applications (No. A/NE-LT/280, 296, 335, 478, 479, 480, 481 and 482) were approved with conditions by the Committee between 2003 and 2013 mainly on the grounds of being complied 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 within the concerned “V” zone to meet the Small House demand at the time of consideration; and the proposed development was able to be connected to the planned public sewerage system in the area. Applications No. A/NE-LT/478 to 482 were also approved on the grounds of being the subject of a previously approved application (No. A/NE-LT/335) and there had been no major change in planning circumstances.
- 6.3 For the remaining application (No. A/NE-LT/287), it was rejected by the Board on review on 31.10.2003 mainly on the grounds of not complying with the Interim Criteria in that the proposed Small House was not able to be connected to the existing or planned sewerage system in the area and there was no information in the submission to demonstrate that it would not cause adverse impact on the water quality in the WGG.
- 6.4 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, A-4a and A-4b)

- 7.1 The Site is:
- (a) paved, generally flat and partly occupied by a single storey domestic structure as well as adjoining temporary structures;
 - (b) located at lower level physically separated from the village proper of Tong Min Tsuen to the northeast by a steep slope; and
 - (c) accessible by a local track leading to Lam Kam Road.
- 7.2 The surrounding areas are predominantly rural in character with a mix of village houses, agricultural land and tree groups. The village proper of Tong Min Tsuen is located about 50m to the northeast and Lam Tsuen River is found about 60m to the west.

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 Small House - Application site	- -	100% 100%	- The Site and the footprint of the proposed Small House fall entirely within the “AGR” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	63% 55%	37% 45%	- More than 50% of the footprint of the proposed Small House fall within the ‘VE’ of Tong Sheung Tsuen. - The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	- Land required to meet Small House demand in Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai: about 11.5 ha (or equivalent to 460 Small House sites). The outstanding Small House applications are 29 ¹ while the 10-year Small House demand forecast for the same villages is 431.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		- Land available to meet Small House demand within the “V” zones of the villages concerned: about 2.95 ha (or equivalent to 118 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view against the

¹ Among the 29 outstanding Small House applications, 24 of them fall within the “V” zone and five straddle or outside the “V” zone. For those five applications straddling or being outside the “V” zone, none of them has obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				application from agricultural development point of view as the Site is small in size and surrounded by domestic structures and the potential for agricultural rehabilitation is low.
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 by village houses, farmlands and tree groups.
6.	Within Water Gathering Ground (WGG)?	✓		- 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)?		✓	- 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) in general has reservation on the application but considers that the application only involving the development of a Small House can be tolerated on traffic grounds.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint. - Approval condition on the

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) has no adverse comment on the application as the applicant has proposed to connect the Small House to the existing public sewerage system.
12.	Landscape impact?		✓	- The Chief Town Planner/ Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning perspective as no existing tree is found within the Site and adverse impact on significant landscape resources from the proposed development is not anticipated. - Since there is not adequate space for meaningful landscaping within the Site to benefit the public realm, the standard condition for submission and implementation of landscaping 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 V**.

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

- (h) Chief Engineer/Construction, Water Supplies Department; and
- (i) Director of Electrical and Mechanical Services.

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) Chief Engineer/Project Management, Drainage Services Department;
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (d) Project Manager/North, Civil Engineering and Development Department; and
- (e) District Officer (Tai Po), Home Affairs Department.

10. Public Comment Received During Statutory Publication Period

On 13.11.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment was received from an individual (**Appendix VI**) objecting to the application on the grounds of being not in line with the planning intention of “AGR” zone; not complying with the Interim Criteria; and land being still available within the concerned “V” zones for Small House development.

11. Planning Considerations and Assessments

- 11.1 The Site falls entirely within the “AGR” zone (**Plan A-2a**). The proposed Small House development is not in line with the planning intention of “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. Nevertheless, DAFC has no strong view against the application from agricultural development point of view as the Site is small in size and surrounded by domestic structures and the potential for agricultural rehabilitation is low.
- 11.2 According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai is 29 while 10-year Small House demand forecast for the same villages is 431. Based on the latest estimate by the Planning Department, about 2.95 ha of land (equivalent to about 118 Small House sites) are available within the concerned “V” zones. As more than 50% of the proposed Small House footprint falls within the ‘VE’ of Tong Sheung Tsuen, DLO/TP, LandsD has no objection to the application.
- 11.3 The Site, located to the southwest of Tong Min Tsuen (**Plan A-2a**), is paved and generally flat and partly occupied by a single storey domestic structure as well as adjoining temporary structures (**Plans A-4a and A-4b**). It is located at lower level physically separated from the village proper of Tong Min Tsuen by a steep slope to the immediate east (**Plans A-2a and A-4b**). The proposed development is not incompatible with the surrounding areas which are predominantly rural in character with village houses, active and fallow agricultural land and tree groups (**Plans A-2a and A-3**). CTP/UD&L, PlanD

advises that no tree was found within the Site and he has no objection to the application from landscape planning point of view as adverse impact on significant landscape resources due to the proposed Small House development is not anticipated.

- 11.4 The Site is within the upper indirect WGG. CE/MN, DSD advises that the Site is able to be connected to the public sewerage system in the area (**Plan A-2a**). The applicant has proposed to connect the proposed Small House to the existing public sewerage system with consents obtained from affected lot owners (**Plan A-2a, Drawing A-2 and Appendix Ia**). 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. In view of that a watercourse is located about 14.5m away from the Site, DEP advises that the applicant should follow '*Professional Persons Environmental Consultative Committee Practice Note (ProPECCPN) 1/94 Construction Site Drainage*' to properly handle and dispose of site discharge during construction phase. 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 on traffic grounds. 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 proposed Small House footprint falls within the 'VE' of Tong Min Tsuen and the proposed development located within WGG would be able to be connected to the public sewerage system (**Plan A-2a**). While land available within the "V" zone (about 2.95 ha or equivalent to about 118 Small House sites) is insufficient to fully meet the future Small House demand, it is capable to meet the 29 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.
- 11.6 Nevertheless, the Site is the subject of a previously approved application (No. A/NE-LT/429) submitted by the same applicant with no change to the footprint and the development parameters of the proposed Small House. According to LandsD, the subject Small House grant application has been approved and execution of the Small House grant documents is pending fulfilment of the approval conditions imposed. Hence, sympathetic consideration could be given to the current application based on its exceptional circumstances in that the implementation of the approved Small House development is in an advance stage.
- 11.7 There are seven similar applications in the close vicinity of the Site as shown on **Plan A-2a**. One of them (Application No. A/NE-LT/287) was rejected in 2003 mainly for the reason of not being able to be connected to the existing or planned sewerage system in the area. The other six applications (No. A/NE-LT/335 and 478 to 482) were approved in 2009 and 2013 mainly on the

grounds of being complied 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 concerned "V" zone at the time of consideration; and the proposed development was able to be connected to the planned public sewerage system in the area. Applications No. A/NE-LT/478 to 482 were also approved on the grounds of being the subject of a previously approved application (No. A/NE-LT/335). The circumstances of the current application are similar to these approved cases.

- 11.8 Regarding the public comment objecting to the application mainly on the grounds of being not in line with the planning intention of "AGR" zone; not complying with the Interim Criteria; and land being still available within the concerned "V" zones for Small House development, 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 comment mentioned in paragraph 10, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until **4.1.2023**, 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 VII**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (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; and

- (b) land is still available within the “V” zones of Chung Uk Tsuen, Fong Ma Po, Tong Min Tsuen and San Uk Tsai 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. 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 6.11.2018
Appendix Ia	Further information received on 14.11.2018
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 application
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public comment
Appendix VII	Recommended advisory clauses
Drawing A-1	Site plan and section 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
Plans A-4a and A-4b	Site photos