

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/682

- Applicant** : Mr. CHAN Yiu Wa represented by Mr. HUI Kwan Yee
- Site** : Lots 1712 and 1713 in D.D. 19, Tin Liu Ha Tsuen, Tai Po, New Territories
- Site Area** : About 71.2m²
- Lease** : Block Government Lease (both lots each have an area of 0.01 acre recorded as “house”)
- Plan** : Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Two Houses (New Territories Exempted Houses (NTEHs))

1. The Proposal

1.1 The applicant, owner of the application site (the Site), seeks planning permission to build two houses (NTEHs) at the Site, which falls within an area zoned “AGR” on the approved Lam Tsuen OZP No. S/NE-LT/11 (**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)’ within the “AGR” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of each of the proposed NTEHs are as follows:

Total domestic GFA	:	106.8 m ²
No. of storeys	:	3
Building height	:	8.23m
Roofed over area	:	35.6 m ²
(excluding balcony)		

1.3 Layout of each of the proposed NTEH 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 the following documents:

- (a) application form with attachments received on 17.3.2020 (**Appendix I**)
- (b) supplementary information received on 23.3.2020 (**Appendix Ia**)
- (c) further information (FI) received on 7.4.2020 providing a sewerage connection proposal* (**Appendix Ib**)
- (d) FI received on 13.7.2020 providing a new geotechnical planning review report (GPRR)# (**Appendix Ic**)
- (e) FI received on 20.8.2020 providing a revised GPRR* (**Appendix Id**)
- (f) FI received on 26.8.2020 providing a replacement page of GPRR* (**Appendix Ie**)
- (g) FI received on 11.9.2020 providing clarification on background information* (**Appendix If**)

(# accepted but not exempted from publication and recounting requirements)

(* accepted and exempted from publication and recounting requirements)

1.5 At the request of the applicant, the Rural and New Town Planning Committee (the Committee) agreed on 15.5.2020 and 4.9.2020 to defer the consideration of the application each for two months to allow time for the applicant to prepare FI to support the application. The latest FI was received on 11.9.2020, and the application is scheduled for consideration on 6.11.2020.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application as stated in Part 8 of the application form at **Appendix I** and FI submission at **Appendix If** are summarized as follows:

- (a) the Site comprises two house lots. The applicant, being the registered owner of the Site, has the legal right to build houses on the subject lots in accordance with the lease;
- (b) there are similar village houses already built in the vicinity of the Site;
- (c) the applicant commits to follow traditional village customs and rituals in the construction of the proposed houses without affecting the “fung shui” of the village concerned; and
- (d) after acquisition of the Site, the applicant submitted redevelopment application to Lands Department (LandsD) and has been waiting for LandsD’s reply. The applicant emphasizes that he has not carried out any works, including vegetation clearance and formation of access road, within and near the Site (**Appendix If**).

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. On 23.8.2002, criterion (i) which requires that the application site, if located within the water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

5. Previous Application

There is no previous planning application at the Site.

6. Similar Applications

6.1 While there is no similar application for NTEH development within the same “AGR” zone in the vicinity of the Site, there are 14 similar applications (Nos. A/NE-LT/344, 345, 346, 413, 489, 570, 571, 578, 618, 623, 635, 640, 666 and 679) for Small House development since the first promulgation of the Interim Criteria on 24.11.2000. Out of them, five were approved and nine were rejected.

6.2 Applications No. A/NE-LT/344, 345 and 346 were approved with conditions by the Committee in 2005 and 2006 mainly on the grounds of being in line with the Interim Criteria in that the proposed Small House footprint was entirely within the village ‘environs’ (‘VE’); there was a general shortage of land in the concerned “Village Type Development” (“V”) zone to meet the demand for Small House development at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Subsequently, Applications No. A/NE-LT/489 and 635 submitted by the same applicants of A/NE-LT/344 and 345 were approved by the Committee in 2013 and 2018 respectively mainly on sympathetic grounds as the application site had previous approval.

6.3 The remaining nine applications (No. A/NE-LT/413, 570, 571, 578, 618, 623, 640, 666 and 679) covering five sites were rejected by the Committee/the Board on review between 2011 and 2019 mainly for the reasons of not being in line with the planning intention of “AGR”; not complying with the Interim Criteria in that there was no general shortage of land in the “V” zone to meet the demand for Small House development at the time of consideration; failed to demonstrate that the proposed development located within WGG would be able to be connected to the planned sewerage system in the area; and/or land

was still available within the “V” zone for Small House development.

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

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

7.1 The Site is:

- (a) currently vacant and partly covered with grasses;
- (b) adjoining the south-eastern fringe of the “V” zone for Ha Tin Liu Ha;
- (c) accessible via a footpath from a local track leading to She Shan Road; and
- (d) within the village ‘environs’ (‘VE’) of Ha Tin Liu Ha and the upper indirect WGG.

7.2 The surrounding areas are predominantly rural in character with a mix of village houses, temporary structures, active/fallow agricultural land and tree groups. The village cluster of Ha Tin Liu Ha is situated about 60m to the northwest of the Site.

7.3 There are other lots described as “house” attached to the Block Government Lease, namely Lots 1708, 1709, 1711, 1714 to 1718 and 2212 in D.D. 19 (**Plan A-2**). A two-storey domestic building has been erected on Lot 1716 to the northeast of the Site without planning permission.¹

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 following Government departments have been consulted and their views on the application are summarized as follows:

¹ According to the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD), a warning letter was issued to the lot owner of Lot No. 1716 in D.D. 19 on 26.7.2019 and the said warning letter was registered in the Land Registry on 2.10.2019. LandsD reserves the right to take further lease enforcement actions.

Land Administration

9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site comprises two lots each have the same area of 0.01 acre described as “house” attached to the Block Government Lease;
- (c) the Site falls within ‘VE’ of Tin Liu Ha, and is not covered by any Modification of Tenancy or Building Licence;
- (d) the proposed houses could be regarded as NTEHs under Cap. 121;
- (e) no adverse comment on the proposed domestic GFA, BH and roofed over area for each NTEH as proposed by the applicant; and
- (f) if the application is approved by the Board, LandsD would continue to process the redevelopment application in the capacity of a landlord. If the redevelopment application is approved, it will be subject to such terms and conditions as imposed by LandsD.

Traffic

9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) in general, he has reservation on the application. Such type of development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the “V” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial; and
- (b) notwithstanding the above, he considers that the application only involves development of two houses can be tolerated on traffic grounds.

Landscape

9.1.3 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) the Site is situated within the densely vegetated Ha Tin Liu Ha Fung Shui Woodland, in an area of settled valleys landscape character comprises clusters of trees and village houses within

an area zoned “V” to the immediate west of the Site. The proposed NTEHs are not incompatible with the surrounding area;

- (b) the Site is currently vacant and partly covered with grass. Adverse impact on the existing landscape resources within the Site is not anticipated. However, compared with aerial photo of 2015, vegetation clearance within and surrounding the Site is observed and an access road to the northwest of the Site was formed; and
- (c) there is concern that approval of the application would set an undesirable precedent encouraging more similar developments within the subject “AGR” zone. The cumulative impact of such approval would degrade the landscape quality of the environment, in particular the existing fung shui woodland surrounding the Site.

Environment

9.1.4 Comments of the Director of Environmental Protection (DEP):

- (a) the Site falls within the “AGR” zone, and is within the WGG. The applicant proposes to connect the proposed NTEHs to the existing public sewer at Tin Liu Ha Tsuen, which has sufficient capacity;
- (b) subject to DSD’s confirmation of the technical feasibility of sewerage connection, he has no objection to the application on the conditions that:
 - (i) the proposed houses will be connected to the public sewer at the applicant’s own cost;
 - (ii) written consents shall be obtained from the adjacent lot owners and/or LandsD for laying and maintaining sewage pipes for the proposed houses;
 - (iii) adequate land space within the Site will be reserved for connection of the proposed houses to the public sewer; and
 - (iv) the applicant shall take up full ownership, and construction and maintenance responsibility of the sewerage connection system; and
- (c) the Site falls within the Consultation Zone of Tai Po and Tai Po Tau Water Treatment Works. Based on the information provided, he has no objection to the application from chlorine risk point of view.

Drainage

9.1.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) no in-principle objection to the application from public drainage viewpoint. If the application is approved, a condition on submission and implementation of drainage proposal for the Site is required to ensure that it will not cause adverse drainage impact to the adjacent area;
- (b) there is no public drain maintained by DSD in the vicinity of the Site. The proposed houses should have their own stormwater collection and discharge systems to cater for the runoff generated within the Site and overland flow from other areas surrounding the Site. The proposed developments are located on unpaved ground, which will increase the impervious area resulting in a change of flow pattern and increase of surface runoff and thus flooding risk in the area. The existing natural streams, village drains, ditches and the adjacent areas should not be adversely affected, and the runoff within the subject premises shall not be drained to the public sewerage network. The applicant/owner is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation, and to indemnify the Government against claims and demands arising out of damage or nuisance caused by failure of the system;
- (c) the proposed houses are located within an area where connection to existing sewerage networks are available in the vicinity. Based on the applicant's information, discharge of sewage by gravity from the proposed development to the existing public sewerage network is feasible; and
- (d) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD, Home Affairs Department and/or relevant private lot owners should be sought.

Water Supply

9.1.6 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) no objection to the application;
- (b) the Site is located within upper indirect WGG and more than 30m away from the nearest stream;
- (c) it is noted that DEP has no objection to the application provided that the applicant shall connect the proposed houses to the public sewer. He supports DEP's view by imposing the

following conditions:

- (i) the foul water drainage system of the proposed NTEHs can be connected to the public sewerage system in the area and the applicant shall connect the whole of the foul water drainage system to the public sewerage system;
 - (ii) adequate protective measures shall be taken to ensure that no pollution or siltation occurs to the WGG; and
 - (iii) the applicant shall submit an executed Deed of Grant of Easement for each private lot through which the sewer connection pipes are proposed to pass to demonstrate that it is both technically and legally feasible to install sewerage pipes from the proposed NTEHs to the sewerage system via relevant private lot; and
- (d) for provision of water supply to the proposed development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Agriculture

9.1.7 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) does not support the application from the agricultural development point of view; and
- (b) the Site is a piece of abandoned land. Nevertheless, there are active agricultural activities in the vicinity and agricultural infrastructure such as water source and footpath is available. The Site possesses potential for agricultural rehabilitation.

Fire Safety

9.1.8 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application; and
- (b) the applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

Geotechnical

9.1.9 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

- (a) has no adverse comments on the GPRR submitted by the applicant and no objection to the application; and
- (b) the applicant has committed to undertake a natural terrain hazard study (NTHS) and to implement mitigation measures, if necessary, as part of the proposed development. If the application is approved by the Board, an approval condition is required on the submission of a NTHS and implementation of mitigation measures identified therein to his satisfaction.

9.2 The following Government departments have no comment/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; and
- (d) District Officer/Tai Po, Home Affairs Department.

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

On 17.4.2020 and 28.7.2020, the application and FI were published for public inspection. During the statutory public inspection periods, five public comments were received from the Hong Kong Bird Watching Society, the Designing Hong Kong Limited and an individual 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 the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom for village house development; suspected “destroy first, build later” case; and setting of an undesirable precedent.

11. Planning Considerations and Assessments

11.1 The application is for the proposed development of two NTEHs at the Site zoned “AGR” on the OZP. The proposed NTEHs are 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 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 water source and footpath is available; and the Site possesses potential for agricultural rehabilitation.

- 11.2 The Site, located on the south-eastern fringe of Ha Tin Liu Ha, is partly covered with grasses (**Plan A-2**). The surrounding areas are predominantly rural in character with a mix of village houses, temporary structures, agricultural land and tree groups (**Plans A-2 and A-3**). While CTP/UD&L of PlanD has concern that approval of the application would set an undesirable precedent encouraging more similar developments within the subject “AGR” zone, the Site is adjoining the “V” zone and the proposed NTEHs are not incompatible with the surrounding area.
- 11.3 Furthermore, there is exceptional circumstance which merits sympathetic consideration of the application in that the Site has building status. As advised by DLO/TP of LandsD, the Site comprising two lots which are held under Block Government Lease demised for house use, and the proposed two houses could be regarded as NTEHs under Cap. 121. He has no objection to the total domestic GFA of 106.8m², BH of 3 storeys (8.23m) and roofed over area of 35.6m² for each NTEH as proposed by the applicant. It has been the existing practice of the Board to take into account building status under the lease in considering planning application for house development. As each application would be considered on its individual merits, the approval of the subject application would unlikely set an undesirable precedent for similar applications within the “AGR” zone.
- 11.4 The Site falls within the upper indirect WGG and the applicant has proposed to connect the proposed NTEHs to the existing public sewerage system at Tin Liu Ha Tsuen (**Plan A-2**). CE/MN of DSD advises that the discharge of sewage by gravity from the proposed development to the existing public sewerage network is feasible. Both DEP and CE/C of WSD have no objection to the application provided that the applicant shall connect the proposed NTEHs to the public sewer at his own cost and adequate space within the Site will be reserved for connection. C for T has general reservation on the application but considers that the application involving development of two NTEHs only can be tolerated on traffic grounds. Other relevant Government departments including CHE/NTE of HyD, DEMS, PM(N) and H(GEO) of CEDD and D of FS have no objection to or adverse comment on the application.
- 11.5 While there is no similar application for NTEH development within the same “AGR” zone in the vicinity of the Site, there are 14 similar applications for Small House development as shown on **Plan A-1**. However, the circumstances of the similar applications are not relevant to the subject application.
- 11.6 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10 above, Government department’s 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 decide to approve the application, it is suggested that the permission shall be valid until 6.11.2024, 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 a 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;
- (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; and
- (d) the submission of a natural terrain hazard study and the implementation of the mitigation measures identified therein to the satisfaction of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department or of the Town Planning Board.

Advisory Clauses

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

- 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) the application does not comply with the Interim Criteria in that the proposed development would have adverse landscape impact on the surrounding area.

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 condition(s) and advisory clause(s), if any, 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 17.3.2020
Appendix Ia	Supplementary information received on 23.3.2020
Appendix Ib	Further information (FI) received on 7.4.2020 providing sewerage connection proposal
Appendix Ic	FI received on 13.7.2020 providing GPRR
Appendix Id	FI received on 20.8.2020 providing a revised GPRR
Appendix Ie	FI received on 26.8.2020 providing a replacement page of GPRR
Appendix If	FI received on 11.9.2020 providing clarification on background information
Appendix II	Relevant revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
Appendix III	Similar applications
Appendix IV	Public comments
Appendix V	Recommended advisory clauses
Drawing A-1	Location plan of Lot 1712 in D.D. 19 and sewerage connection proposal submitted by the applicant
Drawing A-2	Location plan of Lot 1713 in D.D. 19 and sewerage connection proposal submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photo