

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/683

<u>Applicant</u>	Mr. CHAN Yat Leung represented by Dickman L.T. CHAN & Co. Solicitors
<u>Site</u>	Lot 882 S.A in D.D. 19, She Shan Tsuen, Lam Tsuen, Tai Po, New Territories
<u>Site Area</u>	About 100.3m 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>Zonings</u>	“Village Type Development” (“V”) (about 55%) “Agriculture” (“AGR”) (about 45%)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, claims to be an indigenous villager of She Shan Tsuen¹, 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)’ 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 The uncovered area of the Site is proposed to be used as circulation area. Layout of the proposed Small House and the proposed sewerage connection are shown on **Drawing A-1**.

¹ District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that no Small House grant application was received and the applicant’s eligibility of Small House grant cannot be ascertained.

- 1.4 The Site is part of the subject of a previous application (No. A/NE-LT/667) for the same use submitted by the same applicant, which was rejected by the Rural and New Town Planning Committee (the Committee) on 6.9.2019. Compared with the previous application (No. A/NE-LT/667), the site area is reduced and the proposed Small House footprint is shifted towards the “V” zone.
- 1.5 In support of the application, the applicant has submitted an application form with attachment (**Appendix I**) on 14.5.2020.

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** are summarized as follows:

- (a) the proposed Small House is for his own use; and
- (b) there is no alternative site in the village concerned for the proposed Small House development.

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

- 5.1 The Site is part of the subject of a previous application (No. A/NE-LT/667) for proposed Small House submitted by the same applicant, which was rejected by the Committee on 6.9.2019 mainly for the reasons of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint falls outside the “V” zone and the ‘VE’ of She Shan; and land being still available within the concerned “V” zone for Small House development.

- 5.2 Compared with the previous application, the site area has been largely reduced from 448.7m² to 100.3m² (-348.4m² or -78%) and the Small House footprint has been revised and shifted to the east towards the “V” zone. Therefore, the Small House footprint falling within “V” zone has been increased from 27.9m² to 41.1m² (i.e. from 43% to 63% within “V” zone).
- 5.3 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 19 similar applications for Small House development in the vicinity of the Site within the “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000, of which 14 were approved and five were rejected.
- 6.2 Applications No. A/NE-LT/316, 317, 379, 380, 391 and 419 were approved by the Committee between 2004 and 2011 mainly on the grounds of being in line 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 “V” zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Application No. A/NE-LT/484 was approved by the Committee in 2013 mainly on the grounds of having similar approved applications (No. A/NE-LT/379, 380 and 391) in the vicinity of the site and being in line with the Interim Criteria. Despite the Board’s adoption of a more cautious approach in 2015, applications No. A/NE-LT/548, 549, 575, 576 and 577 were approved by the Committee between 2015 and 2016 mainly on sympathetic consideration as the sites were the subject of previously approved applications (i.e. No. A/NE-LT/316, 317, 380, 391 and 379) and there had been no major change in planning circumstances. For Application No. A/NE-LT/587, it was approved by the Committee in 2016 mainly because only a very minor portion (about 7%) of the proposed Small House footprint fell outside the “V” zone.
- 6.3 Application No. A/NE-LT/397 was rejected by the Committee in 2009 mainly for the reasons of being not in line with the planning intention of “AGR” zone; and not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside both the “V” zone and the ‘VE’. Subsequently, application No. A/NE-LT/414 submitted by the same applicant of No. A/NE-LT/397 was approved in 2011 mainly because the proposed Small House footprint had been revised so that more than 50% of it fell within the “V” zone; there was a general shortage of land to meet the demand for Small House development in the “V” zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area.
- 6.4 For the remaining four rejected applications (No. A/NE-LT/490, 492, 493 and 636), they were rejected by the Committee/the Board upon review between 2013 and 2018 mainly on the grounds of being not in line with the planning intention of “AGR” zone; not complying with the Interim Criteria in that more

than 50% of the proposed Small House footprint fell outside the “V” zone and/or the ‘VE’; the proposed development was not able to be connected to the existing or planned sewerage system; and/or the proposed development would have adverse landscape impact on the surrounding area. Application No. A/NE-LT/636 was also rejected in 2018 in that land was still available within the “V” zone for Small House development.

6.5 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 Areas (Plans A-1, A-2a and photos on Plans A-3 and A-4)

7.1 The Site is:

- (a) generally flat, paved and currently parked with vehicles;
- (b) accessible from Lam Kam Road via She Shan Road; and
- (c) within the She Shan Tsuen Site of Archaeological Interest.

7.2 The surrounding areas are predominantly rural in character with a mix of village houses, active and fallow agricultural land and scattered tree groups. Village proper of She Shan Tsuen is found to the east 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 reprovisioning 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>63%</p> <p>55%</p>	<p>37%</p> <p>45%</p>	<ul style="list-style-type: none"> - The remaining portions of the Site and the 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>7%</p> <p>13%</p>	<p>93%</p> <p>87%</p>	<ul style="list-style-type: none"> - Major parts of the Site and the Small House footprint fall outside the ‘VE’ of She Shan. - As more than 50% of the proposed Small House footprint falls within the “V” zone, DLO/TP of 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 She Shan: about 1.75 ha (equivalent to 70 Small House sites). The outstanding Small House applications are 20² while the 10-year Small House demand forecast for the same village is 50. <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 1.54 ha (equivalent to 61 Small House sites) (Plan A-2b).
	<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"> - The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure is available; and the Site possesses

² Among the 20 outstanding Small House applications, 9 of them fall within the “V” zone and 11 straddle or outside the “V” zone. For those 11 applications straddling or outside the “V” zone, one of them has obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character with a mix of village houses, active and fallow agricultural land and scattered tree groups. Village proper of She Shan is found to the east of the Site.
6.	Within Water Gathering Ground (WGG)?	✓		- The Director of Environmental Protection (DEP) and the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) have no objection to the application as the Site is able to 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 from traffic engineering point of view.
11.	Drainage impact?	✓		- The Chief Engineer/ Mainland North, Drainage Services Department (CE/MN, DSD) does not support the application as the proposed Small House is located too close to an existing stream course with its footprint less than

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				3m from the engineering channel. The proposed Small House might be eroded and flooded. There might be flooding susceptibility of the adjoining areas affected by the proposed development.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning perspective as no existing tree is found within the Site and adverse impact on existing 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) 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;
- (h) Director of Fire Services;
- (i) Director of Electrical and Mechanical Services; and
- (j) Executive Secretary of Antiquities and Monuments Office, Development Bureau.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager (North), Civil Engineering and Development

- Department;
- (c) Head of Geotechnical Engineering Office, 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 22.5.2020, the application was published for public inspection. During the statutory public inspection period, two public comments were received from Designing Hong Kong 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 She Shan for Small House development; setting of undesirable precedent; the proposed development will cause flooding risk and blockage of passage for villagers to pass through; and the applicant possesses another piece of land within “V” zone.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House development at the Site falling within an area partly zoned “V” (about 55%) and partly zoned “AGR” (about 45%) 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, 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 agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as water source and road access is available; and the Site possesses potential for agricultural rehabilitation.
- 11.2 According to the DLO/TP, LandsD’s record, the total number of outstanding Small House applications for She Shan Tsuen is 20 while the 10-year Small House demand forecast for the same village is 50. Based on the latest estimate by the Planning Department, about 1.54 ha of land (equivalent to 61 Small House sites) are available within the “V” zone concerned. As more than 50% of the proposed Small House footprint falls within the “V” zone, DLO/TP of LandsD has no objection to the application.
- 11.3 The Site, located at the north-western fringe of She Shan Tsuen, is currently vacant and hard-paved. The proposed development is not incompatible with the surrounding area which is predominantly rural in character occupied by village houses, active/fallow farmland and scattered tree groups (**Plans A-2a and A-3**). CTP/UD&L of 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 existing 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 She Shan Tsuen, which is located near the Site (**Plan A-2a**). 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 costs and adequate space within the Site will be reserved for connection. Nonetheless, CE/MN of DSD does not support the application as the proposed Small House, located too close to an existing stream course with its footprint less than 3m from the engineering channel (**Plan A-2a**), might be eroded and flooded. Also, there might be flooding susceptibility of the adjoining areas affected by the proposed development. Other relevant Government departments including C for T, 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 She Shan and the proposed development located within WGG would be able to be connected to the public sewerage system. While land available within the “V” zone (**Plan A-2b**) is insufficient to fully meet the future Small House demand of 70 Small Houses, such available land (about 1.54 ha or equivalent to 61 Small House sites) is capable to meet the 20 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 2015. 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 The Site is part of the subject of a previous application (No. A/NE-LT/667) submitted by the same applicant, which was rejected by the Committee on 6.9.2019 mainly for the reasons of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint falls outside the “V” zone and the ‘VE’; and land being still available within the concerned “V” zone for Small House development. Compared with the previous application, the site area of the current application has been reduced and the proposed Small House footprint has been revised and shifted to the east towards the “V” zone. While the percentage of the proposed Small House footprint falling within “V” zone has been increased from 43% under the previous application to 63% under the current application, there is still land available within the “V” zone to meet the 20 outstanding Small House applications. Therefore, the more cautious approach is still relevant to the current application.
- 11.7 As shown on **Plan A-2a**, there are 19 similar applications for Small House development in close proximity of the Site. Of which, 14 were approved and five were rejected. Of those approved applications, eight applications were approved before the Board’s adoption of a more cautious approach in approving applications for Small House development in 2015. Subsequently,

five applications with previous approvals were approved in 2015 and 2016 mainly on sympathetic consideration, and one application was approved in 2016 on special grounds as over 93% of the proposed Small House footprint fell within the “V” zone. For the five rejected applications, they were rejected between 2009 and 2018 mainly on the grounds of being not in line with the planning intention of “AGR” zone; not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside the “V” zone and/or the ‘VE’; the proposed development was not able to be connected to the existing or planned sewerage system; and/or the proposed development would have adverse landscape impact on the surrounding area. Application No. A/NE-LT/636 was also rejected in that land was still available within the “V” zone concerned for Small House development. The planning circumstances of the current application are similar to the latest rejected application (No. A/NE-LT/636) in that land was still available within the “V” zone for Small House development.

- 11.8 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10 above, Government departments’ comments and the planning assessments above are relevant. With respect to one of the commenters’ claim that the applicant possesses another piece of land within the “V” zone, DLO/TP of LandsD advises that the applicant is the owner of Lots 882 S.A and 882 RP of D.D. 19, which was the application site of the previous application (No. A/NE-LT/667), with a major portion (88%) zoned as “AGR” and a minor portion (12%) zoned as “V”.

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 “Agriculture” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that there is no information in the submission to demonstrate that the proposed development would not have adverse drainage impact on the surrounding area; and
 - (c) land is still available within the “Village Type Development” (“V”) zone of She Shan Tsuen 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

infrastructures and services.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 10.7.2024, 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; 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**.

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, if any, 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 14.5.2020
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
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
JULY 2020**