



Palmerslaw

Guide for commercial property buyers

Moving forward
together >



Preparation, preparation, preparation – an essential mantra for commercial property buyers

Whether you are buying a commercial property for the first time, or a new kind of premises for your flourishing business or investment portfolio, preparation is the key to a smoother transaction and fewer nasty surprises and last-minute hitches.

This is an introductory guide to those things which you need to consider so that you can budget for the purchase, plan for the right timeframe and so that you can work with your solicitor on any necessary legal troubleshooting and problem-solving.



First things first – money!

You've found the right set of premises for your business, or the right investment for your portfolio – but do you know exactly how much you are going to need to fund the process of the purchase as well as the cost of the building itself?

As well as the purchase price, consider these items:

Value Added Tax – depending on the age and VAT status of the property, you may need to fund an extra 20% on top of the purchase price. Not a small “extra” to fund– especially if you cannot recover it.

There are processes and rules to follow in order to assess whether you have to pay VAT and to be able to recover it if at all possible. There are some circumstances which can trip you up or at least cause delay if this is not tackled early enough – for example:

- A first time investor, buying a property for his or her company, may not be VAT registered as an individual. The VAT registration is essential to be able to claim back the VAT. This can take months to obtain.
- An investor buying a building with a tenant already in place might, at law, be purchasing a property letting business as a going concern (called, in the trade, a “TOGC”). This means that VAT would not usually be chargeable – but again, there are rules to follow to make sure that the purchase is treated properly and validly as a TOGC.

The crux of the matter is this: you need to prepare properly to ensure that you know:

- whether or not VAT will or will not be payable on the price for the property
- what amount you will have to fund on the completion date
- how you are going to fund it
- what you have to do to make sure that you can recover it – if indeed that is possible.

You should ask your seller immediately if they know whether VAT is or is not payable on the price and then speak to your accountant to obtain the right advice at the very earliest opportunity.

Stamp Duty Land Tax – depending on the price of the property, you will have to pay Stamp Duty Land Tax or “SDLT”. Here’s a handy link to HMRC’s SDLT calculator: www.tax.service.gov.uk/calculate-stamp-duty-land-tax/#/intro

Remember that if VAT is payable on the purchase price, you have to pay SDLT on the VAT too! Add it in as part of the purchase price when doing the calculation.

No part of SDLT is recoverable – not even the part paid on the VAT element.

Professional and other fees – normally, for a purchase of a commercial property, you will need:

- A solicitor
- A tax adviser
- A surveyor

You may also need:

- A structural engineer (depending on the outcome of the survey)
- A specialist Capital Allowances adviser (depending on the advice of your tax adviser)

All of these will have fees and “disbursements” (such as search fees) to pay which are usually payable whether or not the purchase actually completes.

If you are borrowing any of the funding from a bank, they will also normally ask you to pay for:

- Their valuer (who may or may not also be your own surveyor)
- Administration and arrangement fees



Next – the property itself – surveys, inspections and testing

Your solicitor will look after the legal investigations relating to the property for you. You too have a role to play in this.

You should always visit the property and inspect the condition of it, test the service media and any equipment, ascertain whether there have been any alterations to it and to check to see who might be occupying it – all in a similar way to that in which you would inspect a potential new home.

So...

In terms of the **condition** of the property, you should engage a surveyor to advise on the kind of survey which is advisable, and to carry it out. You might instruct other specialists, who can be recommended by your surveyor – to carry out all necessary **testing** of service media, appliances and equipment.

As to **alterations** – if there have been obvious alterations made to the property (such as the construction of a mezzanine floor) you should tell your surveyor and your solicitor. The surveyor will consider the work which has been done and the solicitor will advise on whether any consents for the works done are revealed by their conveyancing searches.

In terms of **occupiers** – be sure that you are not likely to be taking on a property with “unwanted guests”. Occupiers of business premises can quite easily gain rights to stay in premises as protected business tenants. It is important to know who is occupying the premises and in what capacity. Your solicitor can then advise on whether you can be rid of them (if indeed you wish to be) – and how. Go and find out who is in there!



Then – funding

Borrowing

If any part of the purchase price is being provided by borrowing from a bank, the bank will have various sets of instructions which your solicitor will need to follow. Your solicitor will have to report to the bank on the property and disclose those unresolved problems which have come to light.

It has been known for borrowers not to appreciate the full gamut of security paperwork which the bank will require before agreeing to release the funds for the purchase.

If “you” are a company purchasing property, do you know whether the bank simply wants a mortgage over the property – or will it also want a debenture over the company, and/or guarantees or other security over other land?

If you are an individual buying a set of premises for your own business, will the bank (as they usually do) want to see a lease in place between you as landlord and the business as tenant?

All of these things have been known to come to light, at the last minute, delaying a transaction and causing immense frustration. They also cause increased costs because of the additional work which is necessitated and the intensity of that work. All because of the last minute urgency. The practical point here is to make sure that you and your relationship manager have a mutual understanding as to what exactly the bank requires. As matters progress it is important to keep in touch with them to understand how close you are to the magic “release of funds.”

Cash elements

Any part of the purchase price which is being funded out of your own funds will be subject to anti-money laundering checks.

You should prepare at least to be able to produce to your solicitor at a very early stage the bank statements showing the location of the funds. You will also need to provide evidence as to how the funds have accrued – whether through legitimate business activity, savings, gifts, inheritances and so on. Your solicitor will be able to provide more detail as to any further checks which they are required, by law, to make.

Planning and overage

Planning

If the purchase is conditional on planning you may want to consider the following:

- A pre app meeting with the Local Authority is often useful in providing insight to matters that may need to be tweaked before the final application is submitted.
- Who is submitting the application and at whose cost.
- Timelines especially if you are moving out of existing premises.
- Matters which will not amount to a satisfactory planning permission that you will need to build into the contract.
- What Long Stop Date you will require to keep the contract live before you can pull out if planning is obtained.

Overage

If the purchase is subject to an overage you may want to consider the following:

- Take advice from your valuer as to the overage period and the formula of any payment to ensure the agreement reached is fair.
- Make sure the formula allows for you to deduct costs e.g. planning costs from any overage payment.
- Ensure that it allows you to carry out certain transactions that would not be caught by the overage known in the trade as “exempt disposal” e.g. lending.
- Speak to your accountant as you will need to make an application for SDLT deferment on any overage agreement as this will constitute consideration for the purposes of SDLT should a overage payment be made.



How to avoid some other potential headaches...

Keep the lines of communication open with your solicitor.

Tell them what your future plans are for the building – be as full and as early with the information as possible. For example – are you going to rent it out? If not, and you are going to trade from it, what is your business? Are you planning on altering or extending the premises?

All of this information will help your solicitor to look at the legal paperwork in that context and to alert you to any obstacles as to the proposed use.

Speak to your tax adviser about whether or not you might be able to claim **“Capital Allowances”** for anything in the building. Those have to be identified quickly and there are processes to follow in order to be able to claim those allowances – before the purchase completes. If you don't do that then you lose the right to claim them.

And lastly...

If you can, schedule a regular weekly or fortnightly time to speak to your solicitor for general updates and sharing of information. Email is great – but there's no substitute for uncovering potential problems than actually conversing!



Contact us

For more information, please contact a member of our commercial property team.



BJ Chong

Supervising Director
Thurrock

☎ 01375 484444

@ BJChong@palmerslaw.co.uk



Carey Jacobs

Supervising Director
Commercial Hub, Basildon

☎ 01268 240000

@ CareyJacobs@palmerslaw.co.uk



Elena Nicolaou

Head of the Commercial Property
Commercial Hub, Basildon

☎ 01268 240000

@ ElenaNicolaou@palmerslaw.co.uk



Hannah Airey

Licensed Conveyancer
Commercial Hub, Basildon

☎ 01268 240000

@ HannahAirey@palmerslaw.co.uk



Jemmar Attfield

Associate Executive
Basildon

☎ 01268 240000

@ JemmarAttfield@palmerslaw.co.uk



Shweta Shinde

Solicitor
Thurrock

☎ 01375 484444

@ ShwetaShinde@palmerslaw.co.uk

Palmerslaw

Basildon

19 Town Square,
Basildon,
Essex, SS14 1BD

☎ 01268 240000

Rayleigh

105 High Street,
Rayleigh,
Essex, SS6 7QA

☎ 01268 988488

South Woodham Ferrers

Prospect House, 1/3 Brickfields Road,
South Woodham Ferrers,
Chelmsford, Essex, CM3 5XB

☎ 01245 322111

Thurrock

Ascension Chambers,
Fleming Road, Chafford Hundred,
Grays, Essex, RM16 6HH

☎ 01375 484444

Commercial Hub

Suite 1A, Phoenix House,
Christopher Martin Road,
Basildon, Essex, SS14 3EZ

☎ 01268 240000

www.palmerslaw.co.uk enquiries@palmerslaw.co.uk



Palmers Solicitors is the trading name of Palmers Law Limited (company registration England & Wales: 09464224) registered office 19 Town Square, Basildon, Essex SS14 1BD and is authorised & regulated by the Solicitors Regulation Authority, SRA No. 813805

This guide is not intended to be an exhaustive statement of the law and gives general information only. You should not rely on it as legal advice. We do not accept liability to anyone who does rely on its contents. This guide was correct at time of publication (September 2023) and is not a substitute for legal advice.

Lexcel
Legal Practice Quality Mark
Law Society Accredited

