

Options, Overage & Developers

As the developers arrive in their masses knocking at your door promising you a lifestyle you of wealth and leisure for your traditional farmyard/property or those couple of off lying fields you have near the by bypass, just take a moment to think what some of those mind boggling words actually mean and over what period of time the development is likely to take place? Typically developers or buyers looking to redevelop immediately or in the short term will preferably use a short term option agreement, where as a long term developer/investor will typically look to develop over a longer period of time for example 10 to 20 years and the use of an 'Overage' may be applicable.

The Best "Option"

For those off lying fields you own by the bypass, developers will be keen to offer you an option agreement. These are commonly known as a tool to purchase an "opportunity", this enables the developer to buy time and tie you into an option deal were they can purchase your land at a later date, normally within 1-5 years should their plans materialise. A developer's intention is to try and secure an "implementable planning permission" before committing to purchasing. The most common scenario is that your field next to the bypass that at present may be worth £10,000 an acre as agricultural land but worth upwards of £1 million an acre should it receive consent for residential or commercial development.

We are currently seeing developers offering on average 75 – 80% of Open Market Value for land based on planning policy changes, village appraisals and Local Development Frameworks. When agreeing an option it is essential to agree the appropriate Heads of Terms and should at least include details of, the land area, option period, financial up front payments, premium paid per annum, purchase price both the percentage of Open Market Value and minimum land value need to be considered, details of the developers intention to submit the planning application for the development within an agreed period of time and the payment of all professional fees and expenses. When agreeing and option it is also important not to dismiss the value of any redundant barns or buildings as this could have an affect on the value of you land/holding.

"Overage" Payment

When the developers say's "right how much for the lot?" it can be easy to get carried away with a substantial offer only to see your former farmyard 10 - 20 years down the line turned into a development of exclusive houses and apartments now worth 5 times what you sold it for. To prevent these situations and secure that you have a slice of the action you should insert an "Overage Clause". The overage clause creates this security and requires the developer/buyer to make additional payments to the seller to

represent the uplift in value following the occurrence of a triggered event previously agreed, normally such “triggers” include, the granting or implementation of planning permission, sale of the land or property with planning permission, or completion of the development or disposal of the completed development.

To ensure that a developer/buyer actually pays an overage payment it is advisable that seller retains a certain amount of control; this is normally provided through restrictions, personal obligations, restrictive covenants and obligations or through retaining a small area of land as a ransom strip and it is advisable to consult your solicitor. Dependent upon the nature of the proposed development certain restrictive methods maybe more favourable or applicable than others. As we are seeing an increased use of overage clauses this is having an increasing effect on what price a developer/buyer is actually willing to pay.

It is important not to forget your tax position as you will be liable to pay Capital Gains Tax at 40% and it is advisable that you consult with your accountant or financial advisor at an early stage to ensure that you mitigate Capital Gains Tax and protect your financial position.

So when you hear that knock on the door! or as the developer waves an option agreement or cheque towards you promising you an offer you can't refuse! take a second to think what it all means and take time to consult your agents, accountants, advisors and solicitors to ensure that you get the best deal in this rapidly growing market.

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