



# STRATEGIC DEVELOPMENT UPDATE

# SWORDERS

Agricultural Commercial Residential

## LOCAL PLAN PROMOTION

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Effective land promotion is often the key to unlocking sites for development.

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This brochure sets out key pointers for landowners considering promoting land to be considered for residential and commercial development. Sites need to be identified at the right time to the Local Planning Authority in order to be considered for its Local Plan Review.

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Sworders only act for the landowner(s) and not for the promoter or developer with whom they negotiate terms. Landowners can therefore be confident that our advice is impartial throughout the process from the selection of the most appropriate promoter or developer, to monitoring that party through the course of the planning process.

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# LOCAL PLAN

## Local Plan Process

The stages of the Local Plan preparation vary between planning authorities, but the key stages are likely to be:

### **Call for Sites**

- Local Planning Authority (LPA) requests that sites are nominated by landowners and developers
- LPA prepares a Strategic Housing and Economic Land Availability Assessment (SHELAA), which includes a list of all the sites being considered for inclusion in its Plan and an assessment of the development potential of each site

### **Regulation 18 – First draft of the Local Plan**

- Issues and Options Consultation – normally lasts 6 weeks
- Proposes draft policies on a range of issues and normally identifies sites for residential, commercial and other uses
- May be repeated if very contentious issues are raised or if significant changes are required

### **Regulation 19 – Pre-submission version of the Local Plan**

- Final draft Plan – the Council's preferred sites and policies
- Comments submitted will be sent with the draft Plan to the Secretary of State for Examination

### **Public Examination of the Plan**

- Carried out by an independent Planning Inspector in public hearing sessions
- After the hearings, the Inspector normally recommends Main Modifications to the Plan – further consultation required
- Once the Inspector finds the Plan sound, it can be adopted and forms part of the development plan

The plan making process set out above should normally take 2–3 years, although some Local Plan processes have, and continue to take, much longer where an Inspector may consider that part of the plan process needs to be re-run. For this reason, it is difficult to predict the potential costs of promotion of a given site with any degree of certainty, whether or not a planning consent will be achievable and a potential value will be successful. Due to the process being speculative and uncertain, combined with the fact that the potential rewards are considerable, it may be worthwhile landowners engaging a promoter to speculate the cash needed to fund a planning application. In return a promoter would seek a pre-agreed percentage of the final value with planning consent.

# STRATEGIC DEVELOPMENT AGREEMENTS AND APPROACHES

Land promotion is hugely competitive through the 'Call for Sites' process as there are many potential sites put forward. Therefore, it is important to prepare a cohesive, and where possible, a compelling case demonstrating your site is not only available and suitable, but also deliverable. Equally important, is to ensure you have the right team and development agreement in place to support the land promotion. We outline below some of the approaches available to landowners.

Development agreements are between the landowner and a promoter or a house builder. Such agreements typically place an obligation upon the promoter or developer to promote the site through the Local Plan process with a view to reasonably maximising the chance of success and whilst covering the landowner's planning and promotion costs. Typically, these costs are deductible from the sale price if planning permission is successful, however, promoters take different approaches.



## PROMOTION AGREEMENTS

Promotion Agreements have grown in popularity since Sworders first identified them as being a better means of providing aligned interests with the landowner than the industry standard option that was often used in the 1980s. The main difference between a Promotion Agreement and an Option Agreement is the promotor will have no right to acquire land. Their role is to obtain a planning permission that reasonably maximises the value of the land within given parameters. Once planning permission is obtained, the site will be marketed and, so long as the minimum sum is achieved, the proceeds of sale are split in the agreed proportions (typically after the deduction of planning promotion and sale costs).

# AGREEMENTS

## OPTION AGREEMENTS

In contrast, an Option Agreement is typically with a house builder who wishes to acquire land for their own development. Therefore, rather than wanting to maximise the value of the land, the house builder has every incentive to minimise the value of the land on the day of purchase. They may also have a pipeline of consented sites to build out and therefore not wish to progress the planning application at the pace that the landowner may wish.

## HYBRID AGREEMENTS

The definition 'Hybrid Agreement' can cover a range of types of agreement, but typically they tend to be Promotion Agreements with house builders who have a right to acquire part, but not all of the land. Again, they can be fraught with misaligned interests and need to be carefully structured.

Sworders' development team can advise on the appropriate method according to each client's specific circumstances to help secure the best development opportunities.

## LANDOWNER PROMOTION

There are alternative routes for landowners instead of an Option, Promotion and Hybrid Agreements. If landowners have the resources to fund the promotion and planning process themselves, they have a greater ability to retain control without

the need to involve a promoter or developer. This can prove invaluable if there are specific elements that you might want to see included within a development which are not focussed on maximising value. It is still important to be properly represented and Sworders have the experience and expertise to promote land and secure planning permission on landowners' behalf.



## SHARED RISK

The majority of landowners may not have resources to fund promotion as the costs for smaller schemes of 100 units can often exceed £100,000 and larger schemes in excess of £1 million. The difficulty is the unknown nature of these costs and quantum thereof.

Therefore, Sworders offer a shared risk approach to their fees and may consider offering an entirely performance related fee basis in many cases, particularly through early stages of land promotion.

## THE IMPORTANCE OF MONITORING

We have a team of experienced planners and surveyors, who provide proactive monitoring, not only of promoters' performance, but also of Local Plan processes.

The aim of a well drafted Promotion Agreement is to fully align promoters' interests with the landowners and there are inevitably changes of circumstances where such alignment can start to weaken. Our aim, where possible, is to monitor the process, reserving the right to attend all relevant meetings with Local Planning Authorities, key statutory undertakers and responding to public consultations on draft planning documents on clients' behalf, in order to seek to ensure that landowners' interests are fully and properly protected.



## EXAMPLES OF RECENTLY ALLOCATED SITES



### ■ Ware, Hertfordshire

Allocation for 1,000 dwellings. Sworders undertook the early stage promotion to get the site considered for release from greenbelt and then put in place a promoter who secured the allocation and is preparing a planning application.



### ■ Kenilworth, Warwickshire

Allocation for circa 550 dwellings. Sworders have overseen the promotion of the site on behalf of landowners, right the way through to allocation and then negotiated terms for a promoter to fund the planning application.



### ■ Baginton, Warwickshire

Sworders have promoted the site and secured a recent allocation, for circa 35 dwellings.



### ■ Daventry, Northamptonshire

Sworders identified a five year supply opportunity and put in place a promoter to secure a 450 unit scheme which was sold in November 2018.

## EXAMPLES OF RECENTLY SOLD SITES



### ■ Standon, Hertfordshire

Planning for circa 15 dwellings. Sworders promoted this site but also secured a five year supply shortfall consent and sold it in Summer 2019.



### ■ Chipping Campden, Gloucestershire

Planning for circa 30 dwellings was obtained by others before Sworders' involvement. Sworders secured the sale instruction and the site was sold in Autumn 2018.



### ■ Swavesey, Cambridgeshire

Sworders identified a five year supply opportunity and secured a planning permission at appeal for 30 dwellings. The site was sold by Sworders in Summer 2018.



### ■ Braintree Phase 2, Essex

Sworders undertook early stage planning promotion and then brought in a promoter for a five year supply shortfall for both Phase 1 and 2. (137 units Sworders sold in June 2017). The promoter has recently secured planning consent for Phase 2 for 45 dwellings, currently being marketed by Sworders.

# TAXATION

A number of taxes apply when considering strategic development land. It is important that landowners take specialist tax advice. Because of Sworders' breadth of knowledge in dealing with sales, we are often able to provide some early pointers that can assist clients in planning ahead to achieve legitimate tax savings. A brief overview of some of the potential pitfalls are identified below.

## Inheritance Tax (IHT)



The availability of Agricultural Property Relief (APR) for Inheritance Tax has its recognised benefits. However, when for example, an allocation is secured, or planning permission obtained, the value is enhanced, but APR is only available on the agricultural element of the land's value. However, subject to meeting specific criteria (and the land being part of the farming business for in excess of two years), often 100% Business Property Relief (BPR) can be obtained. It is important to consider IHT planning and ensure the correct business structure is in place.

## Capital Gains Tax (CGT)

Under current Government guidance Entrepreneurs' Relief may be reviewed. Where available, it effectively reduces the 20% Capital Gains Tax rate to 10% up to a lifetime limit as announced in the March 2020 Budget, reduced from £10m to £1m. To qualify for such relief, a number of conditions must be met and we would encourage that these are reviewed thoroughly. It is vital that to benefit from such relief, careful consideration should be given in advance of any sale.

## VAT

An election to waive VAT exemption can be made (known as Opting to Tax) in order to recover VAT on costs but the timing of this requires careful consideration.



## EQUALISATION IN LAND PROMOTION



Where multiple owners have land they wish to promote together as one large block, it can be beneficial to have a structure in place that allows the sharing of sale proceeds tax efficiently. One way of doing this is known as Trust Pooling.

Trust Pooling allows landowners who are working together to deliver a development site to 'pool' their land in order to share the whole of the site value in agreed proportions. This then allows the landowners to sell the site in a tax efficient manner.

There are however, a number of other potential means of sharing proceeds of sale in an equalised manner; each has pros and cons and differing degrees of potential tax efficiency.

The risks and consequences of these tax strategies, as well as the implications for individual landowner's tax reliefs (Entrepreneurs' Relief, Rollover Relief and Business Property Relief), all need to be carefully considered before deciding on the most appropriate route.

Sworders has over 30 years' experience in advising landowners on potential commercial structures for mitigation of taxation. We work with other specialist professionals to seek to design schemes that are most appropriate to the circumstances of the individual case.



Whether you are just starting, or are a long way down the road in negotiating terms with a promoter or house builder, and even if you are already professionally represented, we are usually able to provide a second opinion on any draft offer or legal agreement without obligation or cost.

At Sworders, we only provide specialist strategic land advice to landowners and do not act for land promoters or house builders in any strategic land and planning matters, or indeed in the sale of new homes. Landowners can be confident that our advice is therefore wholly impartial.

We have a comprehensive database of promoters that we have successfully worked with and are happy to recommend. We have satisfied ourselves that they are well funded and have the experience and capability to deliver a planning permission that maximises value. Most importantly, they are willing to enter into a Promotion Agreement that includes appropriate provisions that allow us to properly protect the landowner's future position.



## CONFLICTS OF INTEREST?

If your agent **does not** act for house builders or promoters in any strategic land matters, is not involved in new homes instructions and **does not** accept introductory commission or inappropriate corporate hospitality, then you are probably already a Sworders' client!

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As rural property professionals, we advise across the agricultural, commercial and residential sectors on all aspects of rural property. We provide advice that seeks to maximise the value of clients' properties, often on shared risk basis.

To be sure you are maximising the value of your asset, please contact us to discuss your opportunities.

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