RICS PROFESSIONAL STANDARD

Land agreements for development purposes

UK

1st edition, December 2025

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RICS®

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RICS professional standard, UK

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This document applies to the UK and Crown Dependencies. If any of the requirements contained in this document conflict with regional legal requirements, those regional legal requirements take precedence and must be applied.

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Technical author

Paul Batho FRICS

Expert group

Chair: Kevan Carrick FRICS (JK Property Consultants LLP)

Philip Barnes FRICS (Barratt Redrow PLC)

James Brierley MRICS (Newmark)

Patrick Eve MRICS (Savills (UK) Ltd)

Martin Howard MRICS (Homes England)

Andrew Martinelli FRICS (Devvia Property Consultancy Ltd)

David O'Reilly MRICS (Land, Planning and Development Federation)

Andrew Shirley MRICS (Country Land & Business Association)

RICS professional practice lead

Tony Mulhall MRICS

RICS project manager

Sarah Crouch

RICS editors

Judith Frost and Sam Birch

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Contents

Document definitions

Document type	Definition
RICS professional standards	**Set requirements or expectations for RICS members and regulated firms about how they provide services or the outcomes of their actions.** RICS professional standards are principles-based and focused on outcomes and good practice. Any requirements included set a baseline expectation for competent delivery or ethical behaviour. They include practices and behaviours intended to protect clients and other stakeholders, as well as ensuring their reasonable expectations of ethics, integrity, technical competence and diligence are met. Members must comply with an RICS professional standard. They may include: • mandatory requirements, which use the word 'must' and must be complied with, and/or • recommended best practice, which uses the word 'should'. It is recognised that there may be acceptable alternatives to best practice that achieve the same or a better outcome. In regulatory or disciplinary proceedings, RICS will take into account relevant professional standards when deciding whether an RICS member or regulated firm acted appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS professional standards into account.
RICS practice information	**Information to support the practice, knowledge and performance of RICS members and regulated firms, and the demand for professional services.** Practice information includes definitions, processes, toolkits, checklists, insights, research and technical information or advice. It also includes documents that aim to provide common benchmarks or approaches across a sector to help build efficient and consistent practice. This information is not mandatory and does not set requirements for RICS members or make explicit recommendations.

Glossary

Term	Definition
Benchmark land value (BLV)	Value of undeveloped land used for assessing planning obligation or Community Infrastructure Levy (CIL) payments and defined in the UK government's National Planning Policy Framework (NPPF). It is based on the existing use value (EUV) of the land plus a landowner premium. BLV is a statutory concept and is not appropriate for use in assessing land value for the purposes of a land agreement between a landowner and a developer.
Community Infrastructure Levy (CIL)	A charge which can be levied by local authorities on new development in their area.
Developer	The person or organisation responsible for planning, designing, financing and organising the construction of the project.
Market value	'The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-length transaction, after proper marketing and where the parties had each acted knowledgably, prudently and without compulsion' (see the International Valuation Standards IVS 102 paragraph A10 and RICS Valuation – Global Standards (Red Book Global Standards) VPS 2).
Planning gain	Capturing by the local planning authority of a portion of the increase in land value which can occur at the point at which planning consent for a proposed development is granted.
Promoter	The person or organisation responsible for promoting land for development, usually by obtaining planning consent and subsequently marketing it for sale. The promoter will not usually purchase the site but will receive a fee for their work when the land is sold to a third party or parties.

Term	Definition
RICS Registered Valuer	A member of the RICS quality assurance programme that checks compliance with Red Book Global Standards. Red Book Global Standards details mandatory practices for RICS members undertaking valuation services.
Section 106 agreement	An agreement (based on section 106 of the Town and Country Planning Act 1990) made between a local authority and an owner/developer, which can be attached to a planning consent concerning planning obligations that make a development acceptable. The section 106 agreement runs with the land to which the planning consent has been granted.

1 Mandatory professional behaviour and competence

Mandatory professional behaviour and competence expected of RICS members and RICS-regulated firms when advising in respect of land agreements for development purposes are summarised below.

Conflicts of interest		
1	RICS members **must** be transparent with their clients on fees and any other payments being received.	3.2
The roles of RICS members and lawyers		
2	RICS members engaged in this type of work **must** have the necessary experience and skills, coupled with access to appropriate professional guidance.	4.1
3	RICS members **must** always keep their client fully informed as to the implications and risks, as well as the sometimes more obvious rewards, of entering into a land agreement.	4.1
4	The intentions of the client relating to the following **must** be established at the outset: • What type of development is proposed? • How much of the land will it occupy? • How many units are proposed? • Should the development be phased?	4.1
5	RICS members **must** ensure that heads of terms include a clear and unambiguous statement of the requirements agreed between the parties.	4.1
Definition of satisfactory planning consent		
6	For all types of land agreement, defining what is ‘satisfactory’ planning consent will be a vital part of the legal agreement, and therefore it **must** be defined in the heads of terms.	4.2
Provision for dispute resolution		
7	Heads of terms for all types of land agreement **must** grant both parties the ability to apply for third-party determination in the event of a dispute and should include an obligation on both parties to act reasonably.	4.3

Valuation and land agreements – professional qualification		
8	Where a written valuation is provided to the client in any circumstances, this **must** be undertaken by an RICS Registered Valuer.	5.1
Basis of valuation		
9	RICS members **must** clearly understand, define and apply the basis of valuation.	5.2
10	The valuation date **must** be defined in the heads of terms.	5.2.2
11	Valuations depend on accurate measurement of land and buildings. The bases of measurement **must** therefore be correctly defined in the heads of terms.	5.4
Conditional contracts		
12	Heads of terms **must** state: • who is responsible for applying for planning consent (usually the developer) • the involvement of the landowner in the process – for example, is the landowner required to approve the proposed application prior to its submission, and on what grounds can approval be withheld? • the name of the applicant(s) • whether variations can be permitted and • the circumstances in which an application can be withdrawn or resubmitted.	6.1.2
13	The parties' rights to require an appeal, and responsibility for costs, **must** be specified in heads of terms.	6.1.2
Option agreements		
14	The heads of terms **must** specify whether the option sum forms part of, or is additional to, the purchase price.	6.2.2
15	Whichever approach is chosen, the way the purchase price is calculated **must** be properly and unambiguously defined, in terms that are capable of implementation, in the heads of terms.	6.2.2
16	The agreement should require an open-book policy so that the landowner is kept fully informed of the costs being incurred. Care **must** be taken to ensure that there is no double-counting of any development costs.	6.2.2

Option agreements		
17	Heads of terms **must** specify: • whether the landowner is permitted to transfer or charge the option land as a whole or in part. If they are, the transferee or mortgagee should covenant to observe the landowner's covenants in the option agreement • whether new tenancies may be entered into and, if so, that these be terminable at or before a sale to the developer.	6.2.2
Pre-emption agreements		
18	The purchase price, or the basis on which it will be calculated, **must** be specified in the heads of terms.	6.3.2
19	Once the developer's pre-emption right has been triggered, the landowner may serve notice on the developer, offering to sell the land on the agreed terms, or may alternatively invite the developer to offer terms to purchase it. Heads of terms **must** adequately cover the service of notice in this context.	6.3.2
Land promotion agreements		
20	Costs of promotion will be borne by the promoter and deducted from the sale price to arrive at a net sales proceeds figure, which will be split between the parties on the basis agreed. The heads of terms for the promotion agreement **must** clearly identify allowable costs to be deducted.	6.5.2

2 Introduction

2.1 Background

In its simplest form, a land agreement is a legal document that defines the relationship between a landowner with an interest (usually freehold) in the piece of land on which development is planned and a developer or promoter. The agreement will set out the responsibilities of the parties in matters such as obtaining planning consent, designing the development, undertaking its construction and selling the completed buildings. Most importantly, the agreement will define the responsibilities of, and the commercial arrangements between, the parties.

Land development is a complex and lengthy process involving a high degree of uncertainty and risk. Until planning consent has been granted, the chances of being able to proceed, let alone the exact nature, extent and value of the development, will be uncertain. Most costs and values will be broad estimates liable to considerable variation, and factors such as legislation and planning policy can change significantly over the course of the agreement. Every piece of development land is unique in terms of its location, physical attributes, access and planning background. The developer's, promoter's and landowner's commercial interests and requirements will therefore differ from one site to another.

Land agreements need to allow for all these factors. Historically, however, many have failed to achieve this important objective. When this happens, legal challenges can cause delays and increased costs, which can threaten the successful outcome of the agreement.

There is no single land agreement template that can be adapted to all cases; this professional standard identifies and outlines the six broad types of agreement most frequently encountered. The RICS member, preferably in liaison with the appointed lawyer, should guide their client as to the best format for the particular circumstances of the proposed development.

2.2 Reasons for this standard

In recent years, RICS has published professional standards on a range of development topics, the most relevant of which are referred to in this document. However, none of these directly relates to land agreements for development or promotion purposes. This is an area of practice that has become increasingly complex and litigious.

RICS members play an important role in the development process. In the course of this, they will work closely with other professionals – in particular with lawyers whose role is to advise on and draft the legal documentation. RICS members are likely to be involved in the early stages of the agreement, during which heads of terms will be drafted and agreed. Heads of terms that fully reflect in clear and unambiguous terms the commercial aims of the parties involved will help avoid the risk of renegotiation, with its associated delays and costs.

2.3 Scope and application

Land agreements for development purposes are used in many contexts. Some practitioners may refer to ‘land agreements’ in the context of greenfield sites and to ‘development agreements’ in the context of redevelopment sites. This standard covers all these land development or promotion agreements, whether of greenfield sites or other property, and whether the development is residential or commercial, large or small.

However, very major developments or those involving a wide variety of property types – for example town centre redevelopments and regeneration schemes – may require different, and often more complex, forms of agreement.

This standard provides mandatory requirements and advice for RICS members acting for either the landowner or the developer/promoter when agreeing heads of terms, which will set the framework for the formal land agreement. It sets out principles designed to ensure a successful outcome for all parties.

It is applicable to all RICS members undertaking this work in the UK.

2.4 Effective date

This professional standard is effective from 1 March 2026.

3 Principles

3.1 Overview

A land agreement will typically be between a landowner on one side and a developer or promoter on the other. The intention of both parties to the agreement will be to realise the development potential in a plot of land, taking into account all relevant planning policy requirements. In many cases, the landowner will be risk averse and will not have the necessary skills, knowledge or expertise to develop the land, so will wish to benefit from the skills and resources of the developer or promoter to take the proposal to a conclusion. The landowner will also be reliant on their professional advisers to ensure their interests are protected in the drafting of the agreement. The land agreement will define an appropriate form of partnership aimed at achieving a mutually acceptable outcome.

Prior to a land agreement being drafted, the landowner may have used the land for agricultural or commercial purposes. They may wish to continue to use the land until development works are ready to commence and then make financial gains either from developing the land or from a sale with the benefit of planning consent.

The developer or promoter provides the skills required to obtain planning consent and, if appropriate, to proceed to the next stage by financing and developing the site. The land agreement should provide for the acquisition of the property, or of rights over it, to ensure its development in the shortest possible time and at the lowest risk, while maximising the profitable outcome for both parties.

While a developer or promoter is likely to be more willing and able to take development risks than most landowners, most developers will not wish to buy a site speculatively.

The land agreement should therefore enable the developer or promoter to undertake all necessary research and surveys, complete an implementable planning application to develop the site and, if necessary, appeal against a refusal.

While it will always be the intention of the parties to an agreement to optimise the land value, development value will only be realised when planning consent is granted. The requirements of the planning system, as expressed in law and national and local planning policy, should be understood by RICS members and reflected in any land agreement for development purposes.

Once satisfactory planning consent has been granted, the land agreement may either:

- provide for the transfer of the landowner’s interest to the developer at a defined price
- allow the site to be marketed for sale or
- provide for the developer to undertake construction works.

The costs of promoting the site and obtaining planning consent will often be met by the developer or promoter, in consideration of securing control of the land for the period required to obtain planning consent. These costs, and any incurred for matters such as required infrastructure and construction works, are normally recoverable from the landowner when the site is sold, by way of a deduction from the gross proceeds of sale. The amount of recoverable costs may be subject to a cap. The agreement will then provide for the distribution of net profits on an agreed basis.

The whole development process is likely to take several years to complete, during which time many factors contributing to its success may be subject to change. The final form of the development will be dictated by the planning consent, so it is unlikely to be known at the outset. Values will change and planning law may be subject to review.

The heads of terms for the land agreement should therefore be drafted in a flexible format that can accommodate such potential changes, while ensuring that the original objectives of the landowner and developer or promoter are met. Because changes are usually impossible to predict at the time of drafting, and therefore cannot be specifically provided for, the land agreement should make more general provision for change, for example by ensuring that any planning application is for the most viable scheme given the nature of the site and national and local planning policy requirements.

The parties should be required to collaborate and act reasonably and in good faith when decisions need to be made on the future direction of the project.

Despite the best endeavours of the parties at the heads of terms stage, unexpected issues mean that disputes are likely to occur. The RICS member should therefore seek to foster partnership-style working practices from the start, to reduce risks and avoid expensive delays and costs that could frustrate the parties' desired outcomes.

3.2 Conflicts of interest

RICS members should be aware of the risk of conflicts of interest arising and take the necessary steps to avoid them. RICS members **must** be transparent with their clients on fees and any other payments being received. The current edition of RICS' Conflicts of interest provides clear rules for RICS members to identify and manage potential conflicts of interest.

4 Preparing land agreements

4.1 The roles of RICS members and lawyers

RICS members acting for either the landowner or the developer/promoter will be involved in the development scheme from an early stage and will therefore be advising on, or leading, discussions between the parties to finalise and draft clear and unambiguous heads of terms for the land agreement.

RICS members engaged in this type of work **must** have the necessary experience and skills, coupled with access to appropriate professional guidance. In most cases, their work will involve:

- advising either the landowner or the developer or promoter on the key issues for inclusion in the land agreement
- negotiating heads of terms that reflect their client's ambitions and
- liaising with other professionals, particularly the lawyers engaged to draft the land agreement.

Land development can be a very complex process with uncertain outcomes, and RICS members should be aware that their client may be relatively inexperienced, particularly in the case of the landowner. RICS members **must** therefore always keep their client fully informed as to the implications and risks, as well as the sometimes more obvious rewards, of entering into a land agreement.

While these issues will be subject to planning, the intentions of the client relating to the following **must** be established at the outset.

- What type of development is proposed?
- How much of the land will it occupy?
- How many units are proposed?
- Should the development be phased?

Some common questions that RICS members and their clients will find it useful to consider when finalising heads of term include the following.

- What are the priorities and attitudes to risk of the parties to the agreement? Developers will wish to build out the scheme and sell the completed units at a profit, while promoters will focus on obtaining satisfactory planning consent and selling the site. Landowners' aims may be more varied. Many will be risk averse and will therefore take a passive role, benefiting from the developer's or promoter's expertise and taking a percentage of the development profit. Some may seek a more active role, while others may wish to continue to use the land for existing purposes and only sell it if planning consent that provides a worthwhile gain is achieved.

- Will the undeveloped site be offered for sale when suitable planning consent has been obtained, or will the developer be required to undertake construction works and sell completed units?
- What are the main commercial issues? Matters to be established at the heads of terms stage include: the value of the site in its existing use; future values; points at which key stages are reached and valuations are triggered; the purpose and basis of valuations, including any special assumptions to be made; identification of planning and construction costs; third-party agreements; and the responsibilities of the parties in each of these circumstances.
- Appointment of consultants – planning adviser, architect, engineers, cost consultant, etc. Who is responsible for making appointments? Is there a duty of care to both or all parties, transferability and reliance of reports and warranties between parties or to successors and end purchasers?
- Should there be a cap on costs?
- In light of the above considerations, what form of agreement should be adopted?

The heads of terms should include an obligation on the developer seeking planning consent to collaborate fully with and obtain the agreement of the landowner as the planning process progresses. This will help ensure that there is no dispute about the viability of the planning consent nor agreement to onerous conditions/terms that might be overturned on a later application after the land purchase is completed. There should be similar provisions in the heads of terms to oblige the developer to adopt the best design and construction methods to maximise sale price and mitigate construction costs, which could otherwise prejudice the price to be paid for the land.

It is important to note that lawyers are not expected to negotiate commercial terms. These will be agreed between the parties prior to drafting the agreement and summarised in the heads of terms. The lawyers' responsibility is to convert these into a clear and unambiguous legal document.

RICS members **must** ensure that heads of terms include a clear and unambiguous statement of the requirements agreed between the parties. This will help the lawyers who have been instructed to draft the agreement to act efficiently and without undue delay. To further assist with legal drafting, the heads of terms should:

- have a clear structure with appropriate headings
- include a short explanation of what the agreement is intended to achieve
- be set out in chronological order, with clear target milestones
- as far as possible be 'future-proofed' by making allowance for possible changes that may occur during the lifetime of the agreement and

- include agreed formulae and mathematical examples to indicate how matters such as the sale price of the land and profit share are to be calculated.

Heads of terms are not enforceable under the Law of Property (Miscellaneous Provisions) Act 1989, but some exception clauses can be incorporated for matters such as exclusivity, confidentiality, payments for fees and costs. If certainty is required urgently, for example when there is strong competition for the site, a memorandum of agreement might be used to ensure confidentiality and exclusivity.

While the landowner, the developer/promoter, their surveyors and their lawyers all have separate roles, a land agreement requires cooperation between all parties. Therefore, while RICS members will be principally responsible for the heads of terms, which will then be passed to the lawyers instructed to draft the agreement, it will be advantageous to overlap these processes and invite the lawyers to be involved when the heads of terms are being finalised. Working together at this point will help foster a proper understanding of the requirements of the agreement and speed up completion of the final documentation.

4.2 Definition of satisfactory planning consent

For all types of land agreement, defining what is 'satisfactory' planning consent will be a vital part of the legal agreement, and therefore it **must** be defined in the heads of terms. Matters to be considered include:

- the minimum acceptable level of permitted development – this may be defined in terms of unit numbers or types or the split between market-priced and affordable housing. Alternatively, a floor area or developable area formula could be considered
- whether outline or detailed planning consent has to be achieved.

The definition of satisfactory will vary according to the type of agreement and the intentions of the parties.

4.3 Provision for dispute resolution

Heads of terms for all types of land agreement **must** grant both parties the ability to apply for third-party determination in the event of a dispute and should include an obligation on both parties to act reasonably.

Mediation offers a relatively quick and cost-effective way to resolve disputes. For larger schemes, use of the current edition of the Ministry of Justice's Pre-Action Protocol for Construction and Engineering Disputes might be appropriate, or even a claims committee, which could address matters without holding up the programme of work.

RICS provides alternative dispute resolution services, including mediation in land and property matters.

4.4 Common heads of terms

Every land agreement for development purposes will need to reflect both the unique circumstances of the site and the particular requirements of the signatories. There can therefore be no standard format. However, some heads of terms common to many agreements can be identified, although it should be noted that this is not an exhaustive list.

Project overview:

- parties
- nature of project
- length of agreement
- parties' desired outcomes.

Property and planning details:

- current site
- ownership
- any third-party land requirements
- planning strategy
- planning consent definitions
- project proposals
- marketing.

Financial overview:

- payment for entering into land agreement
- acquisition cost/value
- development costs
- target disposal price (likely to be subject to price criteria, e.g. trigger and minimum acceptable price levels)
- taxation issues.

Development period:

- timetable
- key milestones (planning consent, sales date, completion of development, etc.)
- end date
- provisions for extension of time if required.

Sources of funds:

- developer or promoter

- landowner.

Costs and profit share:

- developer's/promoter's costs (recoverable/non-recoverable)
- profit calculation
- profit sharing
- distribution – circumstances and timing
- method of appraisal and valuation
- triggers for payments.

Responsibilities of the parties:

- list of actions to complete development
- landowner's and developer's responsibilities/obligations
- decision-making processes and responsibilities
- responsibility for arranging and approving development funding
- responsibility for marketing and selling the development.

Governance:

- directors, meetings, audit
- reporting and access to information
- property charging – rules and restrictions
- matters requiring approval – by whom?
- vetoes.

Dispute resolution:

- triggers
- procedures.

Termination:

- termination on sale of land/completed project
- pre-emption rights
- consequences of breach of contract
- other factors, for example:
  - defective title
  - failure of parties to perform obligations in the agreement
  - unimplementable consent

– viability issues.

While these are typical terms, the form of agreement will vary depending on the nature of the proposed development and the aims of the parties to it. Six typical variants are commonly identified, details of which are set out in sections 5.1 to 5.6. The parties will need to decide on the format to be adopted at the time that heads of terms are agreed.

5 Valuation in land agreements

5.1 Professional qualification

Members are reminded that where a written valuation is provided to the client in any circumstances, this **must** be undertaken by an RICS Registered Valuer.

5.2 Basis of valuation

A number of valuations may be required during the life of some types of land agreement. These will influence the commercial outcome, so RICS members **must** clearly understand, define and apply the basis of valuation. Valuations likely to be required include the following.

5.2.1 Valuation of the landowner's interest at the date the agreement is completed

At this point in the development process, there is unlikely to be any planning consent for the site, so the value will reflect its existing use. Important points in relation to this valuation include the following.

- The basis of value is likely to be market value, in accordance with VPS 2 of RICS Valuation – Global Standards (Red Book Global Standards).
- Although market value should not take account of any development proposals that do not have planning consent, it may include any expectation of a change in the circumstances of the land in the future that would be reflected in the price paid by a purchaser on the open market. So, for example, if the land was in agricultural use but adjoined a recent development, potential purchasers may make a bid at a level above the land's purely agricultural value to reflect the possibility of obtaining consent to develop it at some stage in the future (see VPS section 4 of Red Book Global Standards).
- The market value is likely to change during the life of the land agreement. It may therefore be necessary to make provision for this in the agreement. One option would be to provide for a revaluation, or the parties might agree that the value at the date of signing the agreement should be adjusted by reference to an appropriate index, in order to reflect any change in value over the life of the agreement. The assessment of market value prior to planning consent being obtained should take into account all relevant planning policy requirements. Once planning consent has been granted, however, the position will change to that outlined in section 5.2.2.
- Government publishes policy and practice advice which is required to be followed by decision makers in planning. In relation to obtaining planning consent, the government's current planning practice guidance explicitly states that price paid for land is not a relevant

justification for failing to accord with relevant policies in the plan. It is important for developers and other parties buying (or interested in buying) land to have regard to the total cumulative cost of complying with all relevant policies when agreeing a price for the land (see the government's Viability webpage).

- It is important to recognise the clear distinction between market value and benchmark land value (BLV). BLV is a figure used in the assessment of viability for planning purposes to establish the size of contributions required by the planning authority from the developer towards, for example, the provision of affordable housing, road improvements or local educational needs. Factors that are taken into account when assessing BLV are discussed on the government's Viability webpage. These factors may differ from assumptions made and methods used to assess the market value, so the two approaches are likely to result in different figures. BLV should therefore not be assumed to equate to market value. The use of BLV is covered in the current edition of RICS' Assessing viability in planning under the National Planning Policy Framework 2019 (for England), and RICS members working in this area are also referred to the current edition of RICS' Financial viability in planning: conduct and reporting.

5.2.2 Valuation of the landowner's interest with the benefit of planning consent but prior to development commencing

This represents a valuation of the undeveloped land at a later stage in the process. It may be required when the site is not being openly marketed, for example for a conditional contract, an option agreement, a pre-emption agreement or an overage agreement.

Once again, the basis of valuation is likely to be market value. At this stage of the development process – with planning consent granted – the land will probably be unoccupied. If it is not, the valuation will need to reflect the costs of obtaining vacant possession prior to beginning construction.

The valuation date **must** be defined in the heads of terms. This is often the date on which implementable planning consent is granted, or it may be the date of service of a trigger notice that determines the price after the developer has undertaken further work, for example on the issue of consent conditions and the completion of required highway agreements.

Local circumstances may require the appraiser to look beyond the site that is the subject of the land agreement. For example, if the landowner has adjoining land, is the value of this affected by the grant of planning consent on the site subject to valuation, and how can it be maximised or any potential liability mitigated? How will the developer treat new road access to adjoining land, which may assist its future development, or does a ransom position arise from which benefit can be derived?

5.2.3 Valuation of the completed development

Once a development has been completed, its value is in most cases established by the sale price achieved. However, in some circumstances a valuation may be required prior to a sale or before all units in the development have been sold.

This situation may arise when an overage agreement is terminated before a sale of the completed development or before all individual units have been sold. In these circumstances, a valuation on the assumption that all units have been sold may be required. In effect, this is likely to amount to a valuation of all unsold units plus the total price achieved for units that have already been sold.

The basis of value will be market value, and the date of valuation will probably be the date of expiry of the agreement.

5.3 Methods of valuation for development land

The valuation of development land, as required in sections 5.2.1 and 5.2.2, is a specialist area of professional practice. The current edition of RICS' Valuation of development property covers this type of work.

The method of valuation in these circumstances should be carefully considered. There are two possible options.

- The **comparable method** assesses the value of the site by reference to recent transactions of similar property, usually on a price per unit area. The current edition of RICS' Comparable evidence in real estate valuation covers the use of the comparable method in real estate valuation.
- The **residual method** assesses the value of the development when completed and deducts from this figure the total development and finance costs plus the developer's profit to arrive at a residual sum that represents the value of the land. A simple formula for this method is set out below.

In principle, the comparable method is the more reliable, but because it is frequently difficult to identify truly comparable sales evidence, the residual method is often used instead. However, a residual valuation is very sensitive to relatively small changes in input assumptions, especially those relating to the sale price of the completed development or construction costs.

At the date of valuation, these and other inputs will be estimates rather than provable figures and may therefore lie within a broad confidence range. The residual method can therefore produce a wide range of outcomes, leading to uncertainty and scope for disagreement.

Wherever possible, the valuer is advised to value the land using both the comparable and residual methods, applying professional skill and experience to arrive at a fair determination of value.

At its simplest, the residual development equation is as follows:

$$L = G - D - P$$

where L is land value, G is gross sale proceeds of the completed development, D is development costs (planning, infrastructure, construction, finance, marketing, acquisition, etc.) and P is developer's profit.

L therefore represents the value of the land prior to development; this is likely to be the figure required in most land agreements.

A similar equation, using the same inputs, can be used to estimate the profit from a development:

$$P = G - D - L$$

To calculate P, L has to be known or estimated. This equation produces an estimate of viability for a project; it is not a valuation and is therefore not directly relevant in the context of a land agreement.

5.4 Measurement

Valuations depend on accurate measurement of land and buildings. The bases of measurement **must** therefore be correctly defined in the heads of terms. The current edition of RICS' Land measurement for planning and development purposes defines the key terms. It also sets out and illustrates how – and in what circumstances – these core definitions are applied, as well as including context to assist with the calculation of each.

5.5 Dispute resolution

Matters relating to value have a key bearing on the commercial outcome of a land agreement. However, as indicated previously, valuations may be subject to considerable uncertainty or subjectivity. This can give rise to disputes between the parties. Timing and flexibility are important elements in a successful development, so the parties will wish to ensure that any disputes are settled as quickly as possible.

All land agreements therefore need to provide for disputes to be referred to an appropriate third party to resolve disagreements (see section 4.3). For valuation matters, this is likely to be a suitably qualified RICS Registered Valuer, acting as an independent expert or arbitrator.

6 Types of land agreement

6.1 Conditional contracts

6.1.1 Basis of agreement

In a conditional contract, the developer agrees to purchase land with development potential from the landowner, subject to specified planning and/or technical conditions being achieved. If the conditions are not achieved, or in some cases if the approved scheme is not viable, the contract will terminate and the developer will be under no obligation to complete the purchase.

The contract sum may be calculated in a variety of ways, depending on the type of development proposed and the requirements of the parties. At its simplest, it will be an agreed, fixed amount, payable on completion of the sale.

If the planning position is uncertain at the time the heads of terms are agreed, the sum may be geared to the planning outcome. For example, in a residential development it may relate to the number, type and size of houses permitted.

A conditional contract will usually provide for the developer to pay a deposit upfront, which will in most cases not be returnable if satisfactory planning consent is not received.

The developer will usually be responsible for the costs of obtaining planning consent, and an allowance for such costs (which may be subject to a cap) will be made when the purchase price is agreed. Approved costs should be agreed and listed in the contract. There may also be provision for extra costs not foreseen when the agreement was signed.

The developer will not be obliged to pay the majority of the purchase price unless and until satisfactory planning consent is granted. Their costs incurred in applying for consent are therefore at risk. The landowner benefits from the deposit, from the developer's expertise in obtaining planning consent and, subject to satisfactory consent being obtained, from a further payment following completion of the sale.

6.1.2 Key elements

Liability for obtaining planning consent

Heads of terms **must** state:

- who is responsible for applying for planning consent (usually the developer)
- the involvement of the landowner in the process – for example, is the landowner required to approve the proposed application prior to its submission, and on what grounds can approval be withheld?

- the name of the applicant(s)
- whether variations can be permitted and
- the circumstances in which an application can be withdrawn or resubmitted.

Timetable

The heads of terms should include:

- a backstop date after which the contract will be terminated if satisfactory planning consent has not been received; this may include a clause allowing an extension in specified circumstances – for example when planning consent has not been granted but is imminently expected
- the period allowable for the developer to complete the purchase following receipt of satisfactory planning consent.

Satisfactory planning consent

In addition to the factors described in section 4.2, matters to be considered include:

- the impact of onerous conditions to which consent may be subject – these may be specifically identified or defined in terms of their impact on the financial outcome of the development
- whether 'satisfactory' is wholly at the developer's discretion. The landowner will almost certainly wish to be involved in this decision.

The developer will wish to ensure the planning consent is immune from challenge or judicial review before completing the purchase.

Onerous conditions imposed with planning consent

These will need to be defined in the contract. The developer will wish to include anything that makes the project economically unviable, such as:

- time restrictions (excluding the usual requirement to begin development within a reasonable period)
- unexpected limitations on occupation and use
- greater than expected planning gain contributions and
- restrictions on types of occupier and/or times of occupation.

Planning appeals and new applications

In the event of a refusal, the developer may prefer to make a new application rather than appeal. The parties' rights to require an appeal, and responsibility for costs, **must** be specified in heads of terms.

Flexibility may be required in the event of an appeal against non-determination by the planning authority.

Developer’s obligations

Likely obligations imposed on the developer are:

- to submit a planning application within an agreed timeframe
- to use reasonable endeavours to obtain a planning consent that meets the agreed objectives as soon as reasonably possible
- to keep the landowner informed of progress
- to provide the landowner with copies of all relevant documentation and
- not to begin development until the sale is completed.

Landowner’s obligations

These are likely to include:

- assisting the developer in obtaining planning consent
- facilitating access to the site for studies and investigations
- entering into any planning conditions required as preconditions of the grant of planning consent and ensuring that other relevant parties (e.g. tenants and mortgagees) also do so
- taking no action that might prejudice the grant of planning consent
- doing nothing that might result in a material change in the state or character of the property or hinder its development and
- not selling, leasing, charging, mortgaging, granting an easement or otherwise disposing of the whole or part of the property.

Financial provisions

Common financial provisions include:

- the amount and due date of a deposit payment by the developer to the landowner
- the purchase price after all planning and other conditions are satisfied
- provisions for agreeing and accounting for developer’s costs incurred in obtaining planning consent, including a schedule of allowable costs
- how to deal with unexpected costs caused, for example, by unexpected ground conditions, service costs, etc.
- whether adjustments to the purchase price are permissible because of unexpected conditions in the planning consent (see Onerous conditions imposed with planning consent)
- due dates for payments and
- due allowance for the parties’ respective tax positions when agreeing the provisions for any overage payment.

Dispute resolution

A conditional contract relies on defined goals being achieved, the most important of which relate to planning consent and viability. Disputes can arise as these may be matters of judgement rather than being absolutely clear-cut. For example, when is a planning consent satisfactory and when is a scheme unviable? How should unexpected section 106 or Community Infrastructure Levy (CIL) contributions be dealt with?

See section 4.3. Referral to a mediator or a suitably qualified planning consultant, planning counsel or independent RICS member would be an appropriate way of resolving disputes between the parties.

6.2 Option agreements

6.2.1 Basis of agreement

An option agreement is similar to a conditional contract, except that the developer is not required to purchase the option land if satisfactory planning consent is granted. The developer will therefore have a call option on the land, which – once exercised – creates a binding contract for its sale and purchase.

Under the terms of an option agreement, the developer will be required to promote the land for development, apply for planning consent and employ reasonable endeavours to obtain a satisfactory consent to develop the site. Once planning consent has been granted, the call option may be exercised. An upfront option sum will usually be payable by the developer to the landowner. The agreement is likely to be for a fixed period, which may be extendable in defined circumstances.

The benefit of an option agreement for the developer is that it creates a right to purchase land without any obligation to purchase, even if planning consent is granted. Option agreements can, however, be complex and difficult to negotiate. Once planning consent has been granted, agreeing the purchase price can also be challenging because the two parties' objectives may vary.

The agreement may also include the right for the landowner to require the developer to purchase their option at an agreed price (a 'put option').

6.2.2 Key elements

Because of the similarities to a conditional contract, many of the key elements in an option agreement are also similar. Issues specific to option agreements include the following.

Option period

To avoid contractual uncertainty, a finite option period should be agreed, at the end of which the agreement will terminate.

In certain circumstances, it may be necessary to arrange an extension of time, for example when:

- the outcome of an application, appeal or planning challenge is awaited
- a consent is subject to a planning agreement that is in the course of completion
- an expert's determination or counsel's opinion is awaited or
- any other specified decisions relevant to the particular application are outstanding.

Further reasons to extend the option period may arise in the event that the developer is assembling a site in a number of separate ownerships, which may be at differing stages of the option process, or where satisfactory planning consent has only been obtained on part of the option site.

Because the option agreement term is finite, an extension may be by way of a separate agreement between the landowner and option-holder, to be completed at the time the extension is required.

Option sum

The heads of terms **must** specify whether the option sum forms part of, or is additional to, the purchase price.

An additional option sum may be payable to extend the option period.

Satisfactory planning consent

See section 4.2. Because the developer is not obliged to purchase from the landowner if planning consent is obtained, the requirements of this clause may differ from those under a conditional contract.

The agreement may include defined option objectives that set out the parties' requirements. These could include, for example, an obligation on the developer to use reasonable endeavours to maximise the value of the land and/or set minimum limits on the scale of the development, expressed in terms of the percentage of land to be developed, the minimum land take, or the floor area and number of buildings to be constructed. Such objectives are very likely to be influenced by the planning consent.

It may also be necessary to state that, to be satisfactory, the consent should not contain any adverse conditions. These should also be defined (examples are summarised in section 6.1.2, *Onerous conditions imposed with planning consent*).

Purchase price

For the purposes of an option agreement, the purchase price may either be a fixed sum or on a fixed basis (e.g. £250,000 per developable acre/hectare) set at the time the agreement is signed or, more frequently, the market value of the land at the time of its sale to the developer.

An example could be a purchase price representing an agreed level of return to the developer, structured as a percentage margin on allowable costs or a percentage discount on market value once planning has been granted, but there are many alternatives.

Whichever approach is chosen, the way the purchase price is calculated **must** be properly and unambiguously defined, in terms that are capable of implementation, in the heads of terms.

The following additional statements may also be considered for inclusion in the heads of terms.

- 'The option land has no special value arising from the fact that other land benefits from access roads or services across it.' This would be important if, for example, the developer owns or has rights to adjoining land. In these circumstances, the heads of terms should include wording to ensure a ransom position is not created and that any increase in value arising for this reason cannot be included in any payment due.
- 'The land is being sold with vacant possession.'
- 'The land is not subject to the option agreement.'

A minimum price may be agreed, which might be indexed if the development period is expected to be lengthy.

Development costs will be deductible from the purchase price, so these will need to be agreed, listed and defined in the option agreement. They are likely to include the developer's costs in promoting the site, applying for and obtaining planning consent, planning gain/section 106 costs, plus any necessary works undertaken, such as ground treatment or infrastructure installation. The agreement should require an open-book policy so that the landowner is kept fully informed of the costs being incurred. Care **must** be taken to ensure that there is no double-counting of any development costs.

If the land forms part of a developer's larger interest, the value of the entire site may need to be assessed and then divided, on a pro rata basis, between all landowners. This is likely to be on an equalised basis (a standard rate per unit area) to allow for the fact that some individual ownerships may be mostly or wholly used for landscaping, access and other purposes that benefit the entire holding but that may not be directly used for the development itself. Development costs may be divided between landowners on a similar basis.

A formula or formulae may be agreed to ensure clarity in these matters.

RICS members should advise their clients to seek advice on, and take into account, their tax position when agreeing the provisions for the option payment.

Overage

To cover the possibility that the developer could obtain larger or more valuable planning consent than that envisaged in the original agreement, the landowner may wish to include an overage payment (see section 6.4).

Landowner's obligations

These may include agreeing:

- to enter into required planning agreements and ensure that any other persons or organisations affected (e.g. mortgagees, tenants and others with an interest in the land) also cooperate as required
- to support the developer's planning application
- not to make any other application that affects the land
- not to do anything on the land that affects the development prospects or reduces the value of the land
- not to sell or let the whole or part of the land, or to grant any easements or licences except with the agreement of the developer and
- to permit access to the developer when reasonably required.

Developer's obligations

These will typically include obligations to:

- promote the option land for development
- lodge a planning application and make reasonable endeavours to obtain planning consent within a reasonable timeframe
- maximise the value of the land
- maximise the developable area and
- secure agreement to appropriate planning gain requirements and other obligations of planning consent commensurate with delivering national and local planning policy.

The developer will not usually be willing to enter into an obligation to appeal a planning refusal, but they are likely to seek the right to request an extension of time, if required, to make an appeal.

Termination

The landowner may wish to be able to terminate the agreement if the developer becomes insolvent or is in major breach of the terms of the agreement. This is likely to be resisted by the developer.

Dealing

Heads of terms **must** specify:

- whether the landowner is permitted to transfer or charge the option land as a whole or in part. If they are, the transferee or mortgagee should covenant to observe the landowner's covenants in the option agreement

- whether new tenancies may be entered into and, if so, that these be terminable at or before a sale to the developer.

The option agreement, and any restrictions on dealing, should be registered on the landowner's title. Any existing mortgagees will need to give consent to the option agreement and any consequent restrictions on title.

Dispute resolution

Because the property will not be exposed to the market, there is an increased risk that the parties may not be able to agree a market value and so disputes may arise for this (or another) reason. See section 4.3.

6.3 Pre-emption agreements

6.3.1 Basis of agreement

In a pre-emption agreement, the landowner grants the developer a preferential right to purchase if the landowner decides to dispose of the land.

The landowner is under no obligation to sell the land, but if they decide to do so, the developer has the right, but not an obligation, to purchase it on the agreed terms.

A pre-emption agreement may benefit a developer holding adjoining development land, particularly if the landowner does not wish to sell immediately. There are some disadvantages from the landowner's perspective because the existence of a pre-emption right will make it difficult to market the land to a third party. This restricts the landowner's ability to deal with the land during the period of the agreement. However, a pre-emption agreement may be terminable if the developer is offered the land prior to marketing and declines to exercise the pre-emption agreement.

6.3.2 Key elements

Important issues to be considered when entering into a pre-emption agreement are the following.

Purchase price

The purchase price, or the basis on which it will be calculated, **must** be specified in the heads of terms. It could be a fixed price, or the developer could be required to match an offer received from an independent proposed buyer in an arm's-length transaction. Alternatively, the agreement may require the transaction to be at the land's market value.

Term

The agreement should specify the date at which it will terminate. There is no statutory restriction on the period of a pre-emption agreement.

Triggering the agreement

The developer's pre-emption rights will be triggered by a proposed disposal of the landowner's interest. This is likely to be by way of sale, but the agreement could include other dispositions, such as the proposed creation of a mortgage or the grant of a lease or an option.

Operating the pre-emption

Once the developer's pre-emption right has been triggered, the landowner may serve notice on the developer, offering to sell the land on the agreed terms, or may alternatively invite the developer to offer terms to purchase it. Heads of terms **must** adequately cover the service of notice in this context.

If the offer to purchase is rejected, the landowner should be free to sell the land to a third party on unrestricted terms. The developer may be offered a second chance to purchase the land if a sale is not achieved within a specified period.

RICS members should advise their clients to seek advice on, and take into account, their tax position when agreeing the provisions for operating the pre-emption.

Assignments

The developer's pre-emption right is assignable unless the agreement makes specific provision to the contrary.

Dispute resolution

See section 4.3. If market value is the agreed basis of price, an independent valuer would be an appropriate third party in the event the parties are unable to agree this figure.

6.4 Overage agreements

6.4.1 Basis of agreement

An overage agreement is signed before the land is sold to the developer and provides for an additional payment to be made by the developer to the landowner in certain specified circumstances after a sale has been completed.

It enables the landowner to sell the land at a price that will reflect its unimproved market value plus any subsequent uplift in value arising, for example:

- from the grant of planning consent for development
- when planning consent is in existence at the time of sale, from the grant of an improved planning consent (e.g. a greater developable area, more/larger buildings or more valuable uses) following the sale date
- where revenue from sales of the completed development exceeds an agreed threshold ('sales overage')

- when the value of the completed development exceeds an agreed threshold or
- when the land is resold within an agreed period at a higher price (the developer 'turns' the site at a profit).

An overage agreement allows the developer to purchase development land at its current use value and only pay the landowner for an improvement in value if this is actually achieved. The developer's risk is therefore minimised. In the same way, the landowner achieves a sale and retains the right to benefit from a later improvement in value.

6.4.2 Key elements

An overage agreement can be simple in principle, but providing for the possible range of future outcomes and assessing their impact on the overage payment can add complexity.

Assessing the amount of the overage payment

The way the overage payment is calculated will be influenced by the nature of the circumstances that bring it about. Possible approaches include:

- a fixed sum overage payment due when the trigger event takes place
- if the payment is dependent on the grant of planning consent, a payment representing an agreed percentage of the difference between the market value of the land with and without planning consent
- in the case of a sales overage, an agreed percentage of the difference between total sales revenue achieved and the revenue anticipated in the land agreement; alternatively, the achieved and anticipated revenue may be expressed in rates per unit area (e.g. £ per square foot/metre)
- if the completed development is larger than anticipated at the time the agreement was completed, an overage payment may be based on the additional area multiplied by an agreed rate per unit area.

The developer is likely to require the costs of obtaining the planning consent or its improvement, and/or the costs of constructing any additional buildings, to be deducted from the overage payment. The overage agreement should contain a schedule of all permissible additional costs.

For clarity, the overage agreement may include a formula indicating how the overage payment is to be calculated. The following formula could be used as a basis for calculating the overage arising from the grant of, or improvement in, planning consent:

$$\text{Overage payment} = \{(A - B) - C\} \times D\%$$

where A is the market value of land with new or revised planning consent, B is the market value of land at the date of the agreement with no consent or consent for a smaller development (this should be agreed and documented at the time the agreement is signed), C is costs of achieving planning consent (agreed and listed in schedule) and D is the agreed percentage due to the landowner.

Variations on this formula would be required to cover other circumstances in which an overage payment may be payable.

Trigger for, and timing of, overage payment

The trigger for the overage payment is likely to depend on the nature and scale of the development. It may be:

- the grant of planning consent or of a subsequent variation in an existing consent
- implementation of planning consent
- sale of the land following the grant of planning consent or
- if the developer undertakes construction, the sale of the final unit in the whole development or in each phase.

If payment is subject to planning consent, it should not be payable until the consent granted cannot be challenged.

For a small development built in a single phase, payment may be due after the sale of the final unit. In the case of a larger scheme built in phases, interim overage payments may be agreed following the sale of individual units or of all units in each phase.

The agreement is likely to include a backstop date enabling it to be determined in the event that sales are slower than anticipated. The market value of unsold units should be assessed at the backstop date and added to the prices achieved for sold units to calculate the payment due.

RICS members should advise their clients to seek advice on, and take into account, their tax position when agreeing the provisions for the overage payment.

Further overage payments

The agreement may allow for additional payment to be made if, following the initial payment, the developer succeeds in improving on the first planning consent by obtaining consent for a larger or otherwise more valuable development. Such a payment may become due when revised planning consent is received or when the scheme is completed.

It will be in the landowner's interest to ensure that, if the developer sells the land, its buyer covenants to comply with the overage obligations. Such an obligation will not apply to individual plots bought for owner-occupation.

It is unlikely that further overage payments would be due following completion of the development. The purpose of the agreement is to share the benefits of the anticipated development. It will therefore not apply to any future changes that may affect the market value of the land at a later date.

Developer's planning obligations

The overage agreement may require the developer to:

- apply for planning consent
- maximise the development value of the site
- appeal against refusal and
- implement planning consent within a reasonable time.

Alienation

The rules of privity of contract mean that the developer will retain their responsibility to make overage payments after they sell the land, unless the overage agreement expressly releases them from these obligations.

The landowner may therefore wish to secure future payment of the overage by taking a legal charge over the land. Alternatively, they may require the new purchaser to enter into a deed of covenant to observe and perform the terms and obligations of the overage agreement and require the developer not to dispose of the land until the deed of covenant has been completed.

Termination

An overage agreement should terminate after a finite period if the circumstances for triggering a single payment, or payments for all phases, have not been met. The parties will need to agree a reasonable period within which the requirements of the overage agreement can be achieved.

On termination, the developer should be released of all their liabilities under the terms of the agreement.

Dispute resolution

See section 4.3. Disputes on matters of market value may arise, and a mediator, or an expert or arbitrator appointed by RICS, is an appropriate third party to resolve such disagreements.

6.5 Land promotion agreements

6.5.1 Basis of agreement

Under the terms of a land promotion agreement, the landowner will appoint a promoter who will be responsible for promoting the land for development by obtaining planning consent and subsequently marketing it for sale. The promoter will not purchase the site but will receive a fee for their work when the land is sold to a third party or parties. The fee is usually an agreed percentage of the net proceeds of sale.

A land promotion agreement has some similarities to an option agreement in that the promoter will be responsible for seeking satisfactory planning consent, but they will not have the option to purchase the land once planning consent has been obtained. Instead, the landowner and promoter will jointly seek a successful sale of the land on the open market, with the benefit of planning consent and any other works required to enhance its value.

Under a land promotion agreement, the landowner is not required to sell the land unless and until satisfactory planning consent has been achieved. A further benefit is that the sale price will usually have been proved in the market, rather than being reliant on the parties agreeing the purchase price through valuation and negotiation.

Furthermore, the interests of the parties are more closely aligned than in other forms of agreement. Both have a direct interest in maximising the extent of the development and therefore the eventual sale price.

6.5.2 Key elements

As with other forms of land agreement, the format and content will be strongly influenced by the parties' individual objectives and by the nature of the site itself. However, there are a number of common factors that will usually be included in any agreement.

Joint objectives

As a form of joint venture agreement, there will be a number of objectives that both parties are likely to have in common. These may include requirements to:

- maximise the value of the site
- obtain planning consent in as short a time as is reasonable, given the objective of maximising the value of the site
- ensure the largest possible developable area, again to maximise value
- appeal a refusal of planning consent or a consent that contains onerous conditions and
- market the property for sale once planning consent has been obtained.

Promoter's obligations

The promoter will be required to seek planning consent and market the site. Specific obligations in the context of the agreed joint objectives are likely to include:

- preparation of all plans, design statements, etc.
- for larger developments, preparation of a planning strategy and phasing
- appointment of planning and other consultants
- promotion of the site through the local plan process to achieve an allocation in an adopted local plan, if it is agreed that such a strategy will improve the prospects of subsequent planning applications/approvals
- applying for planning consent at the earliest opportunity, or when commercially sensible, in the joint names of the promoter and landowner:

  - the scheme proposed should be consistent with the joint objectives
  - the application should be for outline or detailed consent, as agreed between the parties and
  - a time limit for achieving planning consent will usually be required.
- structuring the planning conditions and any section 106 agreement to facilitate a sale either in tranches or as a whole
- minimising the impact on the commercial viability of the scheme of any planning obligations to which planning consent may be subject, commensurate with delivering national and local planning policy
- taking action in the event of a refusal; this may include a requirement to submit an appeal (subject to an assessment of the chances of success), make a revised application or apply for onerous conditions to be discharged
- marketing the land for sale with the benefit of planning consent and
- arranging sale of the land either in tranches or as a whole.

The parties will need to agree the extent to which the landowner's approval is required for the promoter's actions.

Landowner's obligations

The landowner is likely to have wider responsibilities in a land promotion agreement than in other forms of land agreement. Obligations may include:

- to take reasonable steps to assist the promoter in obtaining planning consent, including granting the promoter rights of access to undertake surveys and any preliminary or infrastructure works
- to require that any existing tenants and mortgagees enter into any planning agreement
- after the agreement is completed, not to grant leases except on terms that enable a sale with vacant possession to be achieved under the terms of the promotion agreement
- to ensure that any charges made or mortgages entered into are on terms that allow the landowner to sell the land unencumbered when required to do so by the promotion agreement
- not to sell the land prior to the termination of the promotion agreement, unless the purchaser covenants to be bound by the terms of the agreement
- to ensure vacant possession of the land, or tranches, at the time of its onward sale, and to discharge any mortgages
- not to prejudice the development proposals or object to the planning application and
- to sell the land, or a tranche, to the best or highest bidder on the open market after planning consent has been obtained.

Agreement timetable

The agreement should allow the promoter a reasonable period in which to secure satisfactory planning consent and market and arrange a sale of the land. The agreement will terminate if these objectives are not met within the agreed period. The timescale will be subject to agreement between the promoter and the landowner but is likely to be several years.

The promoter will want to have the right to extend the period in certain circumstances, for example:

- when a decision on a planning application, or the result of a challenge to a decision, is awaited
- where planning consent has been granted but is not immune to challenge
- where the outcome of an appeal to an independent expert is awaited or
- when satisfactory planning consent has been confirmed, but a sale of the whole of the land has not been completed.

The agreement may be further extended to a backstop date to allow, for example, the completion of a sale after an exchange of contracts or to permit marketing to continue until planning consent lapses.

Promoter's costs

Costs of promotion will be borne by the promoter and deducted from the sale price to arrive at a net sales proceeds figure, which will be split between the parties on the basis agreed. The heads of terms for the promotion agreement **must** clearly identify allowable costs to be deducted, which are likely to include:

- fees (architects, planning consultants, survey and site investigation, etc.) and all other reasonable costs (to be identified) incurred in applying for and achieving satisfactory planning consent
- costs incurred in complying with planning obligations and planning gain requirements
- other land costs, such as the acquisition of any additional land or easements required to facilitate development
- infrastructure works required for planning purposes or to ensure a saleable site
- taxes incurred (non-recoverable VAT, CIL and other land taxes)
- finance costs
- marketing costs and
- costs of sale.

The landowner may wish to impose a cap on promotion costs. For a larger scheme, recovery of costs can be agreed on a tranche-by-tranche basis.

Marketing

The marketing strategy should be agreed between the parties and documented in the heads of terms. Responsibility for marketing lies with the promoter or with a selling agent jointly appointed by the landowner and the promoter. Matters to be covered include:

- whether the site should be sold as a whole, in tranches or individually (e.g. house plot by house plot, or industrial unit by industrial unit)
- the agreed condition of the site at the time of sale (e.g. the required provision of services and other infrastructure)
- the marketing process, including the timetable, appointment of agents, etc.
- appointment of lawyers to handle sales.

Sale price

The landowner and promoter have an equal interest in maximising the sale price for the land. The landowner may also wish to ensure that they receive a minimum price for their land after the costs of promotion have been deducted.

Because the promoter will have incurred the costs of promotion, they will want to ensure that these costs are fully recovered in a sale of the land. To protect their position, they may therefore seek the right to veto a sale offer that does not provide for full recovery of their costs and to extend the sales period until a satisfactory price can be achieved. Whether or not this is acceptable to the landowner will depend on the circumstances of the proposed transaction and, in particular, the respective parties' perceived risks and rewards.

The agreement should include provision for a valuation in the event of an off-market sale. The valuation will be on the basis of the planning consent achieved and should be based on market value. Section 5.2.2 covers the approach to be taken in these circumstances.

Distribution of sale proceeds

Once a sale or sales have been completed, the net proceeds will be calculated by deducting the promoter's costs from the gross sale proceeds (see section 5). The net proceeds will then be divided between the parties in accordance with the agreed percentage due to each.

If the development is to be sold in tranches, provision may need to be made for a staged distribution of sale proceeds. When negotiating the agreement, the parties will need to agree whether the promoter's costs are deducted proportionally from the sale of each part or whether they are repaid in full from the initial sale proceeds.

RICS members should advise their clients to seek advice on, and take into account, their tax position when agreeing how sale proceeds are distributed.

Infrastructure provision

It may be commercially beneficial to provide infrastructure on a site prior to the land being sold to a developer, often to facilitate a sale of serviced plots.

The landowner and promoter need to agree a policy on infrastructure provision. This may not be possible until after the promotion agreement has been signed. If so, the agreement will need to make provision for a review of infrastructure delivery prior to marketing and selling the land.

6.6 Hybrid agreements

6.6.1 Basis of agreement

A hybrid agreement is a combination of an option agreement and a promotion agreement. It enables development land to be divided into several separate parcels, some of which may be disposed of through the option route, while others may be subject to promotion agreements. Hybrid agreements may therefore be employed on developments of two or more phases and are typically used for larger residential schemes.

A hybrid agreement will run for a specified length of time and will impose a number of obligations on the developer. Once planning consent has been secured, the site will be disposed of through a combination of option parcels and promotion parcels, the commercial terms for which are established through the hybrid agreement. The developer will secure planning consent whereby one or more development parcels have detailed consent while others have outline consent. The promotion parcels will typically be serviced development sites with outline planning consent.

The agreement should provide for the option parcels to be valued prior to the option being exercised, while the promotion parcels will be marketed in line with an agreed disposal strategy, which should be along the lines outlined in section 6.5.

A hybrid agreement allows a landowner to benefit from a developer's expertise in securing an implementable planning consent while also ensuring there are elements of market testing for parcels of the development. Where an option parcel comes forward first, the creation of a sales presence and a sales entrance into the site can drive value into latter phases, which may be disposed of through the promotion route.

To reflect the developer's investment in promoting the site and obtaining planning consent, the agreement will typically include a discount to market value for the option parcels and a promoter's fee in relation to the promotion parcels, both of which are usually calculated as a percentage of the net proceeds of sale. It is common for the developer responsible for the agreement to be able to bid for the promotion parcels.

6.6.2 Key elements

The key elements of hybrid agreements will closely match those relating to option agreements (section 6.2) and promotion agreements (section 6.5). Additional points to consider are:

- the phasing of the development. This will include a decision on the split between option and promotion parcels and the timing of when the parcels are brought forward. For example, the first promotion parcel will often be taken to market after an agreed amount of time has elapsed and/or after an agreed number of completions have been achieved in the first option parcel
- a disposal strategy that sets out responsibility for marketing the promotion parcels and how a final decision will be made on the sales of phases
- the requirements for the ongoing management and maintenance of the site, with allocated responsibilities, as sales of development parcels are likely to be ongoing for a number of years
- clarity over who is responsible for the implementation and funding of infrastructure that benefits more than one phase. For example, the first phase of development should not be burdened with the entire cost of upfront infrastructure works which facilitate future development parcels
- apportionment of the costs of promoting the site and securing planning consent between the phases. These costs are normally deductible from the gross sale proceeds
- whether the developer has any rights of pre-emption over the promotion parcels.

Hybrid agreements can be complex, so the landowner has to be sure that this is the preferred option, rather than a more straightforward land promotion or option agreement.

7 Concluding comments

A land agreement is a complex legal document that reflects both the unique circumstances of a proposed development and the individual requirements of the parties involved. It will contain a range of variable elements, the exact nature of many of which will be uncertain at the time the agreement is being negotiated and completed. A carefully defined agreement is therefore key to the successful commercial outcome of a development project.

RICS members advising each party are likely to be involved from an early stage and will have a central role in negotiating the heads of terms. Their professional experience, and especially their knowledge of the planning system and its likely impacts in terms of both costs and time, will help secure viable planning consent for the scheme. This is key to maximising market value for the land and achieving an optimal agreement for both the landowner and the developer/promoter at the same time as meeting planning policy obligations.

The financial stakes will be high, and the development process will be lengthy. There may well be more than ten years from initiation to conclusion and there are likely to be changes in the market and planning legislation over this period. Such changes are usually impossible to predict and so cannot be specifically provided for in the agreement. A successful land agreement will therefore be flexibly drafted and require the parties to collaborate and act reasonably in response to changing circumstances.

Trust, cooperation and teamwork will be needed between the respective parties and their teams of advisers; disputes can cause expensive delays in a time-critical process and lead to costly litigation, so should be avoided if at all possible.

While this professional standard cannot provide a precise formula to be applied each time an RICS member is involved in this type of work, it will help members to advise and negotiate for their clients confidently and accurately, leading to an agreement that allows for a productive partnership and a successful outcome for both parties.

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Enquiries
contactrics@rics.org