

Commercial Real Estate Acquisition: What you need to know

For seasoned and new developers alike, real estate acquisition is a complex area that requires careful planning.

Taylor Walton's highly experienced commercial real estate team will work with you through the process to ensure you are getting a good title to the property you are acquiring— from single building refurbishments through to large and long-term schemes.

As with all investment activity, property due diligence is a must.

The likely return on investment depends not only on anticipating the needs of the eventual purchaser or tenant when the time comes for disposal, but also on ensuring there are no nasty surprises or defects in the title to the property that may derail your timescales or profit margins.

What do you need to be aware of at the planning and pre-purchase stages of your project?

For commercial and industrial developments, purchase price and location are of course crucial factors when it comes to the likely yield on your capital investment – careful research and due diligence are a must. Finance arrangements come into play at this early stage, so this is the time to think carefully about the vehicle through which you intend to purchase the real estate.

For example, a joint venture agreement such as a partnership, Limited Liability Company or another structure might be right for your circumstances, or you may wish to pursue an alternative.

There are many factors that determine the best and most efficient choice of purchase vehicle, such as the size and complexity of the transaction, the flexibility required when it comes to control, funding and liability, and your proposed exit strategy. We can help you understand the benefits of the various options available to you and establish a suitable structure.

Deciding on your exit strategy at an early stage is essential; do you intend to dispose of the asset quickly, use it yourself or add it to an existing portfolio?

Addressing all of these questions at the outset means you will be better equipped to embark upon a successful and profitable project.

When it comes to acquisition agreements there are several options open, and we can help you decide which route is right for you.

For developers looking to build from scratch, option agreements offer a degree of flexibility whilst awaiting the fulfilment of certain conditions, such as the granting of planning permission. Essentially, these agreements enable the prospective purchaser to compel the vendor to sell the site to him or her at a later date, within the terms agreed upon in the initial contract.

Options are not to be confused with conditional contracts; both are legally binding agreements but they operate in different ways. A conditional contract is agreed when the buyer is awaiting the fulfilment of certain conditions and, once those conditions have been met, he or she is obliged to proceed with the purchase. Obviously these two routes to purchase have benefits and disadvantages depending on your unique circumstances and the nature of the real estate, so it is

important that you understand which one best suits your requirements before signing on the dotted line.

It is not only the mechanisms of real estate acquisition that can impact on your development. You will also need to think about the milestones that you need to hit in order to make the development achievable and profitable.

What planning consents, covenants, easements and statutory agreements affect the property?

Not only do these need to be factored into the timescale for your development – to ensure you are not going to be unexpectedly held up on site – but you also need to be conscious that existing agreements on a site or property can affect the realisation of your plans for it.

It's a common misconception that restrictive covenants, for example, cannot be lifted but it may well be the case that they are unenforceable or can be removed. Our advisors will help you navigate the legal implications, taking into account both existing and new legislation, statutory agreements, covenants and easements.

Even for developers with considerable experience under their belts, the complex and changing nature of commercial real estate law means that expert advice is essential.

A hot topic for property developers and investors this year is the Minimum Energy Efficiency Standard (MEES); from 1 April 2018, landlords cannot renew (or grant new) tenancies for properties that fall below the minimum of an 'E' EPC rating, with only a few exceptions. This law will impact developers who are buying or renovating existing buildings, as well as those with rental portfolios – and recent estimates suggest around a fifth of non-domestic property may fall below the required rating, impacting sale and rental opportunities as the deadlines approach.

Making sure you have all such regulations and legislation on your radar before you invest considerable time and resource into a project is paramount to the smooth running of your development, your costs and timeframes, and your eventual disposal options.

As with all significant investments, purchasers need to think carefully about their individual circumstances, and seek professional advice to protect their assets and make the most of their investment opportunities.

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