Maximising Returns for Landowners

Conditional Contracts for Development Land

A Practical Guide for Landowners

How planning conditions, buyer obligations, longstop dates, purchase-price mechanisms and completion safeguards can affect a development-land sale.

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Conditional Contracts for Development Land

A conditional contract is a binding agreement under which the sale of land completes only when one or more specified conditions have been satisfied or waived. For development land, the principal condition is commonly the grant of an agreed form of planning permission.

The buyer may investigate the site, commission surveys and pursue planning during the conditional period. If the contractual planning test is achieved, the buyer is normally obliged to complete the purchase. The detail of that test, the programme, price mechanism and termination rights therefore matters greatly to the landowner.

A conditional contract can create a binding route to sale after an agreed planning outcome - but the definition of that outcome is critical.

Why can a conditional contract be useful?

It can give a developer sufficient certainty to spend money pursuing planning while giving the landowner a binding route to sale if the agreed outcome is achieved. Unlike an option, the buyer does not usually have a free choice whether to buy once the contractual conditions are satisfied.

- Exchange a binding contract before planning work is complete
- Define the planning outcome that must be achieved before completion
- Allocate responsibility for surveys, design, applications and appeals
- Set a longstop date so the land is not tied up indefinitely
- Establish the purchase price, valuation method and permitted deductions

Where does it sit in the transaction?

Heads of terms → due diligence → exchange conditional contract → planning process → condition satisfied → price determined → completion

Read the full online Call for Sites Guide

Define the Planning Condition Precisely

A conditional contract is not simply an agreement to sell “subject to planning”. The wording must identify the planning result that triggers completion and the steps the buyer must take to pursue it. Ambiguity can create disputes at the point when the land has become most valuable.

The landowner should understand what use and minimum scale are acceptable, whether the permission may contain onerous conditions or obligations, what appeal rights exist and whether the buyer can terminate because the scheme is less profitable than expected.

Define the permitted development

State the use, minimum dwelling number or floorspace, red-line area and any other parameters needed to identify an acceptable planning outcome.

Control onerous requirements

Consider affordable housing, Section 106 obligations, CIL, highway works, drainage, biodiversity, abnormal conditions and other matters that could materially affect land value.

Include the challenge period

The contract should address judicial review or statutory challenge periods and explain when a permission is sufficiently secure for completion.

The planning condition should be objective enough to determine when completion is triggered and detailed enough to protect the landowner from an uneconomic or undeliverable permission.

Check Current Call for Sites Opportunities in England

What the Buyer Should Be Required to Do

The buyer's obligations determine whether the land is being actively progressed or merely tied up. The agreement should set a planning strategy, target dates, reporting duties and an appropriate endeavours standard so the buyer cannot allow the opportunity to drift.

Contract Exchanged Now The parties enter a binding sale contract before the planning condition has been satisfied.	**Completion Happens Later** The transfer takes place only when the contractual conditions are satisfied or validly waived.
Planning Is Commonly Central The agreement defines the planning permission or other planning outcome needed to trigger the sale.	**The Price Must Be Clear** The contract fixes the price or establishes an objective valuation formula and any permitted deductions.
Risk Is Allocated by Contract The drafting determines who bears planning cost, delay, refusal, appeal and legal-challenge risk.	**Independent Advice Is Essential** Legal, planning, valuation and tax advice should be obtained before a binding conditional sale is exchanged.

Buyer obligations should address:

- Complete title, planning and technical due diligence promptly
- Prepare and follow an agreed planning and development strategy
- Submit the planning application or representations by a target date
- Use the contractual endeavours standard to pursue the agreed outcome
- Keep the landowner informed and provide copies of material correspondence
- Respond properly to the authority, consultees and technical issues
- Consider amendments, resubmission or appeal where reasonably appropriate

A conditional contract should create a programme for progressing the land, not an open-ended right to control it while the buyer decides whether the opportunity remains attractive.

Longstop Dates, Appeals and External Delay

The conditional period must be long enough to allow a realistic planning process but not so long that the landowner loses control indefinitely. Longstop provisions should distinguish ordinary planning delay from refusal, appeal, legal challenge and genuinely external events.

1. Initial period — Set a realistic period for investigations, design, application preparation, validation and determination.

2. Refusal and appeal — State whether the buyer must appeal, may appeal or can terminate, and who controls the appeal strategy.

3. Legal challenge — Deal with judicial review or statutory challenge periods and any challenge to the planning permission.

4. External delay — Define whether specified events extend the longstop and whether extensions are capped.

5. Failure to progress — Give the landowner remedies where the buyer misses agreed submission or reporting milestones without justification.

6. Final longstop — Provide a clear date or mechanism after which either the contract terminates or the landowner regains control if the condition remains unsatisfied.

The landowner should know the maximum period of contractual control and exactly which events can extend it.

Is My Land Suitable for Development?

Purchase Price, Valuation and Permitted Deductions

The purchase price may be fixed, calculated by reference to market value, linked to acreage or development capacity, or determined by a formula. Whatever method is chosen, the agreement should show how planning obligations, infrastructure, abnormal costs and other deductions affect the landowner's net receipt.

Permitted Use Define the residential, commercial, employment or mixed use that will satisfy the condition.	**Minimum Scale** Set any minimum dwellings, floorspace, net area or other capacity needed for an acceptable permission.
Access & Red-Line Land Identify the land, access and off-site rights needed so the permission can actually be implemented.	**Planning Obligations** Control the level or type of Section 106, affordable housing, CIL and infrastructure burdens that may be accepted.
Conditions on Permission Consider whether pre-commencement, phasing or other onerous conditions can make a permission unacceptable.	**Challenge Period** State when a permission becomes sufficiently secure following judicial review or other challenge periods.
Buyer Discretion Avoid subjective wording that allows the buyer alone to decide whether a permission is satisfactory.	**Landowner Approval** Define which applications, amendments, obligations and appeals require consultation or approval.

Worked examples should be prepared before exchange. They can reveal whether a percentage, deduction, minimum-price or valuation definition operates differently from the commercial deal the landowner thought had been agreed.

Deposits, Surveys and Protection of the Land

The conditional period often requires access for surveys and investigation. Those rights should be wide enough to progress planning but carefully controlled so the land, crops, buildings, tenants and retained property are protected.

1. Deposit and exclusivity — Record any deposit, whether it is refundable and what restrictions apply to dealings with other parties.

2. Survey access — Define notice, permitted investigations, intrusive works, reinstatement and ownership or use of resulting reports.

3. Insurance and indemnity — Require appropriate cover and protection against injury, damage and liabilities caused by the buyer or its consultants.

4. Title protection — Any restriction or notice registered against the title should be proportionate and capable of removal when the contract terminates.

5. Occupiers and retained land — Protect agricultural, commercial or residential occupation and avoid granting unnecessary rights over land that is not being sold.

6. Confidentiality and data — Control disclosure of commercially sensitive information and the use of planning or technical material if the transaction ends.

7. Reinstatement on termination — State what happens to boreholes, trial pits, fencing, temporary access works and other physical changes if completion does not occur.

Survey rights and title protection should facilitate genuine planning work without giving the buyer unnecessary control over the ownership.

Read: What is a HELAA or SHLAA?

Read: Local Plan Allocation Guide

What the Landowner May Need to Provide at Completion

Completion obligations should be investigated before exchange rather than left until planning has been secured. The landowner may need to provide good title, vacant possession, access and service rights, releases or consents, and documents required by the planning permission or purchaser's funder.

Particular care is needed where the sale excludes retained land. Access, drainage, utilities, visibility splays, boundary treatment and construction rights can affect the continuing use and future value of the retained ownership.

Completion planning should include:

- Title, searches, mortgages, restrictions and full disclosure of relevant rights
- Vacant possession and the treatment of agricultural or other occupiers
- Rights for access, services, drainage, construction and future maintenance
- Boundaries, fencing, retained access and protection of adjoining ownership
- Section 106, highway, drainage or other documents needed for implementation
- Any price adjustment, overage or retained-land protection agreed by the parties

The planning permission is only one part of deliverability

A valuable permission can still be difficult to complete against if title, possession, rights or retained-land arrangements were not investigated when the contract was negotiated.

Title, possession, rights and retained-land protections should be investigated before exchange - not after planning value has been created.

Completion, Termination, Assignment and Reporting

Once the planning condition is satisfied or waived, the agreement should provide a clear route to completion. Evidence of satisfaction is served, any disagreement is resolved under the contractual mechanism, the purchase price is agreed or determined and completion follows within the stated period.

The contract should also explain the consequences if the condition cannot be satisfied. Termination provisions should address title entries, deposits, survey reports, planning documents, confidential information, physical reinstatement and any rights that survive termination.

Assignment and nomination

A buyer may seek the ability to assign the contract or nominate another purchaser. The landowner should understand whether consent is required, whether the original buyer remains liable and whether assignment could transfer control to an unsuitable or weaker covenant.

Reporting and competing interests

Regular reporting helps the landowner understand expenditure, planning progress and changes to the strategy. The agreement should also address conflicts where the buyer controls or promotes competing land that could influence the planning case or timing of the contracted site.

The contract should explain both routes clearly: successful completion after the condition is satisfied, and an orderly release of the land if it is not.

Find Out What Your Land May Be Worth

Questions to Ask Before Signing a Conditional Contract

Before signing, the landowner should test the complete transaction rather than focusing only on the headline price. Independent legal, planning, valuation and tax advice is important because the planning definition, programme, deductions and completion obligations can materially change the eventual outcome.

Planning Definition Is the required use, minimum scale, access, red line and acceptable planning burden clearly defined?	**Buyer Duties** What must the buyer submit, by when, to what standard and with what reporting obligations?
Longstop & Appeals How long can the contract last and what happens after refusal, appeal or legal challenge?	**Price & Deductions** How is market value or the fixed price calculated and which costs may reduce the landowner receipt?
Property Protections How are surveys, occupation, title entries, retained land, rights and reinstatement controlled?	**Completion & Exit** What evidence satisfies the condition, when does completion occur and what happens if the contract terminates?

How Value My Land Can Help

Value My Land can provide a free initial review of the site, planning position and proposed transaction and explain how a conditional contract compares with an Option Agreement, Promotion Agreement or immediate sale. The objective is to understand the development opportunity before control of the land is committed.

Where a funded Promotion Agreement is more appropriate, Value My Land can fund and manage the agreed planning process at its own cost and risk and, following planning success, market the land competitively to developers in accordance with the agreement.

Request a Free Development Potential Assessment

Review the Development Opportunity Before Agreeing a Conditional Sale

Send us the site location and any proposed heads of terms for a free, no-obligation initial review of the planning opportunity and the principal commercial issues to investigate before you commit the land.

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Clear Conditions. Defined Timescales. Protected Landowner Position.

Further reading: Conditional Contracts | Land Option Agreements | Land Promotion Agreements | Land Value With Planning Permission

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