

## Your Legal Questions

Stephen Soper  
Partner & Solicitor



**Q . I own a small piece of open land and have decided to sell it. The agent has mentioned something called overage which I am not sure about. Can you explain this please.**

**A.** Your land may have an agricultural planning use but at some point in the future a residential planning use may be obtained. A residential use attracts a higher value which of course increases the value of the land. Overage is a right to share in that increase. The mechanism for the calculation and the payment of the overage will be contained in the sale documentation and then registered at the Land Registry. Persons wanting to buy the land will then be on notice that it is subject to overage.

The clause will usually allow for payment on a number of changes of use over the period of the provision. Overage is usually triggered either on the grant of a planning permission or its implementation. The receiving party would want overage paid as soon as a planning permission was obtained and a paying party would want overage paid on implementation in the future. Overage has to be tied to a specific period 10, 20, 30 years etc... Again where there is a long period, any number of planning applications could be made to trigger payment. Equally overage should also be payable in relation to parts of land.

An overage provision on a sale may well drive the value down at first so you will need to decide at the outset whether you need to maximise the sale price or want a future windfall. It could put buyers off in a difficult market but if used wisely may make a sale more attractive by reducing the initial price paid.

Overage is a very complicated area fraught with technical difficulties. It is an area where you will need legal advice before agreeing terms for the sale.

*Stephen Soper is a Partner and Solicitor in the Commercial and Property Department of Powells Solicitors*

**Direct dial 01934 637915**  
**soper@powellslaw.com**