

A Guide to Buying Commercial Property or Taking a New Lease of Commercial Property

Introduction

We set out below information on some issues that you should consider when buying or entering into a lease of commercial property. Prior to exchange of contracts we (as your solicitor) would carry out the usual conveyancing searches, review the landlord's title to the property and make enquiries of the landlord about the property. Following that, we would submit a report on the property to you. However, there are certain issues that you should consider, as a prospective buyer or tenant of the property, which it may be helpful to address in advance of taking a new lease of or purchasing your premises.

The role of your solicitor:

1. Searches, enquiries and documentation

As the prospective owner or tenant of the property, you will be bound by the principle "let the buyer beware". It is therefore essential that we conduct all necessary searches and enquiries relating to the property on your behalf, which are as applicable to the purchaser of a leasehold property as they are to a freehold purchase. These searches will include:-

- (a) a local authority search, and enquiries to find out about local development plan provisions, drainage, maintenance of roads, outstanding notices against the property, building regulations, planning applications and permissions etc;
- (b) a search at Land Registry to confirm the identity of the current owner or the landlord, and to discover any restrictive covenants and other rights affecting the property;
- (c) a desktop environmental search to ascertain any probability of the site being affected by contamination and the sensitivity of any possible receptor of the contamination on, adjacent to or in the vicinity of the property; and
- (d) other searches relevant to the property.

Charges are made by the providers of each of the searches we carry out and these will be shown as disbursements on invoices you receive from us. We will be able to give you details of the costs of the searches at the time they are made.

We will also make enquiries of the seller or the landlord to which their solicitor will collate replies. The results of all the searches and enquiries made will enable us to make you aware of the liabilities you may take on as owner or tenant of the property, and to make sure that there is nothing that will prevent you from using the property in the way that you intend.

In addition, we will review the contract or the lease which you will enter into in relation to the property. We will negotiate the documentation on your behalf and deal with exchange and completion of the transaction.

2. Inspection

It is essential that you inspect the property and tell us of anything that may be relevant to our investigations. This would include evidence of rights of way being exercised over the property, occupation by anyone other than the seller or the landlord, issues relating to access, evidence of contamination at the property, and any other matters that you think may be relevant. This will enable us to raise additional enquiries of the seller or the landlord and any relevant agency, as appropriate, to ensure that there are no matters that affect the value of the property or the use of the property for your desired purpose.

3. Survey

The usual enquiries raised by a buyer's or tenant's solicitor and sent to the seller's or the landlord's solicitor do include enquiries relating to the condition of the property. However, it is normal for little or no information to be provided to the buyer/tenant on the condition of the property, and for the seller/landlord to ask the buyer/tenant to rely on its own inspection and survey in this regard. If some of the purchase price is being provided by a mortgagee, the mortgagee may also require a survey to be carried out. If you would like us to put you in touch with an agent who can carry out a survey of the property we will be happy to do so.

4. Security of tenure (NB – this relates to leases only)

We will advise you on any issues relating to security of tenure at the property. Protection is given to certain business tenants by virtue of the Landlord and Tenant Act 1954 enabling tenants to remain in occupation at the end of a lease and to require a new lease from the landlord. Unless the landlord is able to prove one of a list of grounds, for example that it wishes to redevelop the property and is unable to do so without obtaining possession of the property, the tenant will have the right to a further lease. However, many business leases are "contracted out" of the security of tenure provisions of the Landlord and Tenant Act 1954. If this issue is not referred to in the heads of terms relating to the transaction we advise you to consider it and to raise it with the landlord at an early stage. If the lease is to be "contracted out" you will be asked to sign a declaration confirming that you understand the implications of doing so. Please let us know if you would like any further information in this regard.

5. Control of Asbestos

The Control of Asbestos at Work Regulations 2006 place a duty on landlords, tenants and owner-occupiers of non-domestic property to assess whether or not asbestos is present at the property. This can be done by means of an asbestos survey. Once the risk has been assessed, if asbestos is found to be present, there is an obligation to prepare a written plan identifying the measures to be taken. These may include maintaining the current condition of the asbestos or arranging for its safe removal. The written plan must be reviewed at regular intervals. Failure to comply with these Regulations is a criminal offence and we advise you check that the seller/landlord has an acceptable asbestos survey which will be handed over on completion of the purchase, and, if not, to commission an asbestos survey of the property yourself. We can put you in touch with a surveyor who will be able to help you with this.

6. Fire safety legislation

You should also be aware of your potential responsibilities in relation to fire safety. On 1 October 2006 new fire safety legislation came into force which applies to all non-domestic premises, the common parts of residential premises, and work premises occupied by self-employed people. Fire certificates are no longer required and do not have any legal status. Instead duties are imposed on the “responsible person” to carry out a fire risk assessment and implement the resulting fire precaution recommendations, and to keep the assessment under review. It should be noted that there may be more than one “responsible person” in relation to the same premises (for example a landlord will be the responsible person in relation to a building and the tenants will be responsible for their individual floors), and if so they will all be under a duty to work with each other over fire safety.

The Department for Communities and Local Government has published guides for various types of premises e.g. offices and shops, factories and warehouses, healthcare premises etc, and these are available to download at <http://www.communities.gov.uk/index.asp?id=1162101>.

7. Health and Safety Risk Assessment




If you will be employing people who will be working at the property and/or receiving members of the public we advise you to commission a health and safety risk assessment. Issues relating to health and safety would not necessarily be revealed through the usual conveyancing searches and enquiries. Whilst we do not advise on such matters ourselves, we will be happy to put you in touch with a health and safety risk assessor.

8. Tax Advice

We will advise you on your liabilities to pay any Value Added Tax (VAT) and Stamp Duty Land Tax in relation to the transaction. We can also advise in general terms on the effect of any election made by the seller/landlord to waive the exemption from VAT in relation to the property. We cannot advise on the effect that any such election may have on your business generally but we can put you in touch with an accountant who will be able to advise you. We will also not be able to advise on issues relating to capital allowances at the property, nor on any other tax implications arising out of the transaction but we will be glad to refer you to specialist surveyors and accountants as appropriate.

We strongly advise you to seek independent advice in relation to the tax implications of the transaction.

For more information or advice
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