

OPTION AGREEMENTS VERSUS CONDITIONAL CONTRACTS



In summary, an option agreement provides a mechanism for a potential land transaction, allowing the buyer to secure the right to purchase a property or land within a specified timeframe.

It will usually be an agreement between a landowner and a buyer (likely a developer) whereby the landowner grants the right or provides an “option” to a buyer to purchase their property or land for development purposes. In exchange for this, the buyer will probably pay an option fee to the landowner which gives the landowner the comfort of having the site promoted for development and the potential for future security in the form of a sale.

At the same time, an option agreement will provide the buyer with some control over the planning process to ensure it meets their needs and they will take on various obligations at their own cost whilst trying to secure an appropriate planning permission. The landowner may also have some control over the planning process to ensure it aligns with their requirements.



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The buyer may exercise the option to purchase the property or land at any time during the option period or only on the occurrence of certain events, such as the obtaining of planning permission. However, the decision whether to exercise the option rests with the buyer and is solely at their discretion.

It is for this reason that makes an option agreement desirable to many buyers, particularly developers as they have the ability to walk away should the property or land not be suitable or viable for their purposes.

In the event a buyer decides during the option period to purchase the property or land it must serve an option notice on the landowner and pay a deposit, which creates a legally binding contract for sale and purchase of the property or land. The price of the property or land is often determined by valuation, which is typically lower than the market value to reflect the cost and risk to a buyer, or it can be a fixed price.

If the buyer doesn't exercise the option within the option period, then the option will lapse and the landowner will be free to dispose of the property or land as they wish.

Advantages of Option Agreements to Buyers

- Minimal outlay is required at the initial stages before the buyer knows whether planning permission can be obtained.
- An option agreement is registrable, providing protection if the landowner decides to sell the land to a third party.
- The buyer has complete discretion over whether or not to buy the property or land.
- The buyer can secure the property or land from any competitors during the option period.
- The buyer can apply for planning permission knowing that it can buy the property or land if it is successful but there is no obligation to do so should planning permission not be granted or is granted but subject to unacceptable conditions.

Advantages of Option Agreements to Landowners

- The landowner can demand an option sum in return for granting the option and tying up the land for the length of the option period. Sometimes the option sum is a significant amount and this is usually retained by the landowner whether or not the option is exercised.
- The landowner can take advantage of the buyer's experience and skill in obtaining planning permission at no cost to them.
- Where the buyer is seeking planning permission to develop a larger site that includes other land, the market value of the property may be considerably increased over and above any development value that the property or land may have on its own proving more lucrative.

On the other hand, a conditional contract is a binding contract for the sale and purchase of property or land which is subject to satisfaction of one or more conditions precedent (most commonly for satisfactory planning permission to be obtained) before the sale and purchase provisions can become operative.

The contract will attempt to define the condition precedent in detail so that it is clear when they have been met and when the contract will become unconditional. Upon the condition(s) being met, the agreement for the sale of the property or land will become unconditional and the sale will proceed on the terms set out in the contract with the buyer contractually committed to buy the property or land.



If the contract has not become unconditional by a pre-agreed long stop date, then the contract will automatically terminate, or be terminated by one or both parties.

A buyer will want the freedom to be able to exercise its discretion over whether a planning permission is satisfactory and acceptable. For this reason, an option agreement is likely to be a more favourable way to proceed as it offers the buyer a greater degree of control and flexibility, allowing them to walk away should any factors be unacceptable to them.

Conversely, a landowner may prefer a conditional contract and will want to make the same as water-tight as possible to try and keep the buyer legally committed to purchase of their property or land. An option agreement is less attractive for a landowner because they have a lesser degree of control and whilst the property or land is tied up under an option agreement they are unable to dispose of it to another party. However, if the landowner is not in a rush to sell their property or land an option agreement can be a worthwhile avenue to pursue on the basis, as mentioned above, they will usually receive a non-refundable option fee which can potentially be quite lucrative.

Ultimately, whether an option agreement or conditional contract is the better legal document to use for your commercial deal depends on a number of different factor that need to be considered on a case-by-case basis and the circumstances as a whole." There are both pros and cons to both agreements, as discussed in brief above. An initial discussion with a land agent can prove useful and we are happy to liaise with you and them to assist when agreeing suitable heads of terms and how best to structure your transaction.

If you would like further guidance on whether an option agreement or conditional contract is the right route for your deal, our team is here to help. We can provide clear, practical advice and work closely with you to ensure your transaction is structured in the most effective way. For tailored support on all things contract-related, please get in touch with us today.

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