

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/667

<u>Applicant</u>	Mr. CHAN Yat Leung represented by Dickman L.T. CHAN & Co., Solicitors
<u>Site</u>	Lot 882 RP in D.D. 19, She Shan Village, Tai Po, New Territories
<u>Site Area</u>	About 448.7m ²
<u>Lease</u>	Block Government Lease (demised for agricultural purpose)
<u>Plan</u>	Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
<u>Zonings</u>	“Agriculture” (“AGR”) (about 88%) “Village Type Development” (“V”) (about 12%)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, claims to be an indigenous villager (IV) of She Shan, Tai Po¹, seeks planning permission to build an NTEH (Small House) on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, whilst ‘House (NTEH only)’ is always permitted within the “V” zone, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ use within the “AGR” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed Small House development are as follows:
- | | | |
|-------------------|---|----------------------|
| Total floor area | : | 195.09m ² |
| Number of storeys | : | 3 |
| Building height | : | 8.23m |
| Roofed over area | : | 65.03m ² |
- 1.3 Layout of the proposed Small House and the proposed sewerage connection are shown on **Drawings A-1 and A-2** respectively.

¹ The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the applicant’s eligibility of Small house grant has yet to be ascertained.

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

- (a) application form with attachments received on **(Appendix I)** 11.4.2019
- (b) Further Information received on 18.7.2019 providing **(Appendix Ia)** sewerage connection proposal (*accepted and exempted from publication and recounting requirements*)

1.5 At the request of the applicant, the Rural and New Town Planning Committee (the Committee) agreed on 31.5.2019 to defer the consideration of the application for two months to allow time for the applicant to prepare further information to support the application. The applicant submitted further information on 18.7.2019. The application is scheduled for consideration on 6.9.2019.

2. Justifications from the Applicant

The justification put forth by the applicant in support of the application is provided in Part 9 of the application form at **Appendix I**. The applicant states that the proposed house is for his own residential use.

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 water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

- 6.1 There are 14 similar applications for Small House development in the vicinity of the Site and within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000. Nine of them were approved and five were rejected.
- 6.2 Applications No. A/NE-LT/379, 380 and 391 were approved by the Committee in 2008 mainly on the grounds of being in line with the Interim Criteria in that more than 50% of the Small House footprint was within the ‘VE’; there was a general shortage of land to meet the demand for Small House development in the “V” zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Application No. A/NE-LT/484 was approved by the Committee in 2013 mainly on the grounds of having similar approved applications (No. A/NE-LT/379, 380 and 391) in the vicinity of the site and being in line with the interim Criteria. Despite the Board’s adoption of a more cautious approach in 2015, applications No. A/NE-LT/575, 576 and 577 were approved by the Committee in 2016 mainly on sympathetic consideration as the sites were the subject of previously approved applications (i.e. No. A/NE-LT/380, 391 and 379) and there had been no major change in planning circumstances. For Application No. A/NE-LT/587, it was approved by the Committee in 2016 mainly because only a very minor portion (about 7%) of the proposed Small House footprint fell outside the “V” zone.
- 6.3 Application No. A/NE-LT/397 was rejected by the Committee in 2009 mainly for the reasons of being not in line with the planning intention of “AGR” zone; and not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside both the “V” zone and the ‘VE’. Subsequently, application No. A/NE-LT/414 submitted by the same applicant of No. A/NE-LT/397 was approved in 2011 mainly because the proposed Small House footprint had been revised so that more than 50% of it fell within the “V” zone; there was a general shortage of land to meet the demand for Small House development in the “V” zone at the time of consideration; and the proposed development was able to be connected to the planned sewerage system in the area.
- 6.4 For the remaining four rejected applications (No. A/NE-LT/490, 492, 493 and 636), they were rejected by the Committee/the Board upon review between 2013 and 2018 mainly on the grounds of being not in line with the planning intention of “AGR” zone; not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside the “V” zone and/or the ‘VE’; and the proposed development was not able to be connected to the existing or planned sewerage system. Application No. A/NE-LT/492 was also rejected as it would have adverse landscape impact on the surrounding area.
- 6.5 Details of the above similar applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2a**.

7. **The Site and Its Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3 and A-4)**

7.1 The Site is:

- (a) generally flat and paved; and
- (b) accessible from Lam Kam Road via She Shan Road.

7.2 The surrounding areas are predominantly rural in character with a mix of village houses, active and fallow agricultural land and scattered tree groups. Village cluster of She Shan is found to the east of the Site.

8. **Planning Intentions**

8.1 The planning intention of the “V” zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

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

9. **Comments from Relevant Government Departments**

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

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone ? - Footprint of the proposed Small House - Application site	43% 12%	57% 88%	- The remaining portions of the Site and the proposed Small House footprint fall within the “AGR” zone.
2.	Within ‘VE’? - Footprint of the proposed Small House - Application site	1% 3%	99% 97%	- As more than 50% of the Site and the proposed Small House footprint fall outside the ‘VE’ of She Shan, DLO/TP, LandsD does not support the application.

	<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 applications plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet Small House demand: about 2.53 ha (equivalent to 101 Small House sites). The outstanding Small House applications are 21 ² while the 10-year Small House demand forecast is 80.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from the agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as water source and road access is available; and the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/development?	✓		- The surrounding areas are predominantly rural in character mainly occupied with village houses, agricultural land and scattered tree groups.
6.	Within WGG?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application as it does not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint falling outside both the ‘VE’ and the “V” zone.

² Among the 21 outstanding Small House applications, 9 of them fall within the “V” zone and 12 straddle or outside the “V” zone. For those 12 applications straddling or being outside the “V” zone, two of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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 comment on the application.
9.	Traffic impact?		✓	- The Commissioner for Transport (C for T) has no in-principle objection to the application.
10.	Drainage impact?	✓		- The Chief Engineer/ Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from public drainage viewpoint. - Approval condition on submission and implementation of drainage proposal is required.
11.	Sewerage impact?	✓		- The Director of Environmental Protection (DEP) has no objection to the application as the applicant has proposed to connect the Small House to the existing public sewerage at She Shan (Plan A-2a), and sewer connection is feasible and capacity is available for the proposed Small House development.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning perspective as no existing tree is found within the Site and adverse impact arising from the proposed development on landscape resources within the Site is not

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				anticipated.
13.	Geotechnical impact?		✓	
14.	Local objection received from DO?		✓	

9.2 Comments from the following Government departments have been incorporated in the above paragraph. Other detailed comments from Government departments are at **Appendix IV**.

- (a) District Lands Officer/Tai Po, Lands Department;
- (b) Commissioner for Transport;
- (c) Director of Environmental Protection;
- (d) Chief Town Planner/Urban Design & Landscape, Planning Department;
- (e) Chief Engineer/Mainland North, Drainage Services Department;
- (f) Chief Engineer/Construction, Water Supplies Department;
- (g) Director of Agriculture, Fisheries and Conservation; and
- (h) Director of Fire Services;
- (i) Director of Electrical and Mechanical Services; and
- (j) Executive Secretary of Antiquities and Monuments Office.

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

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

10. Public Comments Received During Statutory Publication Period

On 23.4.2019, the application was published for public inspection. During the statutory public inspection period, two public comments were received from the Hong Kong Bird Watching Society and an individual (**Appendix V**) objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; approval of the application would encourage ‘destroy first, built later’ developments; and setting of undesirable precedent.

11. Planning Considerations and Assessments

11.1 The application is for a proposed Small House development at the Site falling within an area mainly zoned “AGR” (88%) and partly zoned “V” (12%) on the

OZP. The proposed development is not in line with the planning intention of the "AGR" zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural development point of view as there are active agricultural activities in the vicinity; agricultural infrastructure such as water source and road access is available; and the Site possesses potential for agricultural rehabilitation.

- 11.2 According to DLO/TP, LandsD's record, the total number of outstanding Small House applications for She Shan Village is 21 while the 10-year Small House demand forecast is 80. Based on the latest estimate by the Planning Department, about 1.57 ha of land (or equivalent to about 62 Small House sites) are available within the "V" zone concerned (**Plan A-2b**). As more than 50% of the proposed Small House footprint falls outside both the 'VE' and the "V" zone, DLO/TP of LandsD does not support the application and advises that the application will not be considered under the Small House Policy. CE/C of WSD also objects to the application as it does not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint falling outside both the 'VE' and the "V" zone.
- 11.3 The Site, located at the north-western fringe of She Shan Village, is currently vacant and hard-paved. The proposed development is not incompatible with the surrounding area which is predominantly rural in character occupied by village houses and scattered tree groups (**Plans A-2a and A-3**). CTP/UD&L of PlanD has no objection to the application from the landscape planning perspective as no existing tree is found within the Site and adverse impact on significant landscape resources arising from the proposed development is not anticipated.
- 11.4 The Site falls within the upper indirect WGG. CE/MN of DSD advises that the Site is within an area where connections to existing sewerage networks are available in the vicinity and the applicant has proposed to connect the proposed Small House to the existing public sewerage system at She Shan (**Plan A-2a**). DEP has no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at his own cost and adequate space within the Site will be reserved for connection. Other relevant Government departments including C for T, CHE/NTE of HyD, PM(N) and H(GEO) of CEDD, and D of FS have no objection to or adverse comment on the application.
- 11.5 Regarding the Interim Criteria (**Appendix II**), although the proposed development within WGG would be able to be connected to the public sewerage system (**Plan A-2a**), it does not comply with the Interim Criteria in that more than 50% of the proposed Small House footprint falls outside both the 'VE' and the "V" zone of She Shan (**Plan A-2a**). While land available within the "V" zone (about 1.57 ha or equivalent to about 62 Small House sites) is insufficient to fully meet the future Small House demand, it is capable to meet the 21 outstanding Small House applications (**Plan A-2b**). It should be noted that the Board has adopted a more cautious approach in approving

applications for Small House development in 2015. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.

- 11.6 According to **Plan A-2a**, there are eight similar applications for Small House development in close vicinity of the Site. Applications No. A/NE-LT/379, 380 and 391 were approved in 2008 before the Board’s adoption of a more cautious approach in approving applications for Small House development in 2015. For applications No. A/NE-LT/575, 576 and 577, they were approved in 2016 mainly on sympathetic consideration as the sites were the subject of previous approved applications (i.e. No. A/NE-LT/380, 391 and 379). Regarding the remaining two applications (No. A/NE-LT/490 and 636), they were rejected in 2013 and 2018 respectively mainly on the grounds of being not in line with the planning intention of the “AGR” zone and not complying with the Interim Criteria in that more than 50% of the proposed Small House footprint fell outside both the “V” zone and the ‘VE’. The planning circumstances of the current application are similar to these rejected applications.
- 11.7 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10 above, Government departments’ comments and the planning assessments above are relevant.

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, 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 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 She Shan; and
 - (c) land is still available within the “V” zone of She Shan 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.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 6.9.2023, 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 submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or the Town Planning Board.

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 permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application form and attachments received on 11.4.2019
Appendix Ia	Further information received on 18.7.2019
Appendix II	Relevant Revised Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories (promulgated on 7.9.2007)

Appendix III	Similar applications
Appendix IV	Detailed comments from relevant Government departments
Appendix V	Public comments
Appendix VI	Recommended advisory clauses
Drawing A-1	Layout plan submitted by the applicant
Drawing A-2	Sewerage connection proposal submitted by the applicant
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available for Small House Development within "V" zone
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2019**