

Overage Conditions for land sale adjacent to 7 The Glebe, Magdalen Laver

12.5.2 The Transferee covenants with the Transferor for the benefit of the Retained Land and to the intent that such covenant shall be made pursuant to S33 of the Local Government (Miscellaneous Provisions) Act 1982 with the intention of binding the Property and every part of it whosoever owns the Property as follows:

12.5.2.1 Definitions and Interpretation

The following definitions and rules of interpretation apply in this Clause 12.5.2.

Base Value: the Market Value of the Development Land at the Trigger Date disregarding any effect on value of the relevant Planning Permission and assuming that there is no expectation of the grant of any Planning Permission.

Court Confirmatory Decision: either:

- (a) a judgment of the High Court or Court of Appeal confirming the grant of Planning Permission by the Determining Authority or by the Secretary of State following a Planning Appeal, and the period for an appeal against such a decision has expired without a further Third Party Application being made; or
- (b) a judgment of the Supreme Court confirming the grant of Planning Permission by the Determining Authority or by the Secretary of State following a Planning Appeal.

Deed of Covenant: a deed of covenant with the Transferor containing covenants in the same terms as those given by the Transferee in this clause with such minor modifications as the Transferor may agree.

Default Rate: 4% per annum above the Interest Rate.

Determining Authority: the local planning authority or other appropriate determining body or person.

Development: any development within the meaning of section 55 of the Town and Country Planning Act 1990 of the whole or any part or parts of the Property.

Development Land: the whole or such part or parts of the Property in respect of which Planning Permission is granted during the Overage Period.

Disposal: a disposition of the whole or any part or parts of the Property whether by way of sale or lease

End Date: **2098 (or 2099 depending on time of sale)**

Enhanced Value: the Market Value of the Development Land at the Trigger Date with the benefit of the relevant Planning Permission and assuming that the Development Land has the benefit of any easements, wayleaves, sight-line covenants and other agreements necessary to provide access, visibility splays or services to or from the Development Land.

Finally Determined: where a Third Party Application has been made, the first of the following events to occur:

- (a) permission to bring a Third Party Application (where required) has not been granted and the period within which an application for permission to appeal against such refusal has expired without a further Third Party Application being made;
- (b) all Third Party Applications have been withdrawn;
- (c) a Court Confirmatory Decision has been issued; or
- (d) a Quashing Order has been issued and the Determining Authority has issued a further Planning Permission and the Review Period in respect of that further Planning Permission has expired.

Independent Surveyor: a Fellow of the Royal Institution of Chartered Surveyors with at least ten years' experience in valuing properties similar to the Development Land for uses similar to the Development.

Interest Rate: the base rate from time to time of National Westminster Bank plc.

Market Value: the estimated amount for which the Development Land should exchange between a willing Transferee and a willing Transferor in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion, on the basis that:

- (a) it is assessed in accordance with VPS 4 paragraph 1.2 of the RICS Valuation - Professional Standards 2014;
- (b) the provisions of this clause are disregarded;
- (c) the Development Land has vacant possession;
- (d) the Development Land is assumed to be free from all encumbrances save for those in existence at the date of this Transfer; and
- (e) no act or omission by the Transferee has occurred since the date of this Transfer which has reduced the Market Value of the Development Land.

Overage Payment: a sum calculated in accordance with the following formula:

$$(A - B) \times 50\%$$

Where:

A = Enhanced Value; and

B = Base Value.

Overage Period: Eighty years starting on the date of this transfer and ending at midnight on the End Date.

Payment Date: the date on which an Overage Payment is to be made in accordance with paragraph 12.5.2.2.1.

Planning Appeal: an appeal by the Transferee against:

- (a) the refusal of the Determining Authority to grant Planning Permission;
- (b) the non-determination of a Planning Application; or
- (c) any one or more conditions attached to a Planning Permission.

Planning Appeal Decision: the written decision of the Secretary of State on a Planning Appeal.

Planning Application: an application for Planning Permission submitted by or on behalf of the Transferee during the Overage Period.

Planning Permission: outline planning permission for Development pursuant to a Planning Application and granted during the Overage Period by a Determining Authority including a planning permission issued pursuant to an application under section 73 of the Town and Country Planning Act 1990 or any Development taking place.

Quashing Order: the decision of the court to nullify a Planning Permission granted by either:

- (a) the Determining Authority; or
- (b) the Secretary of State following a Planning Appeal.

Review Period: either:

- (a) six weeks and ten Working Days following the date of issue of a Planning Permission by the Determining Authority; or
- (b) six weeks following the date of issue of a Planning Appeal Decision.

Secretary of State: the Secretary of State for Communities and Local Government or other appropriate Minister including (where relevant) any inspector appointed to determine any Planning Appeal or the National Assembly for Wales.

Third Party: a person other than:

- (a) the Transferor;
- (b) the Transferee; or
- (c) anyone acting on the Transferor's or Transferee's behalf.

Third Party Application: either of the following:

- (a) Third Party's application for judicial review of a decision by the Determining Authority to grant Planning Permission; or
- (b) a Third Party's application under section 288 of the Town and Country Planning Act 1990 in respect of a decision by the Secretary of State to grant Planning Permission following a Planning Appeal;
- (c) including an application to a higher court appealing against a judgment in respect of an application made under (a) or (b) above, given in a lower court.

Trigger Date: in relation to each Planning Permission granted during the Overage Period, the latest of the following dates to occur during the Overage Period:

- (a) the next Working Day after the expiry of the Review Period (provided that no Third Party Application is commenced by such date); and
- (b) in the event that any Third Party Application is commenced, the next Working Day after the date on which: the Third Party Application is Finally Determined; and
- (c) a Planning Permission is finally granted or upheld whether after a reference back to the Secretary of State or the local planning authority or any other relevant authority (as the case may be);

so that the Planning Permission is no longer open to challenge in any way by the issue of further Third Party Applications.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

12.5.2.2 **Overage Payment**

12.5.2.2.1 On each occasion that a Trigger Date occurs during the Overage Period, an Overage Payment shall immediately become due from the Transferee to the Transferor.

12.5.2.2.2 The Transferee covenants with the Transferor that it shall pay each Overage Payment due under clause 12.5.2.2.1 to the Transferor on the later of:

- (a) the date which is 7 Working Days from and including the relevant Trigger Date; or
- (b) the date which is 7 Working Days from and including the date on which the amount of the relevant Overage Payment is agreed or determined in accordance with the terms of this Transfer.

12.5.2.2.3 An Overage Payment shall be due in respect of each and every Trigger Date that occurs during the Overage Period notwithstanding that a Trigger Date may have previously occurred for the Property or any part or parts of it.

- 12.5.2.2.4 The Transferee covenants with the Transferor that it shall pay interest at the Interest Rate to the Transferor on each Overage Payment that becomes due under clause 12.5.2.2.1. Such interest shall accrue on a daily basis for the period from and including the relevant Trigger Date to but excluding the relevant Payment Date.
- 12.5.2.2.5 The Transferee covenants with the Transferor that it shall pay interest at the Default Rate to the Transferor on any Overage Payment that is not paid on its Payment Date. Such interest shall accrue on a daily basis for the period from and including the relevant Payment Date to and including the date of payment (whether before or after any judgment) and shall not affect any other remedy the Transferor may have.
- 12.5.2.2.6 The Transferee covenants with the Transferor that it shall:
- (a) supply the Transferor with a copy of any Planning Application submitted during the Overage Period within 14 Working Days of its submission to the Determining Authority; and
 - (b) supply the Transferor with a copy of any Planning Permission granted during the Overage Period within 7 Working Days of the date of grant; and
 - (c) notify the Transferor in writing on each occurrence of a Trigger Date within 7 Working Days of the relevant Trigger Date.
- 12.5.2.2.7 The benefit of the Transferee's covenants in relation to any matters contained in this clause 12.5.2 is assignable by the Transferor.

12.5.2.3 Amount of Overage Payment

- 12.5.2.3.1 If the parties agree the amount of an Overage Payment at any time after the relevant Trigger Date, the Transferee and the Transferor shall immediately sign and date a memorandum recording the amount of the Overage Payment and the date of the memorandum shall be the date of agreement for the purposes of 12.5.2.2.2 (b).
- 12.5.2.3.2 If the Transferee and the Transferor fail to agree on the amount of an Overage Payment within 10 Working Days from and including the relevant Trigger Date, either party may refer the matter for determination by an Independent Surveyor.
- 12.5.2.3.3 The parties shall agree on the appointment of the Independent Surveyor and shall agree with the Independent Surveyor the terms of the appointment.
- 12.5.2.3.4 If the parties are unable to agree on an Independent Surveyor or the terms of the appointment within 10 Working Days from and including the date on which the matter was referred for determination under 12.5.2.3.2, either party shall then be entitled to request the President for the time being of the Royal Institution of Chartered Surveyors to appoint the Independent Surveyor and to agree with the Independent Surveyor the terms of the appointment.

- 12.5.2.3.5 The Independent Surveyor is required to prepare a written decision and give notice (including a written copy) of the decision on the amount of the Overage Payment to the parties within 20 Working Days from and including the date of the Independent Surveyor's appointment.
- 12.5.2.3.6 If the Independent Surveyor dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this paragraph then:
- (a) either party may apply to the President of the Royal Institution of Chartered Surveyors to discharge the Independent Surveyor and to appoint a replacement Independent Surveyor; and
 - (b) this clause shall apply to the new Independent Surveyor as if they were the first Independent Surveyor appointed.
- 12.5.2.3.7 The parties are entitled to make submissions to the Independent Surveyor and will provide (or procure that others provide) the Independent Surveyor with such assistance and documents as the Independent Surveyor reasonably requires for the purpose of reaching a decision.
- 12.5.2.3.8 The Independent Surveyor shall act as an expert and not as an arbitrator. The Independent Surveyor's written decision shall be final and binding on the parties in the absence of manifest error or fraud.
- 12.5.2.3.9 The Transferee and the Transferor agree to pay the Independent Surveyor's costs in the proportions determined by the Independent Surveyor within 10 Working Days from and including a demand for payment. If they are not so paid, the party against whom the costs were not awarded shall be entitled to pay the Independent Surveyor the sums due and recover the amount from the other party on demand.
- 12.5.2.3.10 In default of agreement pursuant to clause 12.5.2.3.1., the Overage Payment shall be the amount determined by the Independent Surveyor and the date of issue of the Independent Surveyor's written decision shall be taken as the date of determination for the purposes of clause 12.5.2.2.2.(b)

12.5.2.4 Disposals and restriction

- 12.4.2.4.1 The Transferee covenants with the Transferor not to make any Disposal at any time during the Overage Period without first procuring that the person to whom the Disposal is being made has executed a Deed of Covenant.
- 12.4.2.4.2 The Transferee shall apply for the entry of the following restriction against the Transferee's title to the Property at HM Land Registry simultaneously with the registration of this transfer:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by Epping Forest

District Council of Civic Offices, 323, High Street, Epping, Essex CM16 4BZ or their conveyancer."

12.5.2.5 Transferor's obligations

12.5.2.5.1 The Transferor covenants with the Transferee that the Transferor, its successors in title or assignees shall consent to the registration of any dispositions or dealings relating to the Property provided that the provisions of this clause 12.5.2 have been complied with or to which Epping Forest District Council shall have given its consent.

12.5.2.5.2 Any consent or approval given or granted by the Transferor in exercise of its functions as local authority shall not be deemed to have been given or granted by the Transferor for the purposes of Clause 12.5.2.

12.5.2.6 Transferor's costs

The Transferee covenants with the Transferor that it shall pay the Transferor's reasonable legal and surveyor's costs and disbursements on a full indemnity basis including any irrecoverable VAT incurred in connection with:

- (a) each Deed of Covenant;
- (b) the entry and withdrawal of each restriction against the title to the Property; and
- (c) the Transferor granting written consent to each Disposal.

12.5.2.7 VAT

12.5.2.7.1 Each amount stated to be payable by the Transferee to the Transferor under or pursuant to this Schedule is exclusive of VAT (if any).

12.5.2.7.2 If any VAT is chargeable on any supply made by the Transferor under or pursuant to this Schedule, the Transferee shall on receipt of a valid VAT invoice, pay the Transferor an amount equal to that VAT.