

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/586

- Applicant** : Mr. TO Lun Fat represented by Ms YU Tsz Shan
- Site** : Lot 310 S.F in D.D.77, Ping Che Kat Tin, Ta Kwu Ling, New Territories
- Site Area** : 111.7 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, who claimed to be an indigenous villager¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ping Che Kat Tin, Ta Kwu Ling (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. 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 “AGR” zone is a Column 2 use, which requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed NTEH (Small House) are as follows:
- | | |
|-------------------|-------------------------|
| Total Floor Area | : 195.09 m ² |
| Number of Storeys | : 3 |
| Building Height | : 8.23 m |
| Roofed Over Area | : 65.03 m ² |
- 1.3 The applicant indicated that the uncovered area of the Site would be used as garden for the proposed Small House. Layout of the proposed Small House and the proposed sewerage connection, are shown on **Drawings A-1 and A-2** respectively.

¹ According to District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be an indigenous villager of Muk Wu of Ta Kwu Ling Heung. His eligibility for Small House concessionary grant has yet to be ascertained.

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

- (a) Application form with attachment received on 27.2.2018 (Appendix I)
- (b) Further information received on 20.3.2018 and 22.3.2018 (Appendix Ia)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 9 of the Application Form in **Appendix I**. They can be summarised as follows:

- (a) the applicant is an indigenous villager and entitled for Small House grant under the Small House Policy. The proposed Small House is located within the village ‘environs’ (‘VE’) of Ping Che Kat Tin; and
- (b) the Site is next to a village road and the proposed Small House development would form part of a cluster of village houses on the other side of the road. Hence the proposed development is not incompatible with the surrounding area.

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 New Territories Exempted House (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. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

5. Previous Applications

- 5.1 The Site is the subject of three previous planning applications (No. A/NE-TKL/114, 335 and 520) for Small House developments submitted by the same applicant. The first application (No. A/NE-TKL/114) for 11 proposed Small Houses on a larger site was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 11.6.1999, before the promulgation of the Interim Criteria in 2000, mainly on the considerations that the site fell within the ‘VE’ of Ping Che Kat Tin; there was a general shortage of land in meeting the demand for Small House development in the “V” zones of Ping Che Village; and the proposed development was generally compatible with the surrounding areas and would unlikely have significant adverse impacts on the surrounding areas. Applications for extension of the validity period of the planning permission were approved three times in 2002, 2004 and 2006, for a total of nine years, until 11.6.2008. As the proposed development had not been commenced by the given date, the planning permission lapsed on 12.6.2008.
- 5.2 The other previous applications (No. A/NE-TKL/335 and 520) for 11 proposed Small Houses on a larger site and a proposed Small House on the same site respectively were

rejected by the Committee on 11.6.2010 and 20.11.2015 respectively mainly on the grounds that the proposed developments were not in line with the planning intention of “AGR” zone; the proposed developments did not comply with the Interim Criteria in that the proposed developments were considered not compatible with the adjoining “Industrial (Group D)” (“I(D)”) zone; the applicant failed to demonstrate in the submissions that the potential industrial/residential interface issue would be mitigated and no adverse sewerage impact on the surrounding areas; land was still available in “V” zones of Ping Che Village; and approval of the application would set an undesirable precedent for similar applications in the area.

- 5.3 Compared with the last previous application (No. A/NE-TKL/520), the site area and major development parameters including the disposition of the proposed Small House generally remain the same.
- 5.4 Details of the previous applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

6. Similar Applications

- 6.1 There are five similar applications for Small House development within / partly within the “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Two applications (No. A/NE-TKL/168 and 186), located to the west of Ping Che Kat Tin, were approved with conditions by the Committee between June and December 2001 respectively mainly on the considerations that the proposed developments were in close proximity to the village cluster and within its ‘VE’ of Ping Che Kat Tin; there was a general shortage of land in meeting the demand for Small House development in the “V” zones of Ping Che Village at the time of consideration; the proposed developments were considered compatible with the surrounding rural and village environment and would unlikely have significant adverse environmental and traffic impacts on the surrounding areas.
- 6.3 The other three applications (No. A/NE-TKL/521, 522 and 523) to the immediate east of the Site were rejected by the Committee on 20.11.2015 mainly on the grounds as stated in paragraph 5.2 above.
- 6.4 Details of the similar applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

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

- 7.1 The Site is:
 - (a) currently vacant, flat and overgrown with grass;
 - (b) located to the south of the existing village cluster of Ping Che Kat Tin, separated by a village road, a pond and some vacant land (**Plan A-2a**); and
 - (c) accessible from Ping Che Road via a local track.

7.2 The surrounding area has the following characteristics:

- (a) predominantly rural in character where village houses, active / fallow agricultural land, vacant land, car repair workshop and warehouse uses, and scattered tree groups are found;
- (b) to the north is a pond and a village road, across which are village houses within “V” zone of Ping Che Kat Tin;
- (c) to the west is active/fallow agricultural land, and to further southwest are warehouses and a car repairing workshop within an area zoned “I(D)” on the OZP;
- (d) to the south is vacant land and Ping Yuen River; and
- (e) to further east are some Small Houses on land zoned “V” and fallow agricultural land.

8. Planning Intention

The planning intention of the “AGR” zone in Ping Che and Ta Kwu Ling area is to primarily 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 summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	- -	100% 100%	The Site and footprint of the proposed Small House fall entirely within “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%	- -	DLO/N, LandsD advises that the Site falls entirely within the ‘VE’ of Ping Che Kat Tin.
3.	Sufficient land in “V” zone to satisfy outstanding Small House application		✓	- Land required to meet the Small House demand in Ping Che Village (including Ping Che, Ping Che Kat Tin and Ping Che Yuen Ha): about

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	and 10-year Small House demand?			5.33 ha (equivalent to 213 Small House sites) ² . The outstanding Small House applications for Ping Che Village are 53 while the 10-year Small House demand forecast for the same village is 160. - Land available to meet the Small House demand within the “V” zones of Ping Che Village: about 4.22 ha (equivalent to 177 Small House sites) (Plans A-2b to A-2d)
4.	Compatible with the planning intention of “AGR” zone?		✓	Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from the agriculture point of view as the Site is a piece of vacant land overgrown with grass. Active agricultural activities can be found in the vicinity, thus the Site possesses high potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		The proposed development is not incompatible with surrounding setting and environment dominated by village houses, fallow agricultural land, vacant land, open storage and scattered tree groups. (Plan A-2a).
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	The Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by LandsD.
9.	Traffic impact?	✓		- The Commissioner for Transport (C

² Among the 53 outstanding Small House applications, there are 12 Small House applications straddling or outside the “V” zone that have already obtained planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>for T) has reservation on the application and advises that Small House 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 developments 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.</p> <p>- Notwithstanding the above, the application involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.</p>
10.	Drainage impact?	✓		The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required.
11.	Environmental impact?	✓		Director of Environmental Protection (DEP) does not support the application. There is an “I(D)” zone about 50m to the west of the Site. Hence, there are potential industrial/residential interface issues associated with the application. However, there is no information/assessment in the application to address this concern.
12.	Sewerage impact?	✓		<p>- DEP does not support the application due to insufficient information provided by the applicant on the sewage discharged of the proposed Small House.</p> <p>- There is an existing sewerage in Ping Che Kat Tin and the applicant proposes sewer connection for the sewage disposal of the proposed Small House (Drawing A-2).</p>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>However, the level drop in between is marginal. To ensure no insurmountable problem for sewage disposal to public sewer by gravity means, the applicant should provide further details (including sewer size, manhole cover level, manhole incoming and outgoing levels) with due regard to the local topography.</p> <ul style="list-style-type: none"> - CE/MN, DSD has no objection to the application and a sewerage proposal should be submitted for approval if sewer connection to public sewerage is required. His detailed comments on the sewerage proposal are appended in Appendix V. - DAFC advised that the proposed routing of the sewer connection would encroach upon the tree protection zones of a row of trees located on Government land, with a number of the trees being large and mature. Any impacts on the trees, in particular the large and mature trees, should be avoided as far as possible. - DLO/N, LandsD advises that subject to no adverse comments from CE/MN, DSD and DEP on the sewage proposal and no site constraints, he has no objection to the sewers passing through the Government land. Prior consent for excavation works to be conducted on Government land is required from his office and the applicant is required to take up the maintenance responsibilities of the sewers concerned.
13.	Landscaping impact?		✓	<ul style="list-style-type: none"> - Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has on objection to the application from the landscape planning point of view.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>- The Site is located in an area of rural landscape character comprising open storages, warehouses, village clusters, scattered woodland patches, tree clusters and farmland (mostly fallow). The Site is located close to Ping Che Kat Tin and within a fallow farmland surrounded some fruit trees to its north and south. The proposed Small House is not incompatible with the surrounding environment. Significant change and disturbance to the existing landscape resources arising from the proposed development is not anticipated.</p> <p>- Should the application be approved by the Board, landscape condition is not recommended as the footprint of the Small House occupies almost the entire site, thus adequate planting space cannot be provided for landscape works within the Site.</p>
14.	Local objections conveyed by DO?		✓	The District Officer (North) (DO(N)) advises that the incumbent North District Council (NDC) member of the subject constituency, the Indigenous Inhabitant Representative and the Resident Representative have no comment on the application.

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Details of comments from Government departments are at **Appendix V**.

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

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

- (a) Chief Highway Engineer/New Territories East, Highways Department; and

- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 6.3.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received (**Appendix VI**). The Chairman of NDC and a NDC member support the application as it provides convenience to the villagers whereas the Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The other three public comments, submitted by Kadoorie Farm and Botanic Garden Corporation, World Wide Fund for Nature Hong Kong, and an individual, object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; the rejection reasons of the previous application and similar applications of the subject application are still valid; and approval of the application would set an undesirable precedent for similar applications in the area.

11. Planning Considerations and Assessments

- 11.1 The Site falls within an area zoned “AGR” on the OZP. The proposed Small House 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 agriculture point of view as the Site possesses high potential for agricultural rehabilitation.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ping Che Village (including Ping Che, Ping Che Kat Tin and Ping Che Yuen Ha) is 53 while the 10-year Small House demand forecast for the same Village is 160. According to the latest estimate by PlanD, about 4.22 ha (equivalent to 177 Small House sites) of land are available in the “V” zones of Ping Che Village for Small House development (**Plans A-2b to A-2d**). The footprint of the proposed Small House falls entirely within the ‘VE’ of Ping Che Kat Tin.
- 11.3 The Site is currently vacant, flat and overgrown with grass (**Plan A-2a**). The proposed Small House is located in an area of rural landscape character comprising open storage, warehouses, village clusters, scattered woodland patches, tree clusters and mostly fallow agricultural land (**Plan A-2a**). Significant adverse landscape impact arising from the proposed development is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the application from the landscape planning point of view. C for T has reservation on the application and considers that Small House development should be confined within the “V” zone as far as possible but given that the application involving one Small House, it could be tolerated.
- 11.4 DEP does not support the application as the Site is located at some 50m to the east of an area zoned “I(D)” at present partly occupied by a vehicle repairing workshop and warehouses (**Plans A-2a and A-3**) and thus there would be potential industrial/residential interface problems. The applicant fails to demonstrate that such interface problem could be mitigated. Regarding the sewage discharge of the proposed Small House, the applicant proposes to use sewer connection for sewage discharge of

the proposed Small House but fails to provide detailed information and demonstrate the feasibility of the sewerage proposal. Besides, the proposed routing of the sewer connection would encroach upon the tree protection zones of a row of trees located on Government land. Other Government departments consulted, including D of FS, CE/C of WSD and CE/MN of DSD, have no adverse comment on or no objection to the application.

- 11.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the 'VE' of Ping Che Kat Tin (**Plan A-2a**). While land available within the "V" zones of Ping Che Village is insufficient to fully meet the future Small House demand, it is noted that land (about 4.22 ha or equivalent to 177 Small House sites) is still available within the "V" zones to meet the outstanding 53 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 and special consideration would be given to sites with previous planning approvals for Small House development. As such, it is 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. Besides, the proposed development is considered not complying with the Interim Criteria in that the proposed development is not compatible with the adjacent "I(D)" zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.
- 11.6 The Site is the subject of three previous applications (No. A/NE-TKL/114, 335 and 520) for Small House developments. The first application (No. A/NE-TKL/114) for 11 proposed Small Houses on a larger site was approved by the Committee in 1999 before the promulgation of the Interim Criteria. The last two applications (No. A/NE-TKL/335 and 520) were rejected by the Committee in 2010 and 2015 respectively mainly on the grounds of not complying with the Interim Criteria, no mitigation measure provided for the potential industrial/residential interface issue, adverse sewerage impact on the surrounding areas, land available in "V" zones of Ping Che Village and setting of undesirable precedent. There is no significant change in planning circumstances since the two previous applications were rejected.
- 11.7 There are five similar applications for Small House development with/partly within the "AGR" zone in the vicinity of the Site and two applications (No. A/NE-TKL/168 and 186), located to the west of Ping Che Kat Tin, were approved with conditions by the Committee in 2001 mainly on the grounds of located in close proximity to the village cluster and within the 'VE' of Ping Che Kat Tin; general shortage of land in meeting the demand for Small House development in the "V" zones of Ping Che Village at the time of consideration; compatible with the surrounding rural and village environment and no significant adverse environmental and traffic impacts on the surrounding areas. The other three applications (No. A/NE-TKL/521, 522 and 523) to the immediate east of the Site were rejected by the Committee on 20.11.2015 mainly on the grounds of being not in line with the planning intention of "AGR" zone, not comply with the Interim Criteria, no mitigation measure provided for the potential industrial/residential interface issue, adverse sewerage impact, land still available in "V" zones of Ping Che Village, and setting of undesirable precedents. The circumstances of the current application are similar to those rejected applications.
- 11.8 Regarding the adverse public comments mainly on the planning intention of "AGR"

zone, the rejection reasons of the previous application and similar applications of the subject application are still valid, and the setting of undesirable precedent for similar applications in the area, Government departments' comments and 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 in the Ping Che and Ta Kwu Ling area which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and 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 New Territories Exempted House (NTEH)/Small House in New Territories in that the proposed development is susceptible to environmental impacts of the industrial uses in the nearby "Industrial (Group D)" zone. The applicant fails to demonstrate in the submission that the potential industrial/residential interface issue would be mitigated;
- (c) the applicant fails to demonstrate in the submission that the proposed development would not have adverse sewerage impact on the surrounding area; and
- (d) land is still available within the "V" zones of Ping Che Village where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for 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 20.4.2022, 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 Condition

The submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services 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 the 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 with Attachment received on 27.2.2018
Appendix Ia	Further Information received on 20.3.2018 and 22.3.2018
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Previous s.16 Applications
Appendix IV	Similar s.16 Applications for Proposed House (NTEH – Small House) within/partly within the “Agriculture” zone in the Ping Che and Ta Kwu Ling Area
Appendix V	Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Sewerage Proposal
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b to A-2d	Estimated Amount of Land Available within the “V” zones of Ping Che Village for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photo

**PLANNING DEPARTMENT
APRIL 2018**