

Property Purchase Guidance

Small Self-Administered Schemes (SSASs) are able to purchase commercial property as well as commercial and agricultural land. Once purchased, the property or land can be leased to a sponsoring employer or an unconnected third party. Alternatively, assuming that the proper planning permission is obtained, land can be developed into commercial property.

Buying from a sponsoring employer or member can release SSAS money to the business or member which has been a useful tool in difficult economic times. It should be noted that there may be a tax liability on the seller.

... This briefing note summarises the main issues
... which the trustees of a SSAS should consider when
... undertaking an investment in property.

The trustees must ensure that all legislative requirements are met in respect of the purchase and that all necessary reports, surveys and environmental/structural checks are performed. The trustees also need to ensure that all legislative requirements are met throughout the scheme's ownership of the property.

In conjunction with these notes the trustees should inform us of their intention to purchase a property as soon as possible in order that we may assist the trustees in ensuring that legislative requirements are not breached and that no unauthorised payments are made or tax charges incurred by the scheme.

The trustees should view any investment in property as a long term investment and should give careful consideration at the time of the proposed purchase as to when the members will wish to withdraw their benefits from the SSAS and the liquidity of the scheme to permit that.

Our role

Our key role is to ensure that any property purchase is within HM Revenue & Customs (HMRC) rules and meets all HMRC requirements. Your Client Manager will discuss and understand your requirements so that they can help co-ordinate the various property transactions and assist all parties through the various stages of purchasing a property and then continue to manage that property investment on an ongoing basis.



Key steps to progressing your property purchase

Buying a commercial property can be a complex task but we aim to help make the process as simple as possible. We will liaise with the solicitor and bank (if applicable) to confirm our requirements as professional trustee (if applicable). Once you have identified a property, the steps are:

1. Assess the financial feasibility – we can assist with this if necessary. A valuation should be considered a prudent part of the purchase process even if the vendor is unconnected.
2. Complete our Property Purchase Questionnaire and submit it to us. This acts as your official instruction to us to begin the purchase.
3. We will assess the initial details on receipt, highlighting and discussing any potential issues with you. We can usually give our confirmation that the property meets our requirements within a week of your submission.
4. Decide upon a solicitor, valuer and bank (if appropriate). If we are a trustee, we will need to be party to any appointment. Barnett Waddingham does not insist on any specific solicitor or valuer being used and therefore you are free to find the most suitable one for your needs.
5. Address any environmental issues.
6. Your solicitor will be the main point of contact for you: we will liaise with the solicitor directly.
7. Contracts will not be entered into until we have approved the purchase and there are sufficient funds available in the scheme to cover the purchase costs including VAT, stamp duty and expenses.

If it is of help, Barnett Waddingham has a panel of solicitors who are fully conversant with property purchases through self-invested pension schemes. Your Client Manager can provide more details.

Types of property which trustees may purchase under a SSAS

Freehold or leasehold commercial property and industrial property may be purchased by a SSAS, such as offices, shops, factories etc., although the trustees must take care to ensure that there is no residential element to the property as this is unlikely to be allowed. If the trustees are in any doubt as to whether a transaction will be allowed please contact us to discuss this.

Development and agricultural land can be acceptable investments. Care would need to be taken with land purchased for development into residential property as HMRC impose strict restrictions on this type of development.

If this is an option that you are considering, please contact us as soon as possible to discuss this.

Listed buildings may be held in a SSAS. Each case will be reviewed prior to purchase to ensure that the trustees are not taking on a liability to correct previous work on the property which is not in line with its listed status. This will likely mean additional checks by the trustees' solicitor.

Residential property purchased for conversion will incur tax charges as even if change of use is confirmed the property will still be regarded as residential by HMRC. In these cases change of use must have been granted and completed prior to the SSAS purchasing the property.

Residential property other than in certain very limited circumstances is subject to tax charges designed to negate the benefit of the tax relief enjoyed by SSASs and as such we would not permit residential property in a SSAS for which we are professional trustee.

Examples of residential property:

1. a building or structure that is used or suitable for use as a dwelling;
2. ground rents over residential property;
3. any related land that is wholly or partly the garden for the building or structure;
4. any building or structure on any such related land;
5. a beach hut;
6. timeshares;
7. in limited situations a hotel, which includes an inn, or similar accommodation, will be treated as residential property (only where it provides accommodation rights as a timeshare); or
8. any related land which is wholly or partly grounds for the residential property and which is used or intended for use for a purpose connected with the enjoyment of the building.

Examples of non-residential property:

1. a hospital or hospice;
2. a prison or similar establishment;
3. a hall of residence (not flats) for students - meeting certain conditions specified by HMRC;
4. if the pension scheme owns the whole of a hotel or is the joint owner of the whole hotel then this does not constitute residential property;
5. a home or other institution which provides residential accommodation for children; this means a dedicated children's home not a home that children can live in;
6. a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder; or
7. any building specified in Regulations as not to be treated as residential property.

If a building is not currently in use but was last used for one of the non-residential purposes set out above, then it is not treated as residential property. If the building has never been used and is more suitable for one of the uses specified above than for any other purpose it is not treated as residential property, regardless of its suitability for use as a dwelling.

There are also some job-related properties that are exempted (such as a pub with a manager's flat). The conditions for this type of investment are extremely strict though and require a number of criteria to be met in order to ensure that they are not inadvertently classed as residential property. A shop with some flats above it with their own entrance would not qualify.

Buying at auction

SSAS trustees can buy property at auction although there are practical challenges which need to be overcome:

- a. Pre-purchase checks (environmental, tax efficiency etc.);
- b. Payment of the deposit (pension scheme cheque made payable to auctioneers, or company pays and is reimbursed).

For these reasons, we ask that we are given as much notice as possible to consider whether the investment can or should proceed.

Purchases from and leases to a connected party

A connected party is a sponsoring employer, a scheme member, an associated company or an individual related to a member by lineal descent.

We must receive a copy of an Independent Property Valuation Report, addressed to the trustees of the scheme, dated within six months of completion of the purchase and prepared by a professionally qualified surveyor (a member of the Royal Institution of Chartered Surveyors (RICS)) confirming:

- the property's market value; and
- the market rental value (only if the property is let to a connected party).

When dealing with connected parties, HMRC requires that the price paid for the property and the amount that the property is let for is as stated in the Valuation Report. If the price paid by the scheme or the level of rent charged does not match the Valuation Report, HMRC may impose tax charges on the difference.

If the trustees and the company employ the same firm of solicitors to process the sale/purchase, both parties must instruct the solicitor that they are to work in the best interests of the party employing them. The solicitor must confirm in writing that no conflict of interest exists.

The trustees should also inform us if a connected party owns any land or property next to, opposite or in the same location as any property investment which the trustees wish to make. It may still be possible for the trustees to make this investment provided that an independent valuer can confirm that the two properties/pieces of land are separate and that there is no additional benefit to be gained (i.e. the two properties becoming connected at a later date).

Valuation requirements

The trustees must ensure that a property valuation is obtained on a regular basis whilst it is owned by the trustees. In particular, up to date valuations will be required to enable us to value the whole of the scheme fund and calculate each member's individual share of the fund when:

- a member wishes to vest retirement benefits from the scheme
- a member wishes to transfer funds out of the scheme
- a member in capped drawdown is due a pension review (required every three years up to age 75 and annually thereafter)
- a member's fund is subject to a pension sharing order
- a member reaches age 75
- a member dies.

Regular valuations help maintain the integrity of calculations allocating funds between scheme members. We may request an up to date Valuation Report at any time to ensure that a member's benefits are calculated accurately.

Timescales

In our experience a property purchase is likely to take a minimum of eight weeks from the appointment of the solicitor to act on behalf of the trustees, although in many cases the transaction may take much longer. The trustees must ensure that the finance is available for the purchase on time. They must also ensure that the scheme is able to finance any extra costs if the property purchase is delayed.

Finance

The trustees must ensure that the purchase price of the property and all associated costs (such as VAT, Stamp Duty Land Tax (SDLT) in England or Land and Buildings Transaction Tax (LBTT) in Scotland or Land Transaction Tax (LTT) in Wales, legal costs, surveyor's fees and lender's fees) are available from scheme funds and paid out of the scheme bank account. All invoices should be made out to the trustees of the scheme.

Such funds may be made available through secured lending, contributions and transfers into the scheme. Alternatively, the scheme could jointly invest in a property with the sponsoring employer, member(s) or an unconnected party. It is the trustees' responsibility to ensure that all such transactions are permitted by HMRC. If the trustees are in any doubt as to whether this is the case, please contact us to discuss this.

Any borrowing offers and subsequent borrowing must be made in the name of the trustees of the scheme and not the individual directors or the sponsoring employer and must be within the maximum borrowing capacity of the scheme (no more than 50% of the net value of the scheme fund as defined by HMRC).

Scheme borrowing must be carried out on normal commercial terms to avoid tax charges. We will calculate the maximum borrowing limit for a scheme.

Contracts must not be exchanged until the trustees have accepted the mortgage offer and/or have sufficient funds in the scheme bank account to cover all the purchase costs and related expenses.

The scheme property may be used as security for the borrowing but the trustees must not provide personal guarantees.

All mortgage payments must be paid from the scheme bank account and the trustees must ensure that there are sufficient liquid funds within the scheme to meet the mortgage repayments at all times.

Borrowing is not restricted to banks. A SSAS can borrow from an individual or even the scheme's sponsoring employer or the scheme members personally. Such transactions should be on an arm's length basis and agreed in writing before funds are advanced.

VAT

VAT is charged when a VAT registered property is bought or sold (unless the purchase satisfies the 'Transfer of a Going Concern' criteria). In most circumstances the trustees can elect for VAT to be applied to the property and the scheme will be able to reclaim the VAT paid on the purchase price from HMRC. SDLT, LBTT or LTT is charged after VAT has been added on, even if the VAT can be claimed back. It is important to note that the rent payable will also be subject to VAT on a VAT registered property.

Where VAT is payable on the purchase price and borrowing is required to meet this charge, borrowing may be arranged in the name of the trustees of the scheme until the VAT is recovered from HMRC. Any borrowing must be included within the 50% maximum borrowing limit.

It is crucially important that the trustees establish whether VAT will be payable on the purchase price prior to progressing the purchase as this extra borrowing may prove costly to the scheme and exceed the 50% limit, thereby incurring tax charges from HMRC.

Please note that Barnett Waddingham is not able to provide tax advice and therefore we recommend specialist VAT advice is sought prior to the purchase.

Stamp Duty Land Tax / Land and Buildings Transaction Tax / Land Transaction Tax

Normal transaction tax rules apply and the purchaser, being the trustees of the scheme, is responsible for settling any such tax due.

Leases

The trustees may purchase a property subject to an existing lease, provided that they are on acceptable terms.

A vacant property should be let under a formal lease. Where a new lease is required the trustees should appoint a solicitor to prepare the lease. All scheme properties must be let on a fully insuring and repairing basis.

Any ground rents should be met by the scheme as landlord. Service charges can be passed to the tenant if the lease permits this.

If the tenant of the property is a connected party, the letting must be made for the market rental value matching that of an independent rental valuation prepared by a professionally qualified surveyor (a member of the Royal Institution of Chartered Surveyors). If a connected tenant does not pay rent, or pays below a commercial level of rent, tax charges apply on the company and the scheme. The tax charge is typically 40% of the underpaid rent charged on the company and 15% on the scheme, though it could be higher in certain circumstances. Where we are professional trustee, we will notify HMRC of any underpayment as part of our duty as scheme administrator.

If there are genuine financial difficulties and the company cannot afford the rental payments, then provided the trustees deal with the company on an arm's length basis, tax charges could be avoided.

Please note that should a tenant experience financial difficulties, non-payment of rent will adversely affect scheme members in retirement.

Property management

The trustees are responsible for the management of the property, the collection of the rent and ensuring that the terms of the lease are fully adhered to. Barnett Waddingham cannot be appointed as the property manager to the property.

We would recommend that a Direct Debit or standing order payments are established wherever possible to reduce the risk of arrears accruing.

Covenants and liabilities

The trustees should endeavour to ensure that there are no covenants or liabilities attached to the property which may affect the use and/or future value of the property. The trustees must satisfy themselves as to the condition of the property and the financial strength of any prospective tenants.

The legal owners

The property should be registered in the name of all trustees, up to a maximum of four, as the trustees of the scheme.

If Barnett Waddingham is professional trustee to the scheme it should be one of the trustees listed as a registered owner of the property, unless we agree otherwise in which case we will confirm this in writing.

⋮ The trustees will need to ensure that Barnett Waddingham is sent a copy of the Land Registry certificate showing that the property is correctly registered.

We do not hold any original documentation for trustees so arrangements will need to be made for all the original documents and Title Deeds to be kept in a secure place.

Insurance

The trustees must ensure that adequate buildings insurance cover is in place throughout the duration of the scheme's ownership of the property. We have a block insurance policy that can be used for this purpose. If our block policy is not being used, a copy of the in force insurance document should be sent to us. Barnett Waddingham receives an introduction payment from the insurer which means that we do not currently charge for our time dealing with the insurer.

The trustees must also ensure that public liability insurance is in place at all times. This requirement applies to both property and undeveloped land/land in development. We reserve the right to ask the trustees to undertake further insurance if we do not believe the property to be adequately covered.

Fire regulations

The Regulatory Reform (Fire Safety) Order 2005 requires the trustees or tenant of the scheme property to carry out a risk assessment and maintain a fire management plan.

Environmental study

In order to protect the trustees and members against any liability created within the Environmental Protection Act 1990, the trustees must ensure that they are fully aware of the 'Environmental Risk' that the property may pose, and that an environmental study is performed in respect of the site.

It is also possible for the trustees/tenant to incur environmental liabilities if the property is discovered to be contaminated or is found to have caused a form of environmental damage.

The possible presence of asbestos, for example, may result in a significant reduction in the value of the property.

If, for example, there was found to be a pollution problem on the site, and the cost of this could not be met by the tenant, then the trustees could be held legally responsible for the cost of such damage and any ensuing litigation. The trustees therefore need to be satisfied that at the time of purchase there are no such potential problems. One way to address this is for the trustees to ensure that a full environmental report is undertaken.

The trustees should take measures to ensure that they do not under any circumstances enter into a contract which requires them to give any environmental indemnity to the seller or anything of a similar nature.

It is a legal requirement for every commercial property to be the subject of an Asbestos Register and Management Plan. In most cases this will involve an asbestos survey being prepared by a qualified individual.

Generally, the responsibility for ensuring that the requirements are met rests with the person who is seen to 'control' the property. The trustees may deem this to be the tenant where there is one tenant who is fully responsible for the property, and may indeed discharge this responsibility onto the tenant accordingly. Where compliance with the requirements rests on the owners of the property, the trustees must ensure that the requirements are met together with the associated costs and penalties.

If a property owned by a SSAS is found to be contaminated, even though this may not be the fault of the current landowner, the scheme as the owner will be financially responsible for the clean-up costs and any ensuing litigation.

The trustees should be aware that should a contamination problem occur, the clean-up process can be extremely expensive and in many cases, may wipe out the assets of the scheme, and any costs in excess of the scheme assets could burden the trustees personally.

If there has been any harm to third parties then litigation costs and damages could also severely increase the financial exposure of the scheme.

Failure to comply with these requirements is a criminal offence.

Environmental insurance

It is possible for the trustees to take out 'environmental insurance' to protect against such claims if the scheme property is contaminated. Please talk to your insurers if you wish to protect the scheme accordingly.

Please note that the trustees must ensure that the policy purchased covers:

- a. offsite third party liability – this covers the trustees' legal liability for bodily injury and/or property damage arising from contamination which migrates from the outer boundary of the property;
- b. clean-up liability; and
- c. costs and expenses – this should cover legal fees, court costs, witness fees etc.

Please note that most standard insurance policies merely cover sudden and accidental pollution – they do not cover gradual pollution arising from historic contamination.

It is the trustees' responsibility, as owners of the property to ensure that the property is insured adequately and comprehensively.

Energy Performance Certificates

Since 1 October 2008, an Energy Performance Certificate (EPC) must be obtained for a commercial property (or 'non-domestic building'), before it can either be purchased or sold. The EPC should be supplied by the vendor of the property, and each has a unique 20 digit 'Certificate Reference Number'.

An EPC shows the energy rating of the building, and indicates the energy efficiency of the building fabric and the heating, ventilation, cooling and lighting systems. An 'Energy Performance Asset Rating' (EPAR) is provided on the front of the EPC. This is a combination of a letter (with a range of A to G) and a number (within a range of 0 to 'over 150'). The higher the letter and number, the less energy efficient the building is. Once issued, the EPC then remains valid for 10 years.

From 1 April 2018 it will be against the law to let out a property with an EPAR in bands F and G.

It is still possible to buy or sell a property within the F and G bands. The trustees should carefully consider the EPC's accompanying recommendation report when deciding how much they are willing to pay for the property bearing in mind the need for the EPAR band to be E or better before the property can be let.

The rules apply to new lettings and lease renewals (commercial or residential) in England and Wales from 1 April 2018, and to existing leases in England and Wales from April 2023, unless they fall within one of the exceptions under the legislation, (for example, leases granted for a term of six months or less, or any property let on a tenancy of more than 99 years).

Where applicable, the trustees will need to arrange for an EPC to be undertaken for the scheme's property, where the trustees do not already possess a valid one.

The EPC will be accompanied by a 'Recommendation Report', which provides an indication of opportunities that exist to improve the building's energy efficiency. For those properties with an EPAR in bands F and G, these recommendations will outline what can be done, and the likely timescales and costs of carrying out the recommendations, in order for the property to then achieve an EPAR of E or better.

The Scottish Government introduced its own legislation with effect from 1 September 2016. 'The Climate Change (Scotland) Act 2009' is applicable for Scottish-based commercial properties with a floor area of more than 1,000m², and is triggered by either a sale of the property, or a lease of it to a new tenant. Where these regulations apply, the property owner must produce an 'Action Plan', which identifies targets for improvement of the carbon and energy performance through physical improvements to the property. Once the Action Plan has been produced, the property owner can choose to either carry out the improvements, or to defer these by reporting the actual energy used, which must be recorded via a Display Energy Certificate (DEC). All Action Plans and DECs must be lodged on the Scottish EPC Register, and copies made available to prospective buyers or tenants of the property.

An EPC must be produced before a property is marketed for sale or let. We have an agreement with a national firm of energy assessors who can provide advice to the trustees which will enable them to fulfil their legal requirements. Further details can be provided by your Client Manager. Barnett Waddingham receives an introductory payment from the firm meaning that we do not currently make any charge for dealing with the EPC request.

Refurbishments, works and extensions

Should the trustees wish to carry out any additional works on the property it is highly advisable that they contact us in advance to discuss this.

Generally, if improvements are carried out at the request of the tenant, which are not within the normal terms of the lease, the rent must be formerly reviewed and increased in line with the improvements. An amendment to the existing lease will be required in respect of the improvement.

The costs of refurbishment works and/or extensions can be paid by the scheme provided that this is in accordance with the lease. Copies of invoices in respect of such work should be sent to Barnett Waddingham for our records.

It is permissible for a sponsoring employer to undertake the improvements provided that this is on an arm's length basis i.e. charging a fair price. This would usually be evidenced by obtaining quotations from other companies or if there is a clear standard charging basis that the company employs across its client base. Again, copy invoices should be sent to Barnett Waddingham for our records.

If you are arranging development or fit-out work yourself, bear in mind that the scheme should not own items of tangible moveable property such as carpets, cookers or furniture but is able, in our view, to own property that includes fitted carpets and fitted kitchens.

Please contact your Barnett Waddingham Client Manager if you would like to discuss any of the above in more detail.

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