

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

**APPLICATION NO. A/NE-LT/670**

<b><u>Applicant</u></b>	Mr. SUM Chi Chung represented by Mr. HUI Kwan Yee
<b><u>Site</u></b>	Lot 176 in D.D. 8, Shui Wo, Tai Po, New Territories
<b><u>Site Area</u></b>	About 319.3 m <sup>2</sup>
<b><u>Lease</u></b>	Block Government Lease (demised for agricultural use)
<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 of Shui Wo<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 in the “AGR” zone requires planning permission from the Town Planning Board (the Board).

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

Total floor area	:	195.09m <sup>2</sup>
No. of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m <sup>2</sup>

1.3 Layout of the proposed Small House with septic tank is shown on **Drawing A-1**.

1.4 In support of the application, the applicant has submitted the application form and attachment on 10.6.2019 (**Appendix I**).

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<sup>1</sup> The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the applicant’s 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 as stated in Part 9 of the application form at **Appendix I** are summarized as follows:

- (a) the Site is a piece of vacant agricultural land;
- (b) the applicant has no alternative site for the proposed Small House development; and
- (c) there are similar Small House developments in the vicinity of 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**

There is no previous application for the Site.

**6. Similar Applications**

6.1 There are nine 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, six of which were approved with conditions and three were rejected.

6.2 Applications No. A/NE-LT/358, 398, 410 and 486 on two sites were approved by the Committee between 2006 and 2013, mainly on the grounds of complying with the Interim Criteria as the proposed development was able to be connected to the public sewerage system; the proposed Small House footprint fell entirely within the ‘VE’; and there was a general shortage of land to meet Small House demand at the time of consideration. Despite the Board’s adoption of a more cautious approach in 2015, applications No. A/NE-LT/600 and 601 were approved by the Board on review in 2017 mainly on sympathetic considerations as the application sites were infill sites within the existing

village settlement; the sites had low potential for rehabilitation of agricultural activities; and approving the applications would unlikely set an undesirable precedent for similar applications for Small House developments further east where existing vegetation and trees would be affected.

- 6.3 Application No. A/NE-LT/423 was rejected by the Committee in 2011 mainly for the reasons of not complying with the Interim Criteria in that the proposed Small House within the WGG was not able to be connected to the public sewers in the area; and the applicant failed to demonstrate that the proposed development would not cause adverse impact on the water quality in the area nor adverse impact on the existing trees.
- 6.4 Applications No. A/NE-LT/558 and 559 were rejected by the Board on review in 2016 mainly for the reasons 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; the proposed development would cause adverse landscape impact on the surrounding area; and land was still available within the “V” zone of the concerned villages.
- 6.5 Details of the above similar applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

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

- 7.1 The Site is:
  - (a) currently vacant and covered by grasses and trees;
  - (b) located to the south of Shui Wo Village across a natural water course which is a tributary of Upper Lam Tsuen River (an Ecologically Important Stream (EIS)); and
  - (c) sunken from the nearest footbridge.
- 7.2 The surrounding areas are predominantly rural in character with a mix of scattered tree groups, abandoned farmlands and village houses concentrated within “V” zone.

**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.	<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 proposed Small House footprint 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>	100%	-	<ul style="list-style-type: none"> <li>- The Site and the proposed Small House footprint fall entirely within the ‘VE’ of Shui Wo.</li> <li>- The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.</li> </ul>
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"> <li>- Land required to meet Small House demand in Shui Wo: about 0.43 ha (equivalent to 17 Small House sites). The outstanding Small House applications are 17<sup>2</sup> while the 10-year Small House demand forecast was not provided by the Indigenous Inhabitant Representatives (IIR) of Shui Wo .</li> </ul> <p><u>Land Available</u></p> <ul style="list-style-type: none"> <li>- Land available to meet Small House demand within the “V” zone of the village concerned: about 1.36 ha (equivalent to 54 Small House sites) (<b>Plan A-2b</b>).</li> </ul>
	<p>Sufficient land in “V” zone to meet outstanding Small House applications?</p>	✓	-	
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</li> </ul>

<sup>2</sup> Among the 17 outstanding Small House applications, 12 of them fall within the “V” zone and 5 straddle or outside the “V” zone. For those 5 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 the agricultural development point of view as agricultural infrastructure such as road access and water source is available, and the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/development?	✓		- The surrounding areas are predominantly rural in character occupied by scattered tree groups, village houses and abandoned farmlands.
6.	Within Water Gathering Ground (WGG)?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application as septic tank/soakaway system is proposed as sewage disposal method.
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 comment on 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 on traffic grounds.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) does not support the application as flooding has been recorded in the vicinity and the area adjoining the Site is subject to overland flows and/or regular flooding.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
11.	Sewerage impact?	✓		- The Director of Environmental Protection (DEP) does not support the application as the applicant proposed the use of septic tank/soakaway system in WGG.
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 reservation on the application from the landscape planning point of view as the proposed Small House footprint is likely in conflict with some existing trees and no information on tree preservation proposal is provided by the applicant.</li> <li>- As the Site is sunken from the nearest access path, the proposed development may involve site formation and/or slope works. With no related information such as formation level or extent of slope works, adverse impact arising from site formation and/or slope works to existing trees cannot be ascertained.</li> <li>- In view of the Site is adjacent to a natural river course which is a tributary of an EIS, should the application be approved by the Board, approval condition on the submission and implementation of landscape proposal to establish an effective landscape buffer in between is recommended.</li> </ul>
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) 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) Chief Engineer/Construction, Water Supplies Department
- (g) Director of Agriculture, Fisheries and Conservation; and
- (h) Director of Fire 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) Director of Electrical and Mechanical Services;
- (c) Project Manager/North, Civil Engineering and Development Department;
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (e) District Officer/Tai Po, Home Affairs Department.

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

On 18.6.2019, the application was published for public inspection. During the statutory public inspection period, six public comments from The Hong Kong Bird Watching Society, Designing Hong Kong Limited, World Wide Fund for Nature Hong Kong and individuals were received, objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land being still available within “V” zone for Small House development; the Site possesses potential for cultivation; the proposed use of septic tank will pollute the water quality of the adjacent watercourse; and setting of undesirable precedent.

## **11. Planning Considerations and Assessments**

11.1 The application is for a proposed Small House development at the Site zoned “AGR” on the OZP. 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. DAFC does not support the application from the agricultural development point of view as agricultural infrastructure such as road access and water source is available and the Site possesses potential for agricultural rehabilitation.

11.2 According to the DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Shui Wo is 17, while there is no record provided

by the IIR of the village concerned on the 10-year Small House demand forecast. Based on the latest estimate by the Planning Department, about 1.36 ha of land (equivalent to about 54 Small House sites) are available within the “V” zone of the concerned village. As the footprint of the proposed Small House falls entirely within the ‘VE’ of Shui Wo, DLO/TP, LandsD has no objection to the application.

- 11.3 The Site, located to the south of Shui Wo Village (**Plan A-2a**), is currently vacant and covered by grasses and trees. The Site is separated from the village cluster of Shui Wo by a natural water course and the nearest access path is found to the west of the Site. The proposed development is not incompatible with the existing landscape setting which is rural in character occupied by scattered tree groups, village houses and abandoned farmlands. Nevertheless, CTP/UD&L of PlanD has reservation on the application from landscape planning point of view as the proposed Small House footprint is likely in conflict with some existing trees but there is no tree preservation proposal in the applicant’s submission. Also, as the Site is sunken from the nearest access path, the proposed development may involve site formation and/or slope works but no related information such as formation level or extent of slope works has been submitted by the applicant to demonstrate that there would not be adverse impact on existing trees.
- 11.4 The Site falls within the upper indirect WGG. As the applicant has proposed to use septic tank/soakaway system, DEP and CE/C of WSD do not support the application as the proposed development does not comply with the Interim Criteria in that it is not able to be connected to the public sewer for sewage disposal. Moreover, CE/MN of DSD does not support the application as there are records of flooding in the vicinity of the Site and the area adjoining the Site is subject to overland flows and/or regular flooding. 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 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 no adverse comment on the application.
- 11.5 Regarding the Interim Criteria (**Appendix II**), while more than 50% of the proposed Small House footprint falls within the ‘VE’ of Shui Wo, there is sufficient land within the “V” zone (about 1.36 ha or equivalent to about 54 Small House sites) to fully meet the future demand of 17 Small Houses (equivalent to about 0.43 ha). As such, the proposed development does not comply with the Interim Criteria in that there is no general shortage of land in meeting the demand for Small House development in the concerned “V” zone. It is therefore considered more appropriate to concentrate the proposed Small House development within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services. Furthermore, the proposed development located within WGG is not able to be connected to the existing sewerage system and the applicant fails to demonstrate in the submission that the proposed development would not cause adverse impact on the water quality in the area. In addition, as mentioned in paragraphs 11.3 and 11.4 above, the applicant also fails to demonstrate that the proposed development would not have adverse landscape and drainage



impacts on the surrounding area.

- 11.6 There are nine similar applications for Small House development covering seven sites within the same “AGR” zone in the vicinity of the Site (**Plan A-1**). Four of them (applications No. A/NE-LT/358, 398, 410 and 486) were approved between 2006 and 2013 before the Board’s adoption of the cautious approach in August 2015. After that, two applications (No. A/NE-LT/600 and 601) were approved by the Board on review in 2017 mainly on sympathetic considerations as the Sites were infill sites within the existing village settlement; had low potential for rehabilitation of agricultural activities; and approving the applications would unlikely set an undesirable precedent for similar applications for Small House developments further east where existing vegetation and trees would be affected. For the remaining three cases, Application No. A/NE-LT/423 was rejected in 2011 mainly for the reasons of not being able to be connected to the planned public sewers; and failing to demonstrate that the proposed Small House would not cause adverse impact on the water quality in the area and the existing trees located within the site. For Applications No. A/NE-LT/558 and 559, they were rejected in 2016 mainly for the reasons of not complying with the Interim Criteria in that there was no general shortage of land in meeting the Small House demand; it would cause adverse landscape impact on the surrounding area; and land was still available within the “V” zone for Small House development. The planning circumstances of the current application are similar to those rejected cases in terms of not being able to be connected to the public sewerage system; adverse landscape and water quality impacts on the surrounding area; and no general shortage of land/land was still available within the “V” zone for Small House development.
- 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 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 current 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 there is no general shortage of land in meeting the demand for Small House development in the “V” zone of

Shui Wo; the applicant fails to demonstrate that the proposed development located within water gathering grounds would be able to be connected to the existing or planned sewerage system and would not cause adverse impact on the water quality in the area; and the proposed development would not have adverse landscape and drainage impacts on the surrounding area; and

- (c) land is still available within the “V” zone of Shui Wo 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 2.8.2023, 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 landscape proposal to the satisfaction of Director of Planning or of the Town Planning Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (d) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or of the Town Planning Board.

#### Advisory Clauses

The recommended advisory clauses are attached at **Appendix 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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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. Attachments**

Appendix I	Application form and attachment received on 10.6.2019
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
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-4a & 4b	Site photos

**PLANNING DEPARTMENT  
AUGUST 2019**