

Our Ref: ERH/HAT/102793

Your Ref:



11th November 2022

Private & Confidential

Cardiff Council as Charitable Trustees
The Courtyard
County Hall
Cardiff
CF10 4UW

Sent by email to: eirian.jones@cardiff.gov.uk

For the attention of Eirian Jones – Principal Surveyor

Dear Sirs,

OVERAGE AGREEMENTS

- 1.1. In considering the value of the land in our initial report (ref ERH/HAT/102793 dated 17th December 2021), we did not address overage because the Trustee's do not have the power of sale of the designated land and so could not sell the land and benefit from any uplift in value resulting from the release of the restrictive covenant. We are informed by the solicitors advising that the Trust that due to the nature of the Property as designated land, the general statutory authority in s6 of the Trusts of Land and Appointment of Trustees Act would not generally be available and may only be available where land held on trust is being swapped for alternative land to be used for the same purposes.
- 1.2. Further to discussions at the public consultation, at the meeting of the Advisory Committee Council on 12th October, where concerns were raised that the restrictive covenant might be lifted and the subject land sold on for a higher value use than that which it is being swapped for, we have given consideration to attaching overage to the transfer.
- 1.3. Overage is a mechanism which enables a vendor to share in the uplift in value released by a change in circumstance i.e., the lifting of a restrictive covenant or the grant of planning permission. Overage is only applied to a sale where there is a possibility, but no guarantee, of a future change in circumstances. Purchasers will not reflect in their purchase price an enhanced value which can only be released by a change of circumstance over which they do not have full control and where there is a high degree of uncertainty.
- 1.4. The percentage of the uplift in value passing to the vendor is dependent upon the likelihood of the change occurring. For longer term, more risky prospects the percentage of uplift passing to the vendor should be at a low enough percentage share that there is an incentive for the purchaser to make the effort to pursue it. Equally, if overage is imposed on a

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transaction where there is a more likely prospect for success, the proportion should be weighted to the vendor. In my opinion, in this instance the overage should be set at 50% of the uplift in value. This is based only on my judgment.

- 1.5. Overage would be triggered by the grant of an implementable planning permission for a higher value use, permitted by the release of the restrictive covenant.
- 1.6. The length of time for which the overage is applicable should also reflect the likelihood that it will happen, in this instance if a new school is built without the lifting of the restrictive covenant, then the new school will have a proposed life in excess of 50 years so we would propose a term of at least 75 years.
- 1.7. Attaching overage to land can have an impact on the base price as it removes any potential hope value. Our original valuation reflected purely amenity values due to the restrictive covenant and therefore the attachment of overage would not impact upon the value we reported.

Yours faithfully,



Mrs Elizabeth Hill BSc MRICS
RICS Membership Number: 0846910
Director
For and on Behalf of
COOKE & ARKWRIGHT
Chartered Surveyors

