

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/722

- Applicant** : Mr. FUNG Tak Bun represented by Mr. HUI Kwan Yee
- Site** : Lot 639 S.G in D.D. 83, Kwan Tei Village, Fanling, New Territories
- Site Area** : 110 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP)
No. S/NE-LYT/17
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, who claimed himself an indigenous villager¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Kwan Tei Village, Fanling (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, ‘House (NTEH only)’ 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 The applicant indicates that there is no proposed use for the uncovered area of the application site. Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received on 23.12.2019.

¹ According to District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant is an indigenous villager of Fu Tei Pai of Fanling Heung, his eligibility for Small House grant has yet to be ascertained.

- 1.5 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 21.2.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. **Again, the meeting on 30.3.2020 has been rescheduled and** the application is now scheduled for consideration by the Rural and New Town Planning Committee (the Committee) at this meeting.

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 summarized as follows:

- (a) the Small House can be constructed on the vacant Site;
- (b) the applicant has no alternative site for Small House development; and
- (c) similar Small Houses have been 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. 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 22 similar applications in the vicinity of the Site for Small House development within/partly within the “AGR” zone in the vicinity of the Site (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. Of them, 19 applications were approved and 3 were rejected.
- 6.2 For the 19 approved applications, 13 were approved by the Committee between November 2004 and May 2015 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-1**) mainly on the grounds 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 within “V” zone of the same village in meeting the Small House demand; the proposed developments were not incompatible with the adjacent village setting and the surrounding rural character of the environment; the proposed Small House developments were not expected to have significant adverse traffic, drainage, environmental and/or landscape impacts. Six applications (No.

A/NE-LYT/587, 588, 599, 603, 632 and 682) were approved by the Committee between February 2016 and January 2019 (i.e. after a more cautious approach is adopted by the Board) mainly on the grounds of the sites were in close proximity to the existing village proper of Kwan Tei Village and there were approved Small House applications nearby forming a new village cluster in the locality and the scope of extending the village to the “AGR” zone to the further east is limited.

- 6.3 The remaining 3 applications (No. A/NE-LYT/399, 400 and 511) were rejected by the Committee between September 2009 and July 2013 (i.e. before a more cautious approach is adopted by the Board) mainly on the grounds that the proposed Small House developments did not comply with the Interim Criteria as more than 50% of the footprints of the proposed Small Houses fell outside the “V” zone and the ‘VE’ of a recognized village; the proposed developments were not in line with the planning intention of the “AGR” zone; and approval of the applications would set undesirable precedents for similar applications in the area.
- 6.4 Details of the applications are summarized at **Appendix III** and their locations are shown on **Plans A-1 and A-2a**.

7. The Site and Its Surrounding Area (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) flat and mainly covered by wild grasses; and
- (b) located to the immediate east of the village cluster of Kwan Tei Village (**Plans A-2a and A-2b**).

7.2 The surrounding area has the following characteristics:

- (a) situated in a rural setting dominated by village houses, temporary structures for domestic uses, and active and fallow agricultural land;
- (b) the site of planning application (No. A/NE-LYT/390) for Small House developments approved in 2009 (**Plan A-2a**) can be found to the immediate west;
- (c) to the further northwest of the Site are village houses in the “V” zone of Kwan Tei Village;
- (d) to the immediate north is vacant land, which is the subject of a similar planning application (No. A/NE-LYT/721) to be considered at the same meeting; and
- (e) to the immediate east are temporary structures for domestic purpose, and further east is active agricultural 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 summarized in the following table:

	Criteria	Yes	No	Remarks
1.	<p>Within “V” zone?</p> <ul style="list-style-type: none"> - The Site - Footprint of the proposed Small House 	<p>-</p> <p>-</p>	<p>100%</p> <p>100%</p>	<p>The Site and the footprint of the proposed Small House fall within the “AGR” zone.</p>
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - The Site - Footprint of the proposed Small House 	<p>100%</p> <p>100%</p>	<p>-</p> <p>-</p>	<p>DLO/N, LandsD advises that the Site falls within the ‘VE’ of Kwan Tei Village.</p>
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?</p>		<p>✓</p>	<p><u>Land Required</u></p> <ul style="list-style-type: none"> - Land required to meet the Small House demand in Kwan Tei Village: about 10.5 ha (equivalent to 421 Small House sites). The outstanding Small House applications for Kwan Tei Village are 46² while the 10-year Small House demand forecast for the same village is 375.
	<p>Sufficient land in “V” zone to meet outstanding Small House application?</p>	<p>✓</p>		<p><u>Land Available</u></p> <ul style="list-style-type: none"> - Land available to meet the Small House demand within the “V” zone of Kwan Tei Village: about 2.51 ha (equivalent to 100 Small House sites) (Plan A-2b).
4.	<p>Compatible with the planning intention of “AGR” zone?</p>		<p>✓</p>	<p>The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently vacant. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as greenhouses and plant nurseries. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.</p>
5.	<p>Compatible with surrounding area/</p>	<p>✓</p>		<p>The proposed Small House is compatible with the surrounding rural setting and</p>

² Among the 46 outstanding Small House applications, 30 of them fall within the “V” zone and 16 straddle or outside the “V” zone. For those 16 applications straddling or outside the “V” zone, 5 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	development?			environment dominated by village houses and active/fallow agricultural land (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)?		✓	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?	✓		<ul style="list-style-type: none"> - 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 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 for the application.
11.	Sewage impact?		✓	The 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.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
12.	Landscaping impact?		✓	<ul style="list-style-type: none"> - The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning perspective. - The Site is located in an area of rural inland plains landscape character surrounded by village houses, farmlands and temporary structures. No significant sensitive landscape resource is observed within the Site. Significant adverse impact on existing landscape resources arising from the application is not anticipated. Similar developments with approved planning permissions are found in the vicinity of the Site. The proposed development is considered compatible with the surrounding environment. - In consideration of the limited space within the Site, there is insufficient space for meaningful landscaping. Should the Board approve the application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.
13.	Local objection conveyed by DO?		✓	District Officer (North) (DO(N)) advises that the Chairman of Fanling District Rural Committee and the Indigenous Inhabitant Representative (IIR) of Kwan Tei have no comment on the application. The Resident Representative (RR) of Kwan Tei did not reply.

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

- (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) Chief Engineer/Construction, Water Supplies Department;
- (h) Director of Agriculture, Fisheries and Conservation; 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), Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 3.1.2020, the application was published for public inspection. During the statutory public inspection period, four public comments were received (**Appendix V**). The Chairmen of Sheung Shui District Rural Committee indicates no comment on the application. The remaining three comments from the Hong Kong Bird Watching Society, Designing 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; there is land available in the “V” zone to meet the outstanding Small House demand; there is potential for agricultural rehabilitation at the Site; and approval of the application would set an undesirable precedent for similar applications.

11. Planning Considerations and Assessments

- 11.1 The application is for Small House development within an area zoned “AGR” on the OZP (**Plans A-1 and A-2a**). The proposed Small House development is not in line with the planning intention of the “AGR” zone which is intended 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 development 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 Kwan Tei Village is 46 while the 10-year Small House demand forecast for the same village is 375. According to the latest estimate by PlanD, about 2.51 ha (equivalent to 100 Small House sites) of land are available in the “V” zone of Kwan Tei Village for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the Site falls within the ‘VE’ of Kwan Tei Village.
- 11.3 The Site is vacant and mainly covered by wild grasses. The village proper of Kwan Tei is located to the immediate west of the Site (**Plan A-2a**). The proposed Small House development is compatible with the surrounding rural landscape character dominated by village houses and active/fallow agricultural land (**Plan A-3**). Significant adverse impact on existing landscape resources arising from the application is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the application from landscape planning perspective. 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 proposed development involve one Small House, it 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**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Kwan Tei Village (**Plan A-2a**). While land available within the “V” zone is insufficient to fully meet the future Small House demand of 421 Small Houses, such available land (about 2.51 ha or equivalent to 100 Small House sites) is capable to meet the 46 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 development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services. Nevertheless, the Site is sandwiched by existing village houses, which were approved in 2009 to its immediate west (No. A/NE-LYT/390), and some domestic structures to its immediate east. Its southern part is in proximity to the ‘VE’ boundary, while to its immediate north is a site with previous planning permission (application No. A/NE-LYT/553). Though the permission lapsed on 13.12.2018, the same applicant has submitted a new application (No. A/NE-LYT/721), which will be considered by the Committee at the same meeting. Given such context, the proposed Small House could be considered as an infill development. In this regard, sympathetic consideration might be given to the current application.

- 11.5 There are 14 similar applications for Small House development in the vicinity of the Site. Except two applications (No. A/NE-LYT 399 and 400) which were rejected mainly on the grounds that the proposed Small House development did not comply with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell outside the “V” zone and the ‘VE’ of a recognized village, the remaining 12 applications were approved. Of them, 6 were approved (No. A/NE-LYT/390, 499, 510, 517, 527 and 553) between March 2009 and December 2014 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-2a**) mainly on the grounds of complying with the Interim Criteria. Six other applications (No. A/NE-LYT/587, 588, 599, 603, 632 and 682) located to the north and southwest of the Site were approved between February 2016 and January 2019 (i.e. after a more cautious approach is adopted by the Board) on the consideration that the sites were in close proximity to the existing village proper of Kwan Tei, there were approved Small House applications nearby forming a new village cluster in locality. It is considered that the circumstances of the current application are similar to those applications recently approved by the Committee.
- 11.6 Regarding the adverse public comments objecting to the application on the grounds as summarized 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, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until ~~30.3.2024~~ **26.5.2024**, 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 a 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 VI**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (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 Kwan Tei Village which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.

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 attachments received on 23.12.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Similar s.16 Applications for Proposed House (New Territories Exempted House (NTEH) - Small House) within/partly within the "AGR" Zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area
Appendix IV	Detailed 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 Kwan Tei Village for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

PLANNING DEPARTMENT
~~MARCH~~ MAY 2020