

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/668

- Applicant** : Mr. SUM William represented by Mr. HUI Kwan Yee
- Site** : Lot 271 S.A ss.1 in D.D. 10, Pak Ngau Shek Ha Tsuen, Tai Po, New Territories
- Site Area** : 189m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
- Zonings** : “Village Type Development” (“V”) (about 62%) and
“Agriculture” (“AGR”) (about 38%)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, who claims himself an indigenous villager of Shui Wo¹, 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, whilst ‘House (NTEH) only’ use is always permitted in the “V” zone, ‘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 is a Column 2 use requiring 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 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 forms part of a previous application (No. A/NE-LT/470) for four proposed Small Houses. Of them, three including the proposed Small House

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

under current application were approved by the Committee. When compared with the previous application, the footprint and development parameters of the proposed Small House under the current application remain the same as in the previously approved scheme.

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) application form and attachments received on 15.5.2019 **(Appendix I)**
 - (b) further information (FI) providing sewerage connection proposal (without written consent from the concerned lot owner) received on 14.6.2019 **(Appendix Ia)**
(accepted but not exempted from publication and recounting requirements)
 - (c) FI providing response to departmental comment received on 2.10.2019 **(Appendix Ib)**
(accepted and exempted from publication and recounting requirements)
 - (d) FI providing minor clarification on the sewerage connection proposal received on 1.11.2019 **(Appendix Ic)**
(accepted and exempted from publication and recounting requirements)
 - (e) FI providing minor clarification on the sewerage connection proposal received on 19.11.2019 **(Appendix Id)**
(accepted and exempted from publication and recounting requirements)
- 1.6 On 2.8.2019, the Rural and New Town Planning Committee (the Committee) agreed to the applicant's request to defer making a decision on the application for two months to allow time for the preparation of FI to address departmental comments. The applicant submitted FI on 2.10.2019, 1.11.2019 and 19.11.2019 respectively. The application is re-scheduled for consideration by the Committee on 29.11.2019.

2. Justifications from the Applicant

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

- (a) the proposed Small House development is located on vacant agricultural land;
- (b) there is no other land available for the proposed Small House development;
- (c) similar Small House developments can be found in the vicinity of the Site; and
- (d) the Small House grant application is still under processing by LandsD. Since the planning permission lapsed on 25.5.2017, a new planning application is required.

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 forms part of a previous application (No. A/NE-LT/470) for four proposed Small House developments. As shown on **Plan A-2a**, three of them (i.e. Houses 1 to 3 with House 1 same as the current application) were approved by the Committee on 24.5.2013 mainly on sympathetic grounds as 96%, 100% and 100% of their respective Small House footprints were within “V” zone, notwithstanding that there was no general shortage of land within the “V” zone concerned at the time of consideration. The remaining Small House (i.e. House 4), with only 73% of its footprint within the “V” zone, was rejected by the Committee on the grounds that there was still sufficient land available within the “V” zone for Small House development at the time of consideration.

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 seven similar applications for Small House development within the same “AGR” zone in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. All the seven applications (No. A/NE-LT/376, 377, 502, 558, 559, 606 and 614) were rejected by the Committee/Board on review between 2008 and 2017.

6.2 Applications No. A/NE-LT/376 and 377 were rejected by the Committee on 7.3.2008 mainly on the grounds of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that the application sites were entirely outside the “V” zone and the ‘VE’; and not being able to be connected to the planned sewerage system in the area.

6.3 As mentioned in paragraph 5.1 above, House 4 under application No. A/NE-LT/470 was rejected by the Committee in 2013. Subsequently, Application No. A/NE-LT/502 submitted by the same applicant for the same use, with the proposed Small House footprint shifted westward towards the “V” zone, was also rejected by the Board on review on 15.8.2014 on the grounds that there

was no general shortage of land within the “V” zone to meet Small House demand and the applicant failed to demonstrate in the submission why there was no alternative land available within areas zoned “V” for the proposed development.

- 6.4 Applications No. A/NE-LT/558, 559, 606 and 614, were rejected by the Committee in 2016 and 2017 mainly for the reasons of not being in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that there was no general shortage of land within the “V” zone for Small House development; failure to connect the proposed development to the existing/planned sewerage system; the proposed development would cause adverse landscape impact on the surrounding area or adverse impact on the water quality of the area; and land was still available within the “V” zone of the concerned village for Small House development.
- 6.5 Details of the above similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

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 covered with natural vegetation;
 - (b) located on the periphery of the “V” zone of Pak Ngau Shek Ha Tsuen;
 - (c) entirely outside the ‘VE’ of Sheung Pak Ngau Shek and Ha Pak Ngau Shek; and
 - (d) accessible via a vehicular access leading to Lam Kam Road.
- 7.2 The surrounding areas are predominantly rural in character with a mix of village houses, active/fallow agricultural land and tree groups. A stream course is located about 40m away to the southeast. Existing village houses are found to the west and southwest of the Site.

8. Planning Intentions

- 8.1 The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and re-provisioning 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.	<p>Within “V” zone?</p> <ul style="list-style-type: none"> - Footprint of the Small House - Application site 	<p>96%</p> <p>62%</p>	<p>4%</p> <p>38%</p>	<ul style="list-style-type: none"> - The remaining portion of the Site and Small House footprint fall within the “AGR” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - Footprint of the Small House - Application site 	<p>-</p> <p>-</p>	<p>100%</p> <p>100%</p>	<ul style="list-style-type: none"> - The Site and the Small House footprint fall entirely outside the ‘VE’ of Sheung Pak Ngau Shek and Ha Pak Ngau Shek. - The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?</p>		✓	<p><u>Land Required</u></p> <ul style="list-style-type: none"> - Land required to meet Small House demand in Pak Ngau Shek: about 3.15ha (or equivalent to 126 Small House sites). The outstanding Small House applications are 26² while the 10-year Small House demand forecast for the same village is 100.
	<p>Sufficient land in “V” zone to meet outstanding Small House applications?</p>	✓		<p><u>Land Available</u></p> <ul style="list-style-type: none"> - Land available to meet Small House demand within the “V” zone of the village concerned: about 3.01 ha (or equivalent to 120 Small House sites) (Plan A-2b).
4.	<p>Compatible with the planning intention of “AGR” zone?</p>		✓	<ul style="list-style-type: none"> - The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application as there are active agricultural activities in the vicinity; agricultural infrastructure such as footpath and water source is available; and the Site possesses potential for

² Among the 26 outstanding Small House applications, 20 of them fall within the “V” zone and 6 of them straddle or outside the “V” zone. For those 6 applications straddling or being outside the “V” zone, none of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character with village houses, abandoned farmlands and scattered tree groups.
6.	Within Water Gathering Ground (WGG)?	✓		- The Director of Environmental Protection (DEP) has no objection to the application as the applicant has proposed to connect the Small House to the existing public sewer at Pak Ngau Shek Ha Tsuen (Plan A-2a) and sewer connection is feasible and capacity is available. - The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application as the proposed Small House will be connected to the public sewerage system. - Approval conditions on connection to public sewers and provision of protective measures to WGG are required.
7.	Sewerage impact?	✓		
8.	Encroachment onto planned road networks and public works boundaries?		✓	
9.	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.
10.	Traffic impact?		✓	- The Commissioner for Transport (C for T) has no in-principle objection to the application.
11.	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 submission and implementation of drainage

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				proposal is required.
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 significant adverse impact to landscape resources arising from the proposed development is not anticipated.
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) Commissioner for Transport;
- (e) Chief Engineer/Mainland North, Drainage Services Department;
- (f) Director of Agriculture, Fisheries and Conservation;
- (g) Director of Fire Services;
- (h) Director of Electrical and Mechanical Services; and
- (i) Chief Engineer/Construction, Water Supplies Department.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) Project Manager/North, 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 24.5.2019 and 21.6.2019, the application and FI were published for public inspection. During the statutory public inspection periods, seven public comments were received from individuals objecting to the application mainly on the grounds that the applicant is not an indigenous villager of the concerned village; there is a similar application (Application No. A/NE-LT/377) close to the Site being rejected by the

Board; there is difficulty for the proposed development connecting to the public sewerage system; proximity to natural slope; locating away from the “V” zone boundary; the proposed development will cause adverse impacts on water quality, environment, ecology and traffic; and suspected “destroy first, develop later” scenario.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House development at the Site mainly zoned “V” (about 62%) and partly zoned “AGR” (about 38%) on the OZP. The proposed 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. DAFC does not support the application from agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as footpath and water source is available; and the Site possesses potential for agricultural rehabilitation.
- 11.2 According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Pak Ngau Shek is 26 while 10-year Small House demand forecast for the same village is 100. Based on the latest estimate by the Planning Department, about 3.01 ha of land (equivalent to about 120 Small House sites) are available within the “V” zone concerned. As the proposed Small House footprint falls partly within the “V” zone, DLO/TP, LandsD has no objection to the application.
- 11.3 The Site, located at the eastern fringe of Pak Ngau Shek Tsuen, is generally flat and covered with natural vegetation. There are village houses situated to the west and southwest 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, abandoned farmlands and scattered tree groups. CTP/UD&L of PlanD has no objection to the application from landscape planning point of view as no existing tree is found within the Site and significant adverse impact on landscape resources arising from the proposed development is not anticipated.
- 11.4 The Site falls within the upper indirect WGG and the applicant has proposed to connect the proposed Small House to the existing public sewerage system at Pak Ngau Shek Ha Tsuen, which is located near the Site (**Plan A-2a**). 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. As the Site is situated about 35m away from a water course, DEP also advises that the applicant should follow ProPECC PN 1/94 Construction Site Drainage to properly handle and dispose of site discharge during construction phase. Other relevant Government departments including C for T, CE/MN of DSD, CHE/NTE of HyD, PM(N) and 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 “V” zone of Pak Ngau Shek 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 (**Plan A-2b**) is insufficient to fully meet the future Small House demand of 126 Small Houses, such available land (about 3.01 ha or equivalent to 120 Small House sites) is capable to meet the 26 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. Nevertheless, the Site forms part of a previous application (No. A/NE-LT/470) for four proposed Small Houses, of which Houses 1 to 3 were approved in 2013. The current application is submitted by the same applicant of House 1 under Application No. A/NE-LT/470. Compared with the previously approved application, there is no change to the Small House footprint and the development parameters. Moreover, as advised by DLO/TP of LandsD, the Small House grant application is under processing. Hence, sympathetic consideration might be given to the current application.

- 11.6 As shown on **Plan A-2a**, there are three similar applications (No. A/NE-LT/376, 377 and 502) for Small House development within the same “AGR” zone in close vicinity of the Site. Applications No. A/NE-LT/376 and 377 were rejected in 2008 mainly for the reasons of not complying with the Interim Criteria in that the application site is entirely outside “V” zone and the ‘VE’ of a recognized village; and not being able to be connected to the planned sewerage system. Application No. A/NE-LT/502 was rejected by the Board on review in 2014 on the grounds that there was no general shortage of land within the “V” zone for Small House development at the time of consideration. The circumstances of the current application are not similar to those rejected similar applications.
- 11.7 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10, 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 has no objection to the application.
- 12.2 Should the Committee decided to approve the application, it is suggested that the permission shall be valid until **29.11.2023**, 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 adequate 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 "Agriculture" ("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 "Village Type Development" ("V") zone of Pak Ngau Shek 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 15.5.2019
Appendix Ia	Further information received on 14.6.2019
Appendix Ib	Further information received on 2.10.2019

Appendix Ic	Further information received on 1.11.2019
Appendix Id	Further information received on 19.11.2019
Appendix II	Relevant revised Interim Criteria for Consideration of Application for NTEH/Small House in 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 comments
Appendix VII	Recommended advisory clauses
Drawing A-1	Location 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
NOVEMBER 2019**