

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/658

<u>Applicant</u>	Mr. LAM Tak
<u>Site</u>	Lot 287 in D.D. 29, Ting Kok, Tai Po, New Territories
<u>Site Area</u>	About 154 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, who claims to be an indigenous villager¹ of Ting Kok, seeks planning permission to build an NTEH (Small House) on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ use in the “AGR” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed Small House development are as follows:
- | | | |
|-------------------|---|-------------------|
| Roofed over area | : | 60m ² |
| Total floor area | : | 120m ² |
| Number of storeys | : | 2 |
| Building height | : | 5.48m |
- 1.3 The uncovered area of the Site is proposed to be used for resting and clothes drying purposes. Layout of the proposed development (including the septic tank) is shown on **Drawing A-1**.
- 1.4 The Site is the subject of a previous application (No. A/NE-TK/563) for Small

¹ As advised by DLO/TP, LandsD, the applicant’s eligibility of Small House grant has yet to be ascertained.

House development submitted by the same applicant, which was rejected by the Rural and New Town Planning Committee (the Committee) on 17.1.2014. Compared with the previous application, the footprint of the proposed Small House is reduced from 65.03m² to 60m² and the building height is reduced from 3 storeys to 2 storeys (from 8.23m to 5.48m) with the total floor area reduced correspondingly from 195.09m² to 120m².

- 1.5 In support of the application, the applicant has submitted an application form with attachments (**Appendix I**).

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 at **Appendix I**. They can be summarised as follows:

- (a) the applicant, same as other Hong Kong residents, wants to have his own house;
- (b) there is a lack of land resources in Hong Kong and the Government endeavours to provide more land to solve housing problem; and
- (c) the Site is surrounded by village houses on flat land and the proposed development would not have any adverse impacts on slope, drainage and traffic aspects.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Assessment Criteria

The set of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. On 23.8.2002, criterion (i) which requires that the application site, if located within 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 the subject of a previous application (No. A/NE-TK/563) for Small House development submitted by the same applicant, which was rejected by the Committee on 17.1.2014 mainly on the grounds 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 fell outside the “V” zone and the village ‘environs’ (‘VE’) of Ting Kok village and would

cause adverse landscape impact on the surrounding area; land was still available within the “V” zone of Ting Kok; and setting of undesirable precedent. Compared with the previous application, the footprint of the proposed Small House is reduced from 65.03m² to 60m² and the building height is reduced from 3 storeys to 2 storeys (from 8.23m to 5.48m) with the total floor area reduced correspondingly from 195.09m² to 120m².

5.2 Details of the previous application are summarized at **Appendix III**.

6. **Similar Applications**

6.1 There are two similar applications (No. A/NE-TK/495 and 496) for Small House development within the same “AGR” zone in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Both applications were rejected by the Board on review in 2014 mainly for the reasons of being not in line with the planning intention of the “AGR” zone; and approval of the application would set an undesirable precedent for similar applications at the subject “AGR” zone resulting in village expansion to the south of Ting Kok Road, leading to disturbance to landscape resources in the surrounding area and degradation of the existing agricultural/ recreational landscape character. They are also the subject of two appeal cases (No. 7/2014 and 8/2014), which were dismissed by the Town Planning Appeal Board on 29.6.2016 mainly on the same rejection reasons of the applications by the Board on review.

6.2 Details of the 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) vacant and covered with grass and fruit trees; and
- (b) accessible by a footpath.

7.2 The surrounding areas are mainly rural in character with fallow and active agricultural land. There is a barbecue site to the northeast of the Site and the village proper of Ting Kok is located about 200m to the north on the other side of Ting Kok Road. To its immediate surroundings, there are three existing village houses.

7.3 To the west and south of the “AGR” zone where the Site is situated are areas zoned “Coastal Protection Area” (“CPA”) and “Site of Special Scientific Interest” (“SSSI”)².

² The mangrove habitat in the “SSSI” is of special landscape and ecological value which requires a high degree of protection to retain their inherent value.

8. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. Comments from Relevant Government Departments

9.1 The application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - Footprint of the Small House - Application site		100% 100%	- Both the Small House footprint and the Site fall entirely within the “AGR” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site		100% 100%	- Both the Small House footprint and the Site fall entirely outside the ‘VE’ of Ting Kok. - The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) does not support the application.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	- Land required to meet Small House demand in Ting Kok: about 4.78 ha (equivalent to 191 Small House sites). The outstanding Small House applications are 31 ³ while the 10-year Small House demand forecast is 160.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		- Land available to meet Small House demand within the “V” zone of the village concerned: about 2.41 ha (equivalent to 96 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC)

³ Among the 31 outstanding Small House application, 28 of them fall within the “V” zone and 3 straddle or outside the “V” zone. For those 3 applications straddling or being outside the “V” zone, 1 of them has obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	“AGR” zone?			does not support the application as there are active agricultural activities in the vicinity and agricultural infrastructure such as footpath and water source is available, and the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		- The proposed Small House is not incompatible with the surrounding areas which are mainly rural in character with fallow and active agricultural land. There is a barbecue site to the northeast of the Site and the village proper of Ting Kok is located about 200m to the north on the other side of Ting Kok Road. To its immediate surroundings, there are three existing village houses. To the west and south of the “AGR” zone where the Site is situated are areas zoned “CPA” and “SSSI”.
6.	Within WGG?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T), in general, has reservation on the application but considers that the application only involves development of a Small House can be tolerated unless it is rejected on other grounds.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application. - Approval condition on the submission and implementation of drainage proposal is recommended.
11.	Sewerage impact?		✓	<ul style="list-style-type: none"> - The Director of Environmental Protection (DEP) has no objection to the application provided that the design and operation of the proposed septic tank and soakaway system follow the requirements in EPD's Practice Note for Professional Person (ProPECC) PN 5/93.
12.	Landscape impact?	✓		<ul style="list-style-type: none"> - The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has strong reservations on the application from the landscape planning perspective as approval of the application would set an undesirable precedent and encourage similar Small House applications at the subject "AGR" zone, resulting in village expansion to the south of Ting Kok Road, leading to disturbance to landscape resources in the surrounding area and degradation of the existing agricultural landscape character along the coastal area of Ting Kok. - In view of the scale and nature of the proposed development and there is not adequate space for meaningful landscaping within the Site to benefit the public realm, should the application be approved, no landscape related condition is required.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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) Chief Engineer/Construction, Water Supplies Department;
- (d) Chief Engineer/Mainland North, Drainage Services Department;
- (e) Director of Agriculture, Fisheries and Conservation;
- (f) Director of Environmental Protection;
- (g) Director of Electrical and Mechanical Services;
- (h) Director of Fire Services; and
- (i) Chief Town Planner/Urban Design and Landscape, Planning Department.

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

- (a) Chief Engineer/Consultant Management, Drainage Services Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Project Manager/North, Civil Engineering and Development Department;
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (e) District Officer/Tai Po, Home Affairs Department.

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

On 13.11.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments from The Hong Kong Bird Watching Society, World Wide Fund for Nature Hong Kong and an individual were received objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; setting undesirable precedent; and causing adverse landscape, traffic, environmental and ecological impacts.

11. Planning Considerations and Assessments

11.1 The Site falls entirely within an area zoned “AGR” (**Plan A-2a**). The proposed Small House is not in line with the planning intention of the “AGR” zone which is primarily intended to retain and safeguard good quality agricultural land for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not

support the application as there are active agricultural activities in the vicinity and agricultural infrastructure such as footpath and water source 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 Ting Kok is 31 while the 10-year Small House demand forecast for the concerned village is 160. Based on the latest estimate by the PlanD, about 2.41 ha of land (equivalent to about 96 Small House sites) are available within the "V" zone of Ting Kok. As the proposed Small House footprint falls entirely outside the 'VE' of the concerned village, DLO/TP, LandsD does not support the application.
- 11.3 The Site is vacant and covered with grass and fruit trees. The surrounding areas are mainly rural in character with fallow and active agricultural land. To the west and south of the "AGR" zone where the Site is situated are areas zoned "CPA" and "SSSI" (**Plan A-3**). CTP/UD&L, PlanD has strong reservations on the application from the landscape planning perspective as approval of the application would set an undesirable precedent and encourage similar Small House applications at the subject "AGR" zone, resulting in village expansion to the south of Ting Kok Road, leading to disturbance to landscape resources in the surrounding area and degradation of the existing agricultural landscape character along the coastal area of Ting Kok. C for T in general has reservation on the application but considers that the application only involves development of a Small House can be tolerated unless it is rejected on other grounds.
- 11.4 DEP has no objection to the application provided that the design and operation of the proposed septic tank and soakaway system follows the requirements in EPD's ProPECC PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department". Other relevant Government departments including CE/MN of DSD, CE/C of WSD, CHE/NTE of HyD and D of FS have no objection to or adverse comment on the application.
- 11.5 Regarding the Interim Criteria (**Appendix II**), the proposed development does not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint falls outside both the "V" zone and 'VE' of Ting Kok (**Plan A-1**); and it would cause adverse landscape impact on the surrounding area. Whilst land available within the "V" zone (about 2.41 ha or equivalent to 96 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is capable to meet the 31 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. 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 There are two similar applications (No. A/NE-TK/495 and 496) for Small House development within the same "AGR" zone in the vicinity of the Site

(Plan A-2a). Both applications were rejected by the Board on review in 2014 mainly for the reasons of being not in line with the planning intention of the “AGR” zone; and setting of undesirable precedent for similar applications at the subject “AGR” zone, resulting in village expansion to the south of Ting Kok Road, leading to disturbance to landscape resources in the surrounding area and degradation of the existing agricultural landscape character. They are also the subject of two appeal cases (No. 7/2014 and 8/2014), which were dismissed by the Town Planning Appeal Board on 29.6.2016 mainly on the same rejection reasons of the applications by the Board on review. The circumstances of the current application are similar to these two rejected applications.

- 11.7 Regarding the public comments objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; setting undesirable precedent; and causing adverse landscape, traffic, environmental and ecological impacts, the planning assessments and comments of Government departments 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 “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 current submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that more than 50% of the footprint of the proposed Small House falls outside the “Village Type Development” (“V”) zone and the village ‘environs’ of Ting Kok and it would cause adverse landscape impact on the surrounding area;
 - (c) land is still available within the “V” zone of Ting Kok which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services; and
 - (d) the approval of the application would set an undesirable precedent for similar applications at the subject “AGR” zone, resulting in village expansion to the south of Ting Kok Road, leading to disturbance to landscape resources in the surrounding area and degradation of the existing agricultural landscape character.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 4.1.2023, 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.

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 approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.
- 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 dated 6.11.2018
Appendix II	Interim Criteria
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	Drawing 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

Plan A-3
Plan A-4

development within "V" zone
Aerial photo
Site photo

**PLANNING DEPARTMENT
JANUARY 2019**