

Under the hammer

Kieran Mehngar advises pension schemes on the purchase of commercial property at an auction.



TEN SECOND SUMMARY

1. Check whether the commercial property is VAT registered. Although the tax can be reclaimed, a refund can take considerable time.
2. It is important that any transaction is in the scheme name from the outset because the vendor may not agree to reassign it later.
3. It is the buyer's responsibility to ensure the property is insured immediately upon a successful bid.

Martin Roberts has been presenting the television property programme "Homes Under the Hammer" since 2003, and Dion Dublin makes the process look as easy as kicking a football, but can a pension scheme really buy at a property auction? The answer is yes, but the same rules apply to any property purchase within a scheme – whether it is a SSAS (small self-administered scheme) or SSIP (self-invested personal pension). The property must be commercial, with residential only allowed in limited circumstances – and often at the discretion of the provider.

Purchasing at auction can be an exciting venture, not least because of the unknown element of the price. However, for a pension scheme, buying at auction requires additional planning in advance, so a spontaneous trip to the auction house is to be avoided.

Viewers of "Homes under the hammer" will know that the background music is always relevant to the subject matter being discussed – so let's "start it up".

Start it up

Contact the pension provider. Time may be tight, but the more information available at the outset the better. If the provider has not seen the property details, they cannot do preliminary checks on suitability. The purchase would be subject to the usual searches and the like before acceptance in the scheme, so the trustees may not be able to buy the property if something came up in the searches – such as environmental problems – in which case the member or the pension scheme may be personally liable with the auction house.

Warning sign

Avid fans of "Homes under the hammer" will know that it is advisable to view the property's legal pack before purchase. As well as the property information, this will include such things as local searches, planning permissions, special conditions of sale – including covenants and trade restrictions – and details of any leases or tenancy agreements in place. One area where this is vital is establishing whether the commercial property is VAT registered.

Although the pension scheme will be able to reclaim the VAT – as long as the scheme is registered – it will need to ensure that it has sufficient funds to pay the VAT before purchase because a reclaim from HMRC can take considerable time. If the property is subject to VAT, the tax will be due on the deposit paid. However, note that VAT is payable on the buyer's premium, which is paid to the auctioneer whether the property is elected for VAT or not.

A final warning – be aware that if an individual buys the property at auction in a personal capacity and then looks to sell it to the pension scheme, these parties are connected and the connected party rules apply for the valuation of the property.

DISCOGRAPHY

- Start it up* (Rolling Stones)
- Warning sign* (Nick Heywood)
- Money (that's what I want)* (Barrett Strong)
- Stand and deliver* (Adam and the Ants)
- Money's too tight to mention* (Simply Red)
- The final countdown* (Europe)

Money (that's what I want)

With a normal property purchase, the deposit is usually paid on exchange of contracts. But at auction, the eventual purchase price can be a mystery and the required deposit is unknown until the bidding is completed. If the bid is successful, the deposit will need to be paid immediately.

There are usually three ways this can be done; though some pension providers may not offer all options.

- *Presenting a cheque to the auction house.* There are various risks involved with giving a blank pension scheme cheque to a client.
 - The pension scheme has no control over the amount being paid.
 - If there is no obvious payee (in other words, the auction house) at the time the scheme provides the cheque, there is a risk the client could write the cheque to any party and possibly create an unauthorised payment.
 - If the cheque is lost for any reason, there is the risk of fraud if someone tries to deposit the cheque.

To mitigate the above risks, pension providers often put control measures in place to ensure the cheque is not cleared by the bank without contacting the pension provider first.

- *Depositing funds with a solicitor prior to the auction.* There are instances when an auction house will accept a solicitor's letter confirming that they hold sufficient funds from the scheme on their client account to cover the deposit. The client can then take the letter with them to the auction as proof of funds for any deposit. Each auction house will have its own rules as to whether it will accept this method of payment, so check in advance.
- *The scheme member can pay the deposit personally.* Personal deposits can be reimbursed from the pension scheme – however this should not be encouraged because it can lead to members exchanging on wholly unsuitable properties for the scheme and often without checking with the provider first as to the acceptability of the proposed property. It is important that any transaction is in the scheme name from the outset because the vendor may not agree to reassign to the pension scheme at a later stage.

With all these options, a word of warning for the bidder: do not let excitement take hold and get carried away with bidding on behalf of the pension scheme, resulting in a higher bid than planned.

As with any proposed investments, ensure that there is sufficient liquidity in the scheme before proceeding and ensure that there is a firm stop point – the maximum price that the scheme can pay.

Stand and deliver

If the pension bid is successful, after the deposit is paid the scheme can proceed as with any other property purchase but with one notable exception – the property purchase must be quick. The scheme must deliver completion within a limited timeframe as part of the auction conditions. The completion of the sale normally takes approximately 28 days. However, on some properties this could be quicker and timescales will be covered in the auction catalogue. The balance of funds will need to be paid on completion.

Auction house fees can apply if the deposit is not paid immediately and, if completion is not within a required time frame, the deposit can be lost. So, if the pension scheme is a successful bidder at auction but fails to complete due to insufficient funding or not completing in time, the pension fund will be liable for all costs associated with the failed bid.

Money's too tight to mention

Within a pension scheme environment, as indeed for any, it is difficult for purchasers to be able to complete within the timescales required by the auction house if borrowing is needed.

Many of us have experience of clients or friends who have been in a situation where bank borrowing has been provisionally agreed but, on further analysis, the bank has created caveats or refused to lend on a property.

The pension scheme should not go to auction and make a bid if the borrowing is not formally in place. This does make it very difficult if the pension scheme is looking for borrowing from a bank because, in most cases, it will require stringent financial checks including formal property valuations and details of the tenant.

Consideration may be given to whether the pension scheme has the capacity to create security on other properties or assets held within the scheme. However, the scheme does not have to borrow from the bank and, indeed, borrowing can be from any source whether a corporate or personal loan. Corporate or personal borrowing can offer more flexibility, although any connected loan transaction should be completed on a commercial basis.

It is also possible, if the pension scheme receives borrowing from other sources, for the borrowing to be refinanced once the auction property is in the pension scheme.

The final countdown

Finally, from the fall of the hammer, it is the buyer's responsibility to ensure the property is insured. The legal pack will provide the property broker with details before auction ensuring that a policy is ready to go on risk if the bid is successful.

Happy bidding!



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