



Property development

Purchasing or selling a property for development purposes involves much different considerations to a straightforward investment transaction.

The most significant issue from a developer's point of view is whether the development will be viable, i.e. whether the appropriate planning and any other necessary consents can be obtained. A developer will not want to commit to a purchase unless and until such consents are in place. The way forward under these circumstances could be a conditional contract, where contracts are exchanged for the sale of the development property on the condition that the developer is able to obtain the relevant consents. This gives the developer the time and ability to seek such consents safe in the knowledge that, if they are obtained, this will trigger completion of the sale of the land to them. However, if the consents cannot be obtained satisfactorily, then the parties can end the contract and walk away.

From a seller's point of view this does introduce an element of uncertainty. Therefore, by way of a compromise, a longstop date is usually incorporated into the contract, to place a time limit on the amount of time the developer has to get the consents or to choose to complete without them.

The advantage of a conditional contract for both parties is that it provides a mechanism for disposing of development property which may not otherwise sell.

An alternative to a conditional contract is an option agreement. This is an agreement by which a property owner gives a potential purchaser the ability to opt to buy the property at some point in the future, usually for a fee. This is often more speculative in that it gives the person taking the option the ability to choose whether or not to buy the property, within a fixed time. This is often referred to as a "call option". It is possible to have an option which allows the property owner to force the potential purchaser to buy, under certain circumstances. This is referred to as a "put option", though this is less common.

The main advantage of an option agreement from the potential purchaser's point of view is the flexibility it provides. From the property owner's perspective, there is the opportunity to obtain a fee for the privilege of granting the option, though this will usually be deducted from the purchase price if the sale goes ahead.

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For further information on our Commercial Services please contact:

Andrew Stockton
Partner

Sarah Williams
Senior Solicitor

E: comms@dootsons.co.uk
T: 01942 673431
www.dootsons.co.uk

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Property development continued

A final alternative for a seller, where land is being acquired speculatively by a developer, is to reserve the right to a further payment in the future, should the land be developed and its value increased. This is referred to as “overage”. Overage provisions in a contract can be extremely complex and so legal advice upon this is a must, to ensure that the provisions will be enforceable down the line, for example against future owners should the developer sell on. They can, however, be an extremely good way for a seller to secure a share of the property’s full potential.

We can advise upon these different alternatives available to both land owners and developers, and help to negotiate the documentation required to bring them into effect.



Sarah Williams - Senior Solicitor

After gaining a first class honours law degree at Lancaster University, Sarah trained at Eversheds LLP, qualifying in 2004. She moved to Myerson Solicitors in Altrincham before joining Dootsons in 2012. Sarah deals with all aspects of commercial property law, including Landlord and Tenant matters, sales and acquisitions of land, Option Agreements, development matters, agricultural matters and secured lending. Sarah acts for a wide variety of clients, from individuals looking to buy or lease their first commercial property to larger, established businesses and experienced Landlords with large property portfolios. She has particular experience of dealing with charities.

T: 01942 263684 E: swilliams@dootsons.co.uk

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E: comms@dootsons.co.uk
T: 01942 673431
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Leigh

61 - 63 Church Street
Leigh
Greater Manchester WN7 1AY

Culcheth

23 Jackson Avenue
Culcheth
Warrington WA3 4EJ

Newton le Willows

141 High Street
Newton le Willows
Merseyside WA12 9SQ

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