

## 11. Section 42 cannot be used now 19/00182/PPP has expired

11.1. **Section 42 is written in plain language, containing a straightforward prohibition** against its own use where the underlying permission expired without being begun – which is exactly the case here now that 19/00182/PPP has expired.

*“(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.”*

*“(4) This section does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.”*

11.2. **Legal advice from Harper Macleod explains the prohibition in this case** (see “S.42(4) of the 1997 Act” in [\[HM1\]](#)).

11.2.1. *“S.42(4) of the TCP(S)A states that S.42 does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.*

11.2.2. *Given these facts, S.42(4) has now been triggered by the applicant failing to commence development within the period specified in the decision notice. The Planning Authority cannot now consider these S.42 applications submitted by the applicant, given the time condition on which application 19/00182/PP was granted has now expired without the development having been begun.*

11.2.3. *We are aware from correspondence with our clients that the relevant planning officer considers that there is case law which limits the applicability of S.42(4). However, having reviewed relevant Scottish case law on which S.42 applications were the subject of judicial discussion, we are firmly of the view that there is no precedent which limits the scope and timing of S.42(4), and our interpretation of S.42(4) is therefore correct.*

11.2.4. *As a result of this, even if the applications satisfied the conditions of validation, these applications cannot be considered as the requirements in S.42(4) are applicable, and this fact renders the applications invalid.”*

11.3. It is worth noting that the prohibition at subsection (4) also applies to subsection 3 (because it applies to every subsection).

*“(3) The Scottish Ministers may by regulations or a development order make special provision as regards the procedure to be followed in connection with such applications.”*

11.4. So, while application 24/00031/FUL is in front of the LRB today because it was validated (under subordinate regulations) before 19/00182/PPP expired, nevertheless the prohibition at section 42(4) applies and 24/00031/FUL cannot be given approval under section 42.

11.5. More broadly, Section 42(4) provides consistency with sections 58 and 59 of the Act. That is, planning permissions in Scotland expire – for a reason. Developers are expected to implement their developments within a reasonable time or risk losing permission. So long as development is lawfully begun, permission will not expire. But if planning permission expires without development having started, then the proposals must be reevaluated against the current SDP – with the risk being that proposals might need to change or, in extreme cases, be refused. These requirements are not onerous, and they reflect policy choices by the Scottish Government. It is important to note here that PPP for this proposal was first granted 30 Mar 2016. This is the second time their PPP has expired – and this time planning policy has materially changed to strengthen environmental policies – which is especially relevant to this development.