

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/617

- Applicant** : Mr. CHAN Wai Kin represented by Mr. HUI Kwan Yee
- Site** : Lot 265 S.J RP in D.D. 79, Ping Yeung Village, Ta Kwu Ling, New Territories
- Site Area** : 166.2 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 villager of Ping Yeung of Ta Kwu Ling Heung¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ping Yeung Village, 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)’ is a Column 2 use within “AGR” zone requiring 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 Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**.

¹ According to District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant has been certified by the Indigenous Inhabitants Representative in statutory declaration that the applicant is an indigenous villager of Ping Yeung in Ta Kwu Ling Heung. He advised that the subject Small House application was rejected in April 2019 under the NT Small House Policy as the Site falls outside the village environs ‘VE’ of Ping Yeung and “Village Type Development” (“V”) zone on the approved OZP.

1.4 In support of the application, the applicant has submitted the Application Form with attachment (**Appendix I**) and supplementary information (**Appendix Ia**) which were received by the Board on 15.5.2019 and 21.5.2019 respectively.

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** and supplementary information in **Appendix Ia**. They can be summarised as follows:

- (a) the applicant is an indigenous villager of Ping Yeung village;
- (b) there is no alternative site for construction of his own Small House development; and
- (c) there are similar Small House applications approved 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 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 Application

There is no previous application for the Site.

6. Similar Applications

- 6.1 There are 19 similar applications for Small House development within/partly within the “AGR” zone (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000 (**Appendix II**).
- 6.2 Of 19 similar applications, three applications (No. A/NE-TKL/183, 369 and 383) were rejected by the Board on review/the Committee between February 2002 and December 2012 mainly on the considerations that the proposed Small House developments did not comply with the Interim Criteria as the footprints of the proposed Small Houses fell outside/ mainly outside the “V” zone and ‘VE’ of a recognised village; the applications were not in line with the planning intention of the “AGR” zone; and the approval of the applications would set undesirable precedents for similar applications.
- 6.3 For other 16 applications, 10 applications were approved with conditions by the

Committee of the Board between November 2001 and August 2013 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-1**) mainly on the considerations that the applications complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the 'VE' and there was a general shortage of land in meeting the demand for Small House development in the "Village Type Development" ("V") zone of the same village; the proposed Small House developments were not incompatible with the surrounding rural and village environment; and the proposed developments were not expected to have significant adverse environmental and traffic impacts on the surrounding areas.

- 6.4 Four applications (No. A/NE-TKL/543 to 546) were approved by the Committee on 14.10.2016 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1**) on sympathetic consideration as the proposed Small Houses situated in close proximity to the sites of approved Small House applications (e.g. No. A/NE-TKL/438 and 440) though the land available within the "V" zone was able to meet the outstanding applications at the time of consideration. One application (No. A/NE-TKL/599) for 6 Small Houses was subsequently approved by the Committee on 19.10.2018 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1**) on sympathetic consideration as the proposed Small Houses were sandwiched by the aforementioned four Small House applications (No. A/NE-TKL/543 to 546) and considered as an infill Small House development at the fringe of the 'VE' while a new village cluster was forming in the locality though the land available within the "V" zone was able to meet the outstanding applications at the time of consideration. One application (No. A/NE-TKL/604) was approved by the Committee on 7.12.2018 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1**) on sympathetic consideration as the proposed Small House is located in close proximity to a number of existing Small Houses and approved Small House applications; and a new village cluster was forming in the locality though the land available within the "V" zone was able to meet the outstanding applications at the time of consideration.
- 6.5 Details of the similar applications are summarised 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 A-2b, A-3 and A-4)

- 7.1 The Site is:
- (a) currently vacant, flat and overgrown with grass;
 - (b) located to the immediate west of the "V" zone and 'VE' of Ping Yeung Village (**Plan A-2a**); and
 - (c) accessible via a local road.
- 7.2 The surrounding area has the following characteristics:
- (a) predominantly rural in character where village houses and fallow agricultural land are found;
 - (b) to the immediate east is vacant land, car park and a rejected planning application No. A/NE-TKL/183 (**Plan A-2a**);

- (c) to the further east are village houses within the “V” zone of Ping Yeung Village with some fallow agricultural land and vacant land (**Plans A-2a and A-3**); and
- (d) to the north, west and south are fallow/active agricultural land with scattered tree groups (**Plans A-2a and A-3**).

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 within an area zoned “AGR”.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	- -	100% 100%	- DLO/N, LandsD advises that the Site falls entirely outside the ‘VE’ of Ping Yeung Village. - As the Site and the footprint of the proposed Small House fall outside both the “V” zone and the ‘VE’, DLO/N, LandsD objects to the application.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	- Land required to meet the Small House demand in Ping Yeung Village: about 116.65 ha (equivalent to 4,666 Small House sites). The outstanding Small House applications for Ping Yeung Village are 66 ² while the 10-year Small House demand forecast for the same village is 4,600.

² Among the 66 outstanding Small House applications, 38 of them fall within the “V” zone and 28 straddle or outside the “V” zone. For those 28 applications straddling or being outside the “V” zone, 6 of them have obtained valid planning approval from the Board.

	Criteria	Yes	No	Remarks
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		- Land available to meet the Small House demand within the “V” zone of Ping Yeung Village: about 5.36 ha (equivalent to 214 Small House sites) (Plan A-2b) .
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 possesses potential for agricultural rehabilitation. The Site is currently a vacant land. Agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as open field cultivation, greenhouses, etc.
5.	Compatible with surrounding area/ development?	✓		- The proposed development is not incompatible with surrounding rural setting and environment dominated by village houses and vegetated areas. (Plan A-2b) .
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)?		✓	- 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?	✓		- Commissioner for Transport (C 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 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.

	Criteria	Yes	No	Remarks
				- Notwithstanding the above, the application only involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- 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.	Sewage impact?		✓	- Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping impact?		✓	- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning point of view.
13.	Local objection conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that the 1 st Vice-Chairman of Ta Kwu Ling District Rural Committee, the Indigenous Inhabitant Representatives (IIRs) and the Resident Representative (RR) of Ping Yeung support the application. The incumbent North District Council (NDC) member of the subject constituency has 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 IV**.

- (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 applications:

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

10. Public Comments Received During Statutory Publication Period

On 24.5.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, five public comments were received (**Appendix V**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application and one NDC member supports the application as it meets the needs of the villager. The Hong Kong Bird Watching Society, Kadoorie Farm and Botanic Garden and one 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 proposed development does not comply with the Interim Criteria; there is land available in “V” zone of the village; and approval of the application would encourage ‘destroy first, develop later’ developments and 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”. 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 potential for agricultural rehabilitation.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ping Yeung Village is 66 while the 10-year Small House demand forecast for the same village is 4,600. According to the latest estimate by PlanD, about 5.36 ha (equivalent to 214 Small House sites) of land are available in the “V” zone of Ping Yeung Village for Small House development (**Plan A-2b**). As the proposed Small House footprint falls entirely outside the ‘VE’ of Ping Yeung Village and the “V” zone concerned, DLO/N of LandsD objects to the application and advised that the subject Small House application was rejected in April 2019.
- 11.3 The Site is situated in an area of rural village character in close proximity to the existing village houses, and the proposed Small House development is not incompatible with the surrounding environment (**Plans A-2a and A-3**). CTP/UD&L, PlanD has no objection to the application as significant adverse impact arising from the proposed use on existing landscape resources is not anticipated. C for T considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development only involves the construction of one Small House, the application could be tolerated. 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.
- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House Development falls outside both the ‘VE’ and the “V” zone of the concerned village which would normally not be approved unless under very exceptional

circumstances (**Plan A-2a**). There is no justifications provided by the applicant that a very exceptional circumstances could be applied to the application. While land available within the “V” zone is insufficient to fully meet the future Small House demand, it is noted that land (about 5.36 ha or equivalent to 214 Small House sites) is still available within the “V” zone to meet the 66 outstanding Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by LandsD. As such, it is considered more appropriate to concentrate the proposed Small House developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

- 11.5 There is no previous application for the Site. There is one similar application No. A/NE-TKL/183 in proximity to the Site (**Plan A-2a**), which was rejected by the Board on review in February 2002 mainly on the considerations that the proposed Small House development did not comply with the Interim Criteria as the footprint of the proposed Small Houses fell mainly outside the “V” zone and ‘VE’ of a recognised village; the application was not in line with the planning intention of the “AGR” zone; and the approval of the application would set undesirable precedents for similar applications. The circumstances of the current application are similar to the rejected application.
- 11.6 Regarding the adverse public comments as detailed in paragraph 10, the Government department’s comments and the planning assessment above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local views and 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/Small House in New Territories in that more than 50% of the footprint of the proposed Small House falls outside the “V” zone and the ‘VE’ of Ping Yeung Village; and
 - (c) land is still available within the “V” zone of Ping Yeung 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 5.7.2023, 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 provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and

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 the 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 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.

14. Attachments

Appendix I	Application Form with Attachment received on 15.5.2019
Appendix Ia	Supplementary Information received on 21.5.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	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 IV	Comments from Relevant Government Departments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the “V” zone of Ping Yeung Village for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photo