

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/135

- Applicant** : Mr. TSANG Kwok Wo represented by Honest Land Surveys Company
- Site** : Lot 1406 S.A ss.1 in D.D. 39, Ma Tseuk Leng, Sha Tau Kok, New Territories
- Site Area** : 137.4 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

1.1 The applicant, who claims himself an indigenous villager of Ma Tseuk Leng¹, seeks planning permission to build an NTEH (Small House) on the application site (the Site) in Ma Tseuk Leng, Sha Tau Kok (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. 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 in the “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**. The applicant indicates that the uncovered area of the proposed Small House is for circulation purpose.

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be an indigenous villager of Ma Tseuk Leng in Sha Tau Kok Heung. His eligibility for Small House grant has yet to be ascertained.

- 1.4 The Site forms part of the subject of a previous planning application No. A/NE-LK/94, covering a larger area for Small House development submitted by a different applicant as the current application. The application was approved with conditions by the Committee on 16.1.2015. The planning permission had lapsed on 17.1.2019. Compared with the previous application, except for the reduction of the site area, the major development parameters remain unchanged.
- 1.5 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) received on 23.11.2020.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the Application Form at **Appendix I**. They can be summarised as follows:

- (a) the applicant is an indigenous villager and entitled to a Small House grant in accordance with the Small House Policy;
- (b) the Site falls within the village 'environs' ("VE") of Ma Tseuk Leng;
- (c) the applicant indicated that he submitted an application (No. A/NE-LK/121) to the Board for Small House development at another site within the same village in 2019. However, the application was rejected mainly on the reason that the application site was close to an existing stream;
- (d) the applicant tried to identify suitable land for Small House application within the "Village Type Development" ("V") zone for the Small House development. However, due to land ownership, he could not acquire suitable land for Small House development;
- (e) the proposed Small House development is compatible with the surrounding rural environment and land uses; and
- (f) there are similar applications for Small House development approved by the Board in the vicinity of the Site.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is the sole "current land owner" of the lot. 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. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

5. Previous Application

- 5.1 The Site forms part of the subject of a previous planning application No. A/NE-LK/94, covering a larger area for Small House development submitted by a different applicant as the current application. That application was approved with conditions by the Committee on 16.1.2015. The planning permission had lapsed on 17.1.2019. Compared with the previous application, except for the reduction of the site area from 204.4 m² to 137.4 m² (i.e. – 67 m²), the major development parameters remain unchanged.
- 5.2 Details of the previous application are summarised at **Appendix III** and its location is shown on **Plans A-1** and **A-2a**.

6. Similar Applications

- 6.1 There are 46 similar applications involving 41 sites for Small House development within/partly within the “AGR” zone in the vicinity of the Site in the Luk Keng and Wo Hang area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among these similar cases, 34 of them were considered before the cautious approach being adopted by the Board in August 2015. 31 were approved mainly on the considerations that the applications generally complied with the Interim Criteria. Three applications No. A/NE-LK/78, 92 and 93 largely straddling “AGR” and “Green Belt” zones were rejected mainly on the grounds that the proposed Small Houses did not comply with the Interim Criteria and TPB PG-No. 10 on application for development within “GB” zone in that the proposed development would involve vegetation clearance and hence affect the existing natural landscape.
- 6.3 After the adoption of the more cautious approach, 12 applications were considered. Five applications No. A/NE-LK/106, 107, 109, 111 and 112 were approved by the Committee between December 2016 and April 2018 mainly for the reason of being the subject of previously approved applications submitted by the same applicants. The remaining seven applications No. A/NE-LK/114 to 117, 121, 122 and 134 were rejected by the Board on review or by the Committee between November 2018 and December 2020 mainly on similar grounds that the application did not comply with the Interim Criteria in that the proposed development would cause drainage and landscape impacts on the surrounding areas; and land was still available within the “V” zone of Ma Tseuk Leng for Small House development. An appeal regarding the rejected application No. A/NE-LK/114 located to the southeast of the Site (**Plan A-1**) was heard by the Town Planning Appeal Board on 30.9.2020, the decision is yet to be released.
- 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 Areas (**Plans A-1, A-2a** and **A-2b**, aerial photo on **Plan A-3** and site photos on **Plan A-4**)

- 7.1 The Site is:
- (a) vacant and mainly covered with wild grass; and
 - (b) adjacent to a local track leading to Sha Tau Kok Road in the south.

7.2 The surrounding areas have the following characteristics:

- (a) the Site is situated in an area of rural landscape character surrounded by fallow agricultural land, tree groups and village houses;
- (b) to the immediate north is village houses with planning approval, further north is a village cluster of Ma Tseuk Leng;
- (c) to the immediate east and west are some village houses with planning approval and a local track respectively; and
- (d) to the south is vacant land.

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 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 the “AGR” zone.
2.	Within “VE”? - The Site - Footprint of the proposed Small House	100% 100%	- -	- DLO/N, LandsD advises that the footprint of the proposed Small House falls within the “VE” of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet the Small House demand in Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster ² : about 14.35 ha (equivalent to 575 Small House sites). The outstanding Small House applications for the village cluster is 57 ³ while the 10-year Small House demand forecast for the same villages is 518.
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		<u>Land Available</u> - Land available to meet the Small House demand within the “V” zone of the village cluster: about 2.25 ha (equivalent to 89 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently abandoned. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access is available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. Since the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
5.	Compatible with surrounding area/ development?	✓		- The proposed development is not incompatible with the surrounding areas predominated by fallow/active agricultural land, tree groups and village houses (Plan A-2a).
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	

² Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster comprises Sheung Ma Tseuk Leng Village, Ha Ma Tseuk Leng Village and Shek Kiu Tau Village.

³ Among the 57 outstanding Small House applications, 18 of them fall within the “V” zone and 39 straddle or outside the “V” zone. For those 39 applications straddling or outside the “V” zone, 6 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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. - Notwithstanding the above, the application involves construction of one Small House. He considers that the application can be tolerated unless being 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 for the application.
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 perspective. - The Site is a vacant scrubland and no existing trees were observed within the Site. The Site is located in an area of rural landscape character predominated by abandoned farmland, tree groups, and village houses. The applied use is

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				considered not incompatible with the landscape character of the surrounding area. The layout of proposed house is not in conflict with any existing trees.
13.	Local objection conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that the Resident Representative (RR) of Ma Tseuk Leng Ha supported the application on the consideration that the indigenous villager is entitled to build a three-storey Small House. The Chairman of Sha Tau Kok District Rural Committee, the incumbent North District Council member of the subject Constituency, the Indigenous Inhabitant Representative (IIR) of Ma Tseuk Leng Ha, the RR and IIR of Ma Tseuk Leng Sheung had no comment on the application.

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

- (a) District Lands Officer/North, 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) Director of Fire Services;
- (g) Director of Agriculture, Fisheries and Conservation; and
- (h) District Officer (North), Home Affairs Department.

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

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

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

On 1.12.2020, the application was published for public inspection. During the statutory public inspection period, five public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Designing Hong Kong Limited, Kadoorie Farm and Botanic Garden Corporation and two individuals object to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land is available within the “V” zone for Small House development; setting of an undesirable precedent for other similar applications within the “AGR” zone; uncertain indigenous identity of the applicant; and the environmental and health risks associated from the use of septic tank on the Site.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House on the Site 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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural 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 Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is 57 while the 10-year Small House demand forecast for the same village cluster is 518. According to the latest estimate by PlanD, about 2.25 ha (equivalent to 89 Small House sites) of land are available in the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.
- 11.3 The Site is situated in an area of rural landscape character predominated by fallow/active agricultural land, tree groups and village houses. The proposed Small House development is not entirely incompatible with the surrounding environment (**Plan A-3**). CTP/UD&L, PlanD has no objection to the application as significant adverse impact on existing landscape resources arising from the proposed development 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 involves construction of one Small House only, the application could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment on/no objection to the application.
- 11.4 Regarding the Interim Criteria (**Appendix II**), while land available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is insufficient to fully meet the future Small House demand of 575 Small Houses, such available land (about 2.25 ha or equivalent to 89 Small House sites) is still available within the “V” zone to meet the 57 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 infrastructures and services.
- 11.5 The Site forms part of the subject of a previously approved planning application (No. A/NE-LK/94) for a Small House submitted by a different applicant as the current application. The application was approved in January 2015 before the adoption of a cautious approach by the Board. The planning permission, however, lapsed on 17.1.2019. According to the Interim Criteria (d) (**Appendix II**), application with previous planning permission lapsed will be considered on its own merits. Given that the current application is submitted by a different applicant and land is still available within the “V” zone of Ma Tseuk Leng for Small House development, sympathetic consideration may not be given to the application.
- 11.6 There are 17 similar applications for Small House development in the vicinity of the Site (**Plan A-2a**). Of them, 16 applications within “AGR” zone were approved by the Committee between 2002 and 2015 mainly on the grounds of generally complying with

the Interim Criteria. After the adoption of the more cautious approach, only one application (No. A/NE-LK/109) to the southeast of the Site was approved by the Committee in 2017 on the grounds that the Site was the subject of a previous planning application (No. A/NE-LK/30) submitted by the same applicant. It is considered that the circumstances of the current application are different from the recently approved application No. A/NE-LK/109.

- 11.7 Regarding the adverse public comments against the application mentioned in paragraph 10 above, 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 above, 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 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; and
- (b) land is still available within the "V" zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster where land 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 22.1.2025, 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 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 attachments received on 23.11.2020
Appendix II	Relevant Interim Criteria for Consideration of Application for NTEH/ Small House in New Territories
Appendix III	Previous Application
Appendix IV	Similar s.16 Applications for Proposed House (NTEH – Small House) within/partly within the “AGR” zone in the vicinity of the Site in the Luk Keng and Wo Hang Area
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Drainage Proposal
Drawing A-3	Landscape Proposal
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JANUARY 2021**