

THE HIGHLAND COUNCIL

**NORTH PLANNING APPLICATIONS COMMITTEE
2 August 2016**

Agenda Item	6.4
Report No	PLN/042/16

**16/02334/S42: Miss Joyce Hendry
Land west of Eight Acres, Smithfield, Culbokie**

Report by Area Planning Manager

SUMMARY

Description : Application under Section 42 to develop land without compliance with Condition 1 previously attached to planning permission 14/04026/S42 (originally 12/02770/FUL) for the formation of access and house plot and provision of footpath

Recommendation - GRANT

Ward : 10 – Black Isle

Development category : Local Development

Pre-determination hearing : Not required

Reason referred to Committee: Community Council objection.

1. PROPOSED DEVELOPMENT

- 1.1 This application seeks consent under Section 42 to develop land without compliance with Condition 1 previously attached to planning permission reference 14/04026/S42 (originally 12/02770/FUL) for the formation of access and house plot and provision of footpath.
- 1.2 Condition 1 of 14/04026/S42 reads as follows;
No development shall commence, on the construction of a house until the access that serves the properties Strath View, Danian, The Willows and Elder Cruachan has been permanently closed and all the road improvements and footpath provision as shown on drawings 2562:101 REV I, 2562:108/01, 2562:102 REV A and 2562:101/02, or as otherwise submitted to and agreed in writing with the Planning Authority in consultation with the Roads Authority, have been carried out and completed to the satisfaction of the Planning Authority in consultation with the Roads Authority.

2. SITE DESCRIPTION

- 2.1 The site comprises of the following; an area of grassland located to the west of the applicant's property Eight Acres, which is the proposed house plot, and a new access from the public road to the south of Eight Acres which is partially formed already and which shall serve the plot subject to this consent and the 4 other existing properties located to the north.

3. PLANNING HISTORY

- 3.1
- 12/02770/FUL – Formation of access, house plot and provision of footpath – Granted – 28.11.2012
 - 14/04026/S42 – Application under section 42 to modify condition 1 of planning permission 12/02770/FUL (formation of access and house plot and provision of footpath) - Granted – 15.04.2015
 - 15/03898/CLE – Certificate of Lawfulness – Formation of access and house plot and provision of footpath (planning permission reference 12/02770/FUL and application under section 42 (14/04026/S42) - to modify condition 1 of planning permission 12/02770/FUL) – Granted – 10.11.2015

Land to the east using the same access:

- 15/03538/FUL - Erection of house – under consideration.
- 15/04074/PIP - Formation of 3 house plots - under consideration.

The site received full planning permission in November 2012 (**12/02770/FUL**) for the formation of a house plot, new access and provision of improvements to the public road including the provision of a footpath. The existing access was to be closed off and a new access formed to serve the house plot approved as part of this consent and the 4 existing houses to the north of Eight Acres, which were on land previously owned and developed by the applicant.

Following the granting of this planning permission, a Road Construction Consent (RCC) was issued for the improvements to the public road and the new access. However, the design and layout of the public road improvements and the new access was amended during the RCC process and no longer corresponded with the plans approved under planning permission reference 12/02770/FUL. It was therefore necessary for the applicant to apply for a section 42 consent for the non-compliance with condition 1 of planning permission reference 12/02770/FUL, which was the condition controlling the road improvements and which referenced plans not in accordance with those approved through the RCC. An application under section 42 to modify condition 1 was granted in April 2015 - **14/04026/S42**. A new condition was attached to this section 42 consent, which referred to drawings showing the road improvements/access in accordance with the RCC.

In November 2015 a certificate of lawfulness was granted - **15/03898/CLE**, which established that development had commenced at the site in the form of the new access from the public road, which was partially constructed in 2013, prior to the expiry of the planning permission. Therefore planning permission 14/04026/S42 (originally 12/02770/FUL) is now extant.

Relevant current adjacent applications:

Planning applications 15/03538/FUL and 15/04074/PIP for the erection of one house and the formation of 3 house plots respectively are currently under consideration and will utilise the same access onto the public road. All the land covered by these two applications remains in the same ownership as for the current S42 application, although the single house site has been submitted by a third party.

4. PUBLIC PARTICIPATION

4.1 Advertised : Unknown Neighbour

Representation deadline : 21.06.2016

Timeous representations : 1

Late representations : 0

4.2 Material considerations raised are summarised as follows:

- There is no justification for the removal of works which were previously deemed to be necessary.
- Since the 2012 permission, the applicant seeks to continue to develop the ground at Eight Acres without providing any of the improvements that the Authority had considered necessary to ensure public safety, and that the residents of Culbokie had expected to be delivered as part of the approval.
- The application form states that an agreement in principle was reached prior to the submission of the planning application.
- Amended drawings have been submitted to vary the redline boundaries of two applications, 15/03538/FUL and 15/04074/PIP, both of which are on ground belonging to Mrs Hendry. It is not legally competent to extend the redline boundary of a planning application.
- It is not appropriate to transfer the obligations of condition 1 onto applications that are not yet determined and if approved that might never be implemented.
- The applicant's only interest appears to be to secure consent for development at minimum cost and that delivers no benefit to the community.

4.3 Officer's response to points raised in the representation:

- The new access and road improvements are still considered necessary in order to improve road safety at this location. The new point of access and improved visibility will still be required as a condition of this section 42 consent. The other previously consented improvements to the public road will be secured through planning application reference 15/04074/PIP (3house plots) and planning application reference 15/03538/FUL (single house plot) which are currently under consideration. These plots are located on land to the north-east of this site on land under the control of the same applicant. In the context of the Inner Moray Firth Local Development Plan, which has allocated additional land at Eight Acres for housing development

since the previous permission, this is considered a more proportionate, viable and phased approach to secure the new access and public road improvements.

- A meeting between the applicant and officers took place prior to the submission of this planning application. As with all formal and informal pre-application advice, such advice was given without prejudice to the formal consideration of any subsequent application which may be submitted and the associated decision of the Planning Authority.
- Planning applications 15/04074/PIP and 15/03538/FUL were re-advertised and re-neighbour notified following the submission of the amended red line boundaries which include the land upon which the public road improvements are located. Therefore, these applications are legally competent.
- The costs of providing the public road improvements are such that the development is not economically viable for a single house plot.
- The decision to consider the removal of the requirement for the road improvements for this house site was in recognition of the fact that such a level of road improvement works and the associated cost would not normally be considered proportionate for a single house. The planning system is required to act as an enabler of development and give due consideration to the issue of developer economics and viability balanced against other material planning considerations. Road safety improvements will be secured by the formation of the new access which provides greater visibility splays at the junction with the public road. Reducing the overall road improvement requirements for this one particular plot, allows the development to become viable and the public road improvements at this location will be secured through subsequent development on a more proportionate basis.

4.4 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam. Access to computers can be made available via Planning and Development Service offices.

5. CONSULTATIONS

5.1 **Ferintosh Community Council:** Object – concerned regarding road traffic and pedestrian safety. There is increased use of the road by pedestrians and horses accessing Culbokie Woods

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

28 Sustainable Design

34 Settlement Development Areas

6.2 **Inner Moray Firth Local Development Plan July 2015**

CU3 North of Carn Mor Dun (Housing)

7. **OTHER MATERIAL CONSIDERATIONS**

7.1 **Highland Council Supplementary Planning Policy Guidance**

Access to Single Houses and Small Housing Developments (May 2011)
Sustainable Design Guide (Jan 2013)

7.3 **Scottish Government Planning Policy and Guidance**

8. **PLANNING APPRAISAL**

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

8.3 **Development Plan Policy Assessment**

The principle of the development has been established through the previous permission reference 12/02770/FUL, which is now extant. The current application seeks to remove a condition which required both the improvement of the public road and the formation of a new access. The new access from the public road, which will serve this plot and four existing houses on land previously developed by the applicant, is still required and will be a condition of this section 42 consent. Therefore, this consent will result in a road safety improvement considered proportionate to a single house plot. The improvements to the public road, which were previously approved and have Road Construction Consent, are still considered necessary for any further development at this location, and will be secured via conditions attached to the four plots to the north-east of this site (15/03538/FUL and 15/04074/PIP) on land which remains in the applicant's ownership.

This approach takes a holistic view of the land allocation and development at Eight Acres. Since the previous permission was granted the Inner Moray Firth Local Development Plan has been adopted and this allocates additional land at Eight Acres for housing, with an indicative capacity of 4 units. This allocation requires road improvements. The proposed phasing and apportionment of these works is considered reasonable and enables the developer to secure funds from this particular house plot to contribute towards the additional road improvement works required for the further four housing plots at this location (15/03538/FUL and 15/04074/PIP). The main objective to improve pedestrian and vehicular safety for this housing allocation is achieved, and therefore this proposal is considered to accord with Development Plan policy.

8.4 **Material Considerations**

The justification provided by the applicant for seeking to remove the requirement to carry out the improvements to the public road in connection with this particular house plot, is that the costs of providing the public road upgrade is such that the development is not economically viable for a single house plot and therefore the development is unlikely to proceed on that basis.

9. **CONCLUSION**

- 9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. **RECOMMENDATION**

Action required before decision issued N

Subject to the above, it is recommended the application be **Granted** subject to the following conditions and reasons / notes to applicant:

1. No development shall commence on the construction of a house until the access that serves the properties known at the time of this application as Strath View, Danian, The Willows and Elder Cruachan has been permanently closed off and the new access as shown on drawing reference 2562:200, or as otherwise submitted to and agreed in writing with the Planning Authority, has been completed to the satisfaction of the Planning Authority in consultation with the Roads Authority.

Reason: To ensure that the new access with the public road is timeously provided before development of the site for a house commences, in the interests of road safety.

REASON FOR DECISION

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

TIME LIMITS

This development has an extant planning permission, which was established through the granting of certificate of lawfulness reference 15/03898/CLE. Therefore, there is no requirement to state a time period for the implementation of the planning permission.

FOOTNOTE TO APPLICANT

Accordance with Approved Plans and Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (p.198), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationformsforroadoccupation.htm>

Mud and Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

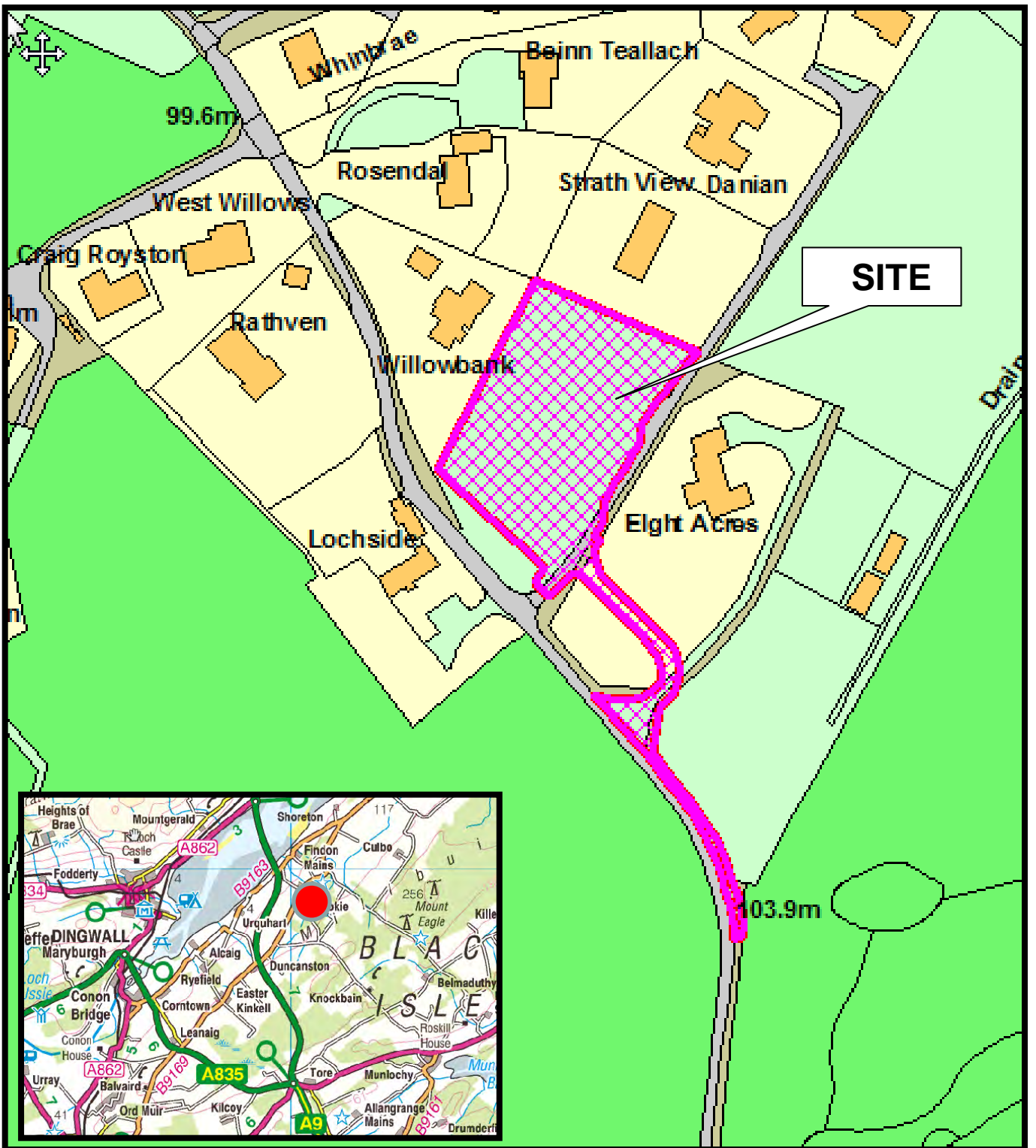
Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Signature: Dafydd Jones
Designation: Area Planning Manager North
Author: Rebecca Hindson
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 – Location Plan
Plan 2 – Site Plan



The Highland Council
Comhairle na Gàidhealtachd
 Planning & Development Service

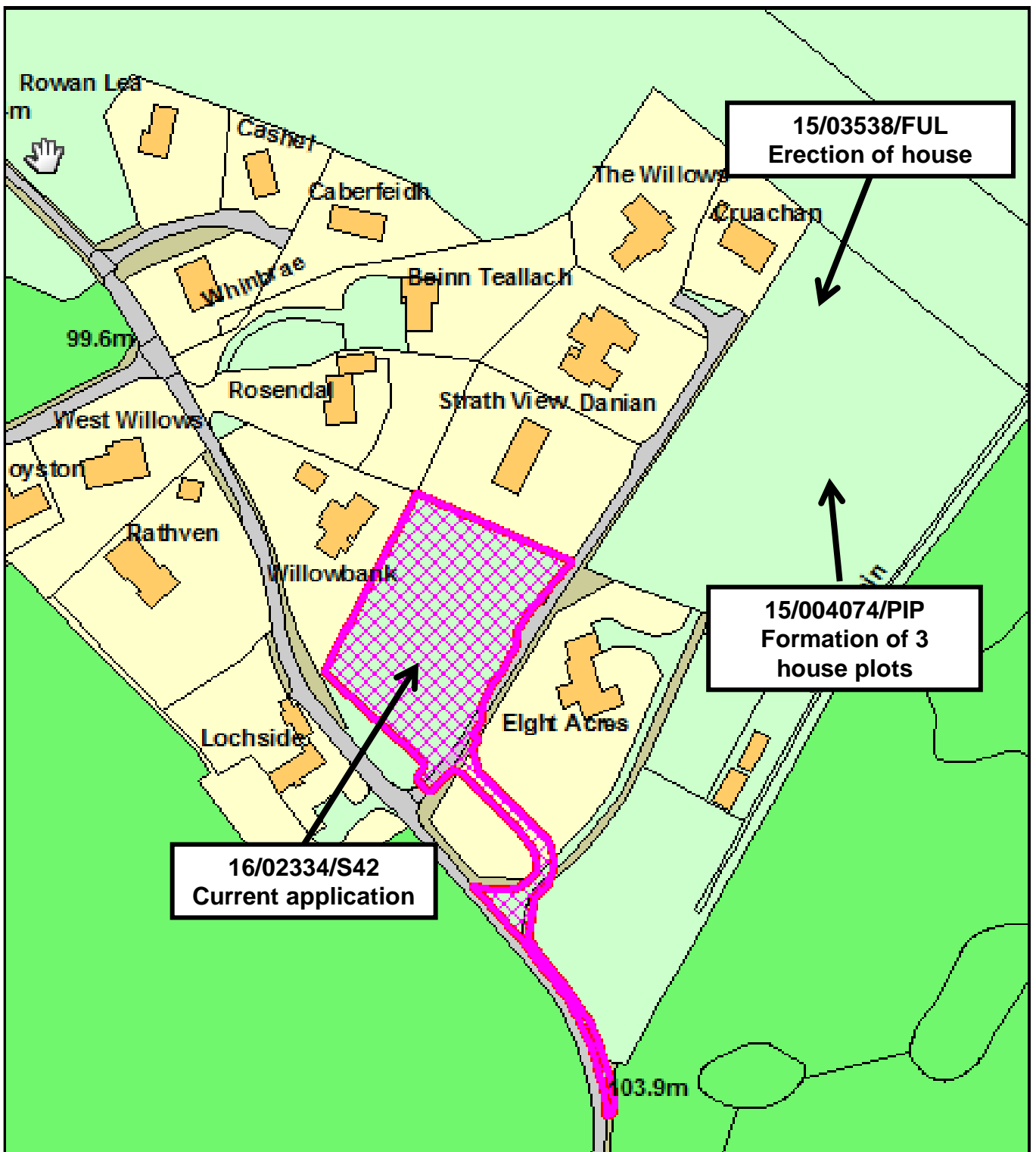
16/02334/S42

Application under Section 42 to develop land without compliance with condition 1 of Planning Permission 14/04026/S42

Land West of Eight Acres, Smithfield, Culbokie
 02 August 2016







Planning & Development
Service

16/02334/S42

Application under Section 42 to develop land
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Land West of Eight Acres, Smithfield, Culbokie
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