

BUYING BUSINESS PREMISES

Advantages and Disadvantages

Buying a business premises gives considerable freedom in relation to its use. The business will have more flexibility over issues such as management and repair and will profit from a building when it sells, if its value increases. Alternatively, the property can be retained and leased to gain income in the future. There is freedom to move when it suits, rather than at the end of a fixed term lease. The business owners can buy the business premises and rent it to the business. This can have certain tax and commercial advantages.

On the other hand purchasing a business premises will tie up capital and can expose the business to a risk of repossession in the event that the business fails to make mortgage payments.

See our detailed guides to the purchase and ownership in England and Wales.

Purchase Process

If a business has located the right property, it will usually make an offer to the agent, subject to certain conditions, typically a satisfactory building survey, finance and satisfaction with legal enquiries. Lock out agreements are commonly drafted so as to ensure that no one else can purchase the property during the period when the relevant checks are being made.

As in Ireland, a second hand property is taken in its actual state and condition under English law. "Buyer beware" applies. An Energy Performance Certificate must be delivered for commercial buildings. Beyond this, there is no obligation on a seller to disclose latent defects even if he is aware of them. Unlike the position with residential sales the Vendor of commercial property is under no obligation to furnish an information pack. Therefore, it is essential that a property be fully and properly surveyed so as to ascertain its state and condition.

A surveyor should be appointed to examine the physical state and condition of a second hand building. The surveyor should look at the premises from the perspective of the intended business use. The surveyor should help to decide if the building meets the business needs, give advice in relation to prospective alterations or improvements and advise in relation to matters which should be included in the contract.

It is important to procure a loan offer before exchanging contracts. The terms of the loan offer should be reviewed with legal advisers to see that they are satisfactory and can be complied with. Commercial mortgages are not regulated in England and Wales and commercial bank terms will often contain surprising clauses if not fully and properly considered and negotiated. Broadly speaking there is more scope for negotiation of loan agreements/facilities in England than in Ireland.

If a business intends to change the size or purpose of an existing building, planning law considerations will need to be assessed at an early date. The capacity of the building to comply with Health Safety and Welfare at Work obligations must also be assessed. The terms of the title may restrict what can and cannot be done. There may be restrictions on noise, pollution levels.

Banks will normally appoint a third party solicitor to deal with completion of their security in commercial property cases. We are in a position to negotiate and liaise with the lenders in relation to their title and security requirements.

Costs and Ongoing Taxes

The following fees and costs will arise on a commercial property purchase:-

- Estate Agents and Surveyors fees which are negotiable and would be broadly similar to those in Ireland
- Solicitors fees
- Land Registry and Search fees
- VAT is levied at 15% however if the tenant's business is registered, it is usually possible to claim it back
- Stamp Duty Land Tax

Stamp duty Land Tax is payable on the purchase of commercial property for prices over £150,000. The rates are as follows:

£150,000/£250,000	1%
£250,000/£500,000	3%
Over £500,000	4%

Stamp duty on leases is higher than in Ireland, particularly where the lease exceeds 7 years. In Ireland it is only 1% of rent. In England, it is based on the capital value of the lease with the above rates applied. This tends to encourage shorter leases.

Business rates are payable on commercial property, equivalent to rates in Ireland.

Business rates will be payable on an ongoing basis. In certain districts where there is partnership between local businesses and the authorities to deliver environmental improvements, additional business rates may be payable. Local Authority charges for services, including waste collection and parking, are also likely. There will also be obligations in respect of insurance, repairs and maintenance together with normal running costs.

In certain areas Capital Allowances may be available for renovating or converting and businesses in designated disadvantage areas can contain 100% Capital Allowances.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.