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Land disposal deal could boost profits

Dan Evans, a partner at Cozens-Hardy solicitors, considers whether Overage is a sensible option or an unnecessary complication.



Overage Agreements have become a more common trend in recent years when dealing with the disposal of land. Overage Agreements, also known as Claw Back Agreements or Deeds of Covenant, give a seller the right to further payments in the event that the buyer develops the land being sold.

Traditionally, they were more commonly seen in transactions involving land specifically earmarked for development, such as that being sold with the benefit of planning permission. This protected a seller from the buyer developing more on the land and making greater profits. An overage enabled the seller to share in those extra profits.

In the last five to 10 years, they have become far more common and are used in land transactions where there is any potential for development. This includes sales

of properties with large gardens where it may be possible to add a further dwelling/s.

The idea behind an Overage Agreement is that it lasts for somewhere between 25-50 years (on average) and, if a buyer obtains a planning permission which increases the value of the land, the seller will be entitled to a further payment.

An agreement would specify a percentage (commonly 50pc), being the share of the uplift in value that would be due to the seller. To be clear, this is not 50pc of the final developed value of the land, but 50pc of the difference in the value of the land with planning permission compared with the value of the land without planning permission.

An Overage Deed will contain mechanisms that dictate how the Overage is to be calculated and when it is triggered. It is very important that a legal advisor



If you are thinking of selling some property that has scope for development, you should seek advice

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reviews such provisions comprehensively, as small changes to the drafting can make a big difference to the meaning of an Overage Agreement.

If you are thinking of

selling some property that has scope for development, you should discuss with your selling agent whether or not overage may be appropriate. If you decide that overage is appropriate,

or you are purchasing land that is subject to an Overage Agreement, you should take legal advice.

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APS House, Hansa Road,
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