Westcountry team Limited

Ask the expert – 22nd July 2011

A question answered by James Berwick, partner of Berwick & Berwick, ***team*** *estate agent with offices in St Ives (01736 799090) and Hayle (01736 759696):*

Q. Recently, I was looking at properties online and spotted one with something called an "uplift" clause. What is this?

A. Also known as an "overage" clause or development covenant, this gives a vendor the legal right to a share in any subsequent increase in value that might occur as a result of planning permission being granted for redevelopment. This normally applies for a set number of years following the sale.

The wording of the clause might be something like this: "This property is sold subject to an Uplift Clause reserving to the vendor 30% of any increase in value arising from the grant of planning consent for alternative use or development of the site. This provision will remain in force for a period of 25 years." The actual figures, of course, can vary from case to case and from one part of the country to another.

Nor surprisingly, these clauses became increasingly common during the last property boom, when owners of homes on large plots became acutely aware of the potential development value of their back gardens. In tune with the spirit of the age, they wanted to retain a slice of the action – even long after they themselves had sold up and moved on!

Of course, not all such clauses are just about greed. Sometimes they might be inserted for very different reasons – for example, to try and protect the status quo and actually deter possible future development, by rendering it less attractive financially.

Nevertheless, whatever the vendor's original motives, clauses of this kind are now relatively rare. Buyers never did like them, of course. That didn't matter very much back in the heady days of the mid-Noughties, when people were desperate to pay whatever vendors asked, and more, for any

scrap of land with possible development potential. Back then, you either accepted the clause as it stood, or you paid the vendor whatever exorbitant amount he demanded in order to have it removed. It's a very different story today, when properties with overage or uplift clauses can be virtually unsaleable. Indeed, vendors who thought they were a good idea 4 or 5 years ago are now rather more likely to scrap them voluntarily, if it means they can secure a buyer.

And probably a good job too, all things considered!