

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/740

- Applicant** : Mr. LEE Yung Ki represented by Mr. HUI Kwan Yee
- Site** : Lot 1676 S.H RP in D.D. 76, Leng Pei Tsuen, Fanling, New Territories
- Site Area** : 124.7 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 to be an indigenous villager of Ko Po Village of Fanling Heung¹, seeks planning permission to build a proposed NTEH (Small House) on the application site (the Site) at Leng Pei Tsuen, 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, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in “AGR” zone is a Column 2 use 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**. According to the applicant, there is no proposed use for the uncovered area of the Site.

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant of the proposed Small House is an indigenous villager of Ko Po Village of Fanling Heung. However, his eligibility for Small House grant has yet to be ascertained.

- 1.4 The Site is the subject of a previous application (No. A/NE-LYT/597) for Small House development submitted by the same applicant. The application was approved with conditions by the Committee on 15.7.2016. The planning permission lapsed on 16.7.2020. Compared with the previous application, the major development parameters, including the site area and the general layout of the proposed Small House, remain unchanged.
- 1.5 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received on 24.11.2020.

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

- (a) the Site is the subject of a previous planning application (No. A/NE-LYT/597) approved by the Board. The planning permission had lapsed and the applicant forgot to submit a renewal application. A fresh application with the same development parameters is thus submitted for consideration so that the Small House application can be further processed by District Lands Office (DLO);
- (b) there are a number of similar approved applications in the vicinity of the Site;
- (c) the Site is the only land available for Small House development; and
- (d) the vacant Site can be erected with Small House.

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

- 5.1 The Site is the subject of a previous application (No. A/NE-LYT/597) for the Small House development submitted by the same applicant as the current application. The application was approved by the Committee on 15.7.2015 mainly on the considerations that the application generally complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell within the ‘VE’ and there was a general shortage of land within the “V” zone of the same village in meeting the Small House demand. The planning permission lapsed on 16.7.2020. Compared with the previous application, the major development parameters, including the site area and the general layout of the proposed Small House, 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 68 similar applications for Small House development within/partly within the “AGR” zone in the vicinity of the Site in Lung Yeuk Tau and Kwan Tei South area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. Of them, 67 similar applications were approved with conditions by the Committee between April 2003 and September 2020. These applications were approved mainly on the considerations that the applications generally 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 the “V” zone of the same village in meeting the Small House demand; 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 impacts on the surrounding area and previous/similar applications were approved by the Committee.
- 6.2 The remaining one similar application (No. A/NE-LYT/267) was rejected by the Committee in September 2003 mainly on the grounds that it did not comply with Interim Criteria as the application site fell entirely outside both the “V” zone and the ‘VE’ of a recognized village; not in line with the planning intention of “AGR” zone; and approval of the application would set an undesirable precedent for similar applications within “AGR” zone in the future.
- 6.3 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 Area** (Plans A-1, A-2a and A-2b, A-3 and A-4)

- 7.1 The Site is:
- (a) flat and a vegetable field (**Plan A-4**);
 - (b) located to the west of the village proper of Leng Pei Tsuen (**Plan A-2a**); and
 - (c) accessible via a local track from Sha Tau Kok Road – Ma Mei Ha (**Plan A-1**).
- 7.2 The surrounding areas have the following characteristics:
- (a) predominantly rural in character where village houses and active/fallow agricultural land are found;
 - (b) to the immediately west and east are vacant land and the site of planning application (No. A/NE-LYT/561) for Small House development approved by the Committee in 2015; further northeast is the village proper of Leng Pei Tsuen (**Plan A-2a**);
 - (c) to the immediately north are village houses with planning approval (**Plan A-2a**); and

(d) to the immediately south is vacant land and covered by some vegetation.

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 more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen.
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 Mei Ha Leng Tsui and Leng Pei Tsuen village cluster: about 4.475 ha (equivalent to 179 Small House sites). The outstanding Small House applications for Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster are 47 ² while the 10-year Small House demand forecast for the same village cluster is 132.
	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 Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster: about 0.85 ha (equivalent to 34 Small House sites) (Plan A-2b).

² Among the 47 outstanding Small House applications, 5 of them fall within the “V” zone and 42 straddle or outside the “V” zone. For those 42 applications straddling or being outside the “V” zone, 30 of them have already obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) states that part of the Site is currently a vegetable field. The agricultural activities are active in the vicinity and agricultural infrastructures such as footpath and water source are available. The Site can be used for agricultural activities such as open-field, greenhouse, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
5.	Compatible with surrounding area/development?	✓		- The Site is located to the west of Leng Pei Tsuen and the proposed Small House is not incompatible with the surrounding rural setting and 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)?		✓	- The 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?	✓		- The Commissioner for Transport (C for T) has reservation on the application and advises that Small House developments should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed developments 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.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				- Notwithstanding the above, the application involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- The 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.	Sewerage 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.
12.	Landscaping impact?		✓	- The 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. - The Site is situated in an area of rural landscape character surrounded by village houses, farmland and scattered tree groups. The proposed use is considered not incompatible with the surrounding environment. Significant adverse impact on existing landscape resources arising from the development is not anticipated.
13.	Local objections conveyed by DO?	✓		- District Officer (North) (DO(N)) advises that he has consulted the locals. The Resident Representative (RR) of Leng Pei Tsuen objects to the application on the grounds that the location of the proposed Small House is close to the Tze Tong. The Chairman of Fanling District Rural Committee, the Indigenous Inhabitant Representative (IIR) of Leng Pei Tsuen and the North District Council Member of the subject Constituency indicate 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 V**.

- (a) District Lands Officer/North, Lands Department;
- (b) Chief Engineer/Mainland North, Drainage Services Department;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Director of Environmental Protection;
- (e) Director of Agriculture, Fisheries and Conservation;
- (f) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (g) Director of Fire Services;
- (h) Commissioner for Transport; 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), North Development Office, 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. Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong Limited and two individuals object to the application mainly on the grounds that the proposed Small House is not in line with planning intention of the “AGR” zone; land is still available in “V” zone of Leng Pei Tsuen; approval of the application will set an undesirable precedent for similar applications in the area; the dense building density in the “V” zone would affect the living environment; and there are environmental and health risks associated with the use of septic tank.

11. Planning Considerations and Assessments

11.1 The application is for a Small House development in an area 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 DLO/N, LandsD advises that more than 50% of footprint of the proposed Small House falls within the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen. Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster is 47 while the 10-year Small House demand forecast for the same village cluster is 132. According to the latest estimate by PlanD, about 0.85 ha (equivalent to 34 Small House sites) of land are available within the “V” zone of Ma Mei Ha Leng Tsui and Leng Pei Tsuen for Small House development (**Plan A-2b**), which is insufficient to meet even the outstanding Small House applications. As such, the application generally complies with the Interim Criteria and sympathetic consideration should be given to the application.

- 11.3 The Site is flat and a vegetable field (**Plan A-4**). It is situated in an area of rural village character in close proximity to the existing village houses and some active/fallow agricultural land, and the proposed Small House development is not incompatible with the surrounding environment (**Plans A-2a and A-3**). The village proper of Leng Pei Tsuen is located to the east and there are approved Small House applications to the north, northeast and northwest of the Site. 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 has reservation on the application and considers that Small House developments should be confined within the “V” zone as far as possible but given that the proposed development involves one Small House, the application could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD, CE/C of WSD and D of FS, have no adverse comment or no objection to the application.
- 11.4 There are 22 similar applications for Small House developments in the vicinity of the Site (**Plan A-2a**). All applications were approved between 2008 and September 2019 mainly on the considerations that the applications generally complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the ‘VE’; there was a general shortage of land within the “V” zone of the same village in meeting the Small House demand and the site is the subject of previous approval. The planning circumstances of the current application are similar to the approved applications. It should also be noted that the Site is the subject of a previously approved application (No. A/NE-LYT/597) submitted by the same applicant as the current application. There has not been any major change in planning circumstances of the area since the approval of these similar and previous applications.
- 11.5 Regarding the local comment conveyed by DO(N), HAD and public comments objecting to the application mentioned in paragraphs in 9.1 and 10 above, the Government department’s 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 local comment conveyed by DO(N), HAD and public comments mentioned in paragraphs 9.1 and 10 above, 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 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**.

12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

- the proposed development is not in line with the planning intention of the "AGR" zone in Lung Yeuk Tau and Kwan Tei South 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.

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 24.11.2020
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Previous s.16 Application
Appendix IV	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 Sites in the Lung Yeuk Tau and Kwan Tei area
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	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 Ma Mei Ha Leng Tsui and Leng Pei Tsuen for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JANUARY 2021**