

## Option Agreements Vs Conditional Planning Contracts

### **Option Agreements Vs Conditional Planning Contracts**

For vendors seeking disposal of land with development potential, option agreements and conditional contracts are widely used. We discuss principles of each to assist in choosing the right one.

#### **Option Agreements**

Option agreements grant the exclusive right to acquire an interest in land, often whilst the development viability of a site is being considered. They are widely used by developers to facilitate large complex site assembly projects that involve the acquisition of third party land in multiple ownerships. In addition they are often used by purchasers to allow time to raise finance for a project and/or secure an alternative use allocation with the local planning authority. In consideration of the option fee, the vendor grants an option to the purchaser to acquire their interest in the land. On exercising the option, the purchaser will complete the transaction at a pre-agreed purchase price or at a value to be agreed. This is often at a discount to market value to reflect the risk that the purchaser takes in promoting a scheme, notably, upfront planning costs.

Option agreements are granted for a specified time. In some cases there is the ability to extend at the purchasers discretion, if for example other agreements have yet to be documented. However, the maximum period for which an option can be granted is 21 years. If the option period exceeds this then it is unenforceable.

The option will be legally binding, but only to the vendor, the purchaser however may choose not to exercise the option by the termination date, in which case it lapses and the vendor retains the option fee.

Generally, option agreements should be considered by vendors in circumstances where planning permission is less than straightforward, in particular if sites are being promoted through the planning framework and by their nature are long term, higher risk opportunities. Strategic sites tend to be acquired by this method.

However, vendors should carefully consider the option period and rights, if any, to be retained during the planning process.

#### **Conditional Planning Contracts**

A conditional contract grants the exclusive right to acquire an interest in land, once planning permission is granted. These types of contracts are often used by vendors, where a potential development has been identified. The purchaser is usually required to offer full alternative use value for a pre-agreed scheme. Upon grant of planning permission, the purchaser will complete the transaction at the agreed purchase price.

A conditional contract is also different from an option agreement (and more favourable to the vendor) in that it is legally binding on both the vendor and the purchaser, with an obligation on both parties to complete the transaction upon grant of an acceptable planning consent. Furthermore, the purchaser is usually obliged to submit a planning application for a scheme that is approved by the vendor, allowing vendors to retain more control over the planning process.

Conditional contract periods are usually determined by the time expected to secure planning permission for development. Whilst there are no restrictions on time limits, the vendor should seek to secure a long stop date to allow for a realistic but finite period for the purchaser to secure planning consent, typically 12-18 months for a medium sized project. This will mean that in the event the purchaser is unsuccessful, the vendor is able to select an alternative purchaser; or pursue an alternative course of action.

Vendors should carefully consider the appropriateness of each method to their individual circumstances to ensure the right agreement is entered into, to achieve the right outcome.

Rapleys has extensive experience advising both vendors and purchasers on the drafting of option agreements and conditional planning contracts available to them and, in addition, assist in ensuring that client's solicitors fully understand what has actually been agreed.

**For further information, please do not hesitate to call 0870 777 6292 or contact one of our nationwide specialists directly, as below:**

**Angus Irvine**  
**Alun Jones**

**07767 463884**  
**07917 536612**

**abi@rapleys.co.uk**  
**aj@rapleys.co.uk**

The comments in this newsletter are for information purposes only. Professional advice should be sought prior to taking any action and Rapleys LLP will not accept responsibility for decisions taken solely on the basis of information contained in this newsletter.