



**WESTERBY TRUSTEE SERVICES LTD**

**PROPERTY PURCHASE GUIDE**

## **The purpose of this guide is:**

- 1. To answer some frequently asked questions about the purchase of property or land as a pension scheme asset.**
- 2. To let you know about some of our basic requirements before you make your decision to proceed with a purchase.**
- 3. To guide you through the purchase process.**

**Whilst we can provide generic information please note that Westerby Trustee Services Ltd is not authorised by the Financial Services Authority to provide financial advice. We cannot therefore comment as to whether property is a suitable investment for your particular pension scheme or the merits of one property over another.**

## **What Types of Properties can be held in a pension scheme?**

In general only property or land that is wholly used for commercial purposes can be held as an asset of a pension scheme. Examples of acceptable properties are:

- Offices
- Retail units
- Industrial units
- Factories
- Warehouses
- Agricultural land
- Other land used for commercial purposes (e.g. an equestrian centre or a campsite)

This list is not exhaustive and we are willing to consider any property of a wholly commercial nature.

**Residential property or property suitable for residential use is not a suitable asset** since its inclusion in a pension scheme will result in tax charges of up to 70% of the purchase price and any income and gains from a residential property asset will not be covered by the usual tax exemptions afforded to pension schemes.

Properties categorised as residential under current HMRC pensions legislation include

- Houses / Flats / Apartments
- Holiday Cottages / Villas
- Ski Chalets
- An office built in the garden of a residential property

## **What about partly residential properties?**

In limited circumstances a building that is **predominantly commercial** but has an element of “job related residential property” may be allowable.

Examples of properties that might be allowable are:

- A caretaker's flat that is part of a commercial site owned by the pension scheme
- A flat above a shop that is leased from the scheme with the shop, where the flat is occupied by the trader in connection with them operating their trade from the shop
- A hotel / pub / guest house with manager's accommodation
- A nursing home with staff accommodation

**Note however that the residential accommodation cannot be occupied by the pension scheme member, or anyone connected to them such as a relative or business partner.**

**Whilst technically allowable the inclusion of such properties in a pension scheme always carries a risk of potential tax charges because:**

- **HMRC will not give pre approval of a specific property therefore you as the pension scheme member and Member Trustee, together with Westerby as the Scheme Trustee, must make the decision as to whether a specific property is allowable. HMRC could however at anytime challenge the decision, decide that in their opinion the property is residential and issue a tax demand on the pension scheme and on you personally.**
- **The property must not only comply with the rules at the point of purchase but throughout the time it is held in the pension scheme. Future events could therefore lead to tax charges on the scheme.**

**You should therefore consider the risks carefully before proceeding with the purchase of such a property by your pension scheme. We reserve the right to refuse the purchase of any property with a residential element.**

## **What about residential development land?**

Land with potential for residential development or with existing residential planning permission is allowable however you may not commence any building works on the land.

Any bare land held must be covered by public liability insurance.

## **Is leasehold property acceptable?**

Yes - long leasehold property can be purchased. Short leaseholds are however a depreciating asset and are not suitable as a pension scheme investment.

As a guideline we will not accept leasehold property if the leasehold term remaining at the member's anticipated retirement date will be less than 75 years.

In some circumstances it may be possible to negotiate an extension of the leasehold term with the freeholder or their agent.

## **Can the property be outside the United Kingdom?**

In theory yes - pension legislation does not restrict purchases to property situated in the UK. There are however many issues to be overcome when purchasing property located overseas:

- Most UK pension schemes are constituted as trusts but many countries do not have trust law in their constitution or common law legal systems. In such countries it may not be possible for property to be registered to a Trust.
- Other differences in legal systems.
- Language problems e.g. translating contracts.
- Property Management – how do we manage overseas property?
- Taxes – the pension scheme is tax exempt in the UK but what about taxes payable in the host country?
- Fluctuations in currency exchange rates may affect the ability of the pension scheme to fund the purchase and may affect the return from the investment.

In order to overcome such issues Westerby Trustee Services Ltd will need to engage the services of expert legal and tax advisers with experience in the relevant jurisdiction. The advisers must be independent and cannot be the advisers acting for the developer or vendor. The cost of such advice must be borne by your pension scheme and is likely to be prohibitive on smaller purchases.

## **Can the Pension Scheme Purchase Fixtures & Fittings?**

No - The pension scheme can only purchase the fabric of the building; it cannot purchase any fixtures and fittings or furnishings.

## **Can my pension scheme borrow to assist with the purchase?**

Yes – your pension scheme can borrow up to a maximum of 50% of its net asset value, less the amount of any existing loans, immediately before the loan is advanced. For example (in simple terms excluding associated costs) if your pension fund is worth £120,000 and has no existing borrowing then it can borrow a maximum of £60,000 and will have purchasing power of £180,000. It is not permissible to take an additional short term loan may to cover any VAT element of the purchase price if this will take the total borrowing over the 50% limit.

The lender will require a first charge over the property to be purchased or other suitable property owned by the pension scheme. The lender may also stipulate that any new lease being granted contains specific terms.

All loan documentation will need to include a clause limiting the liability of Westerby Trustee Services Ltd to the assets of the scheme. We will liaise with the solicitor to ensure that this clause is included.

**Please note that Westerby Trustee Services Ltd is not authorised to advise on or arrange mortgages. Any borrowing required must therefore be sourced by your financial adviser or you personally.**

## **Can I lend to my own pension scheme?**

In some circumstances it may be possible for you, your company or a connected party to lend to your pension scheme. There must be a formal loan agreement and the interest rate payable and other terms must comply with HMRC requirements that the transaction takes place on a commercial “open market” basis.

## **What if the purchase price is subject to VAT?**

- In most circumstances your pension scheme can be registered for VAT enabling it to reclaim the VAT on the purchase price and associated costs such as legal fees and valuation fees.
- The scheme may need to fund the VAT element of the purchase price until such time as it can be reclaimed from H M Revenue & Customs.
- VAT will be applicable to the rent received and the trustees will need to submit a quarterly VAT return for the scheme.
- There are some circumstances where your pension scheme cannot opt to tax a property and reclaim the VAT (e.g. where the purchase price exceeds £250,000 and the tenant is both connected and VAT exempt).

Please note that Westerby Trustee Services Ltd is not an expert on VAT matters. Whilst we can provide a basic service of registering the scheme for VAT purposes, VAT book keeping and submitting returns (for which we charge additional fees), we cannot give advice on whether the scheme should seek to be registered for VAT or whether an option to tax will be successful.

Any complex VAT matters arising will need to be referred to a VAT specialist who will charge a separate fee for any services or advice provided to the trustees.

## **Can my pension scheme buy a property that I / my family / my company already owns?**

Yes – you may enter into such a transaction with your pension scheme provided that it takes place at proven open market value. We will require a current valuation of the property to be carried out by an independent and fully qualified Fellow or Member of the Royal Institute of Chartered Surveyors, (FRICS or MRICS) before proceeding.

## **Shared Ownership – Can my pension scheme buy part of a property or purchase a property jointly with a connected or third party?**

Yes – subject to open market valuations where parties are connected. A cross option or joint ownership agreement will be required apportioning the ownership of the property and giving each owner first option to purchase if another owner wishes to sell their share.

**If the person or entity buying jointly with the SIPP is borrowing to fund their share of the purchase price or if the pension scheme is buying part of a property on which the co-owner already has borrowing secured that will not be fully redeemed by the part sale, the lender must indemnify the SIPP against any liability to that loan.**

**Whilst some lenders are able to accommodate this requirement others cannot. It is therefore vital to check with the lender at the earliest possible opportunity whether they are able to grant such an indemnity.**

## **Can I buy at auction?**

In certain circumstances it may be possible for the pension scheme to purchase commercial property at auction. This is at the sole discretion of Westerby Trustee Services Ltd and on a case by case basis.

You should provide us with the auction pack and any other details well in advance of the auction date. Under no circumstances must you bid on behalf of your pension scheme until you have received our written confirmation that you may do so.

## **In Specie Property Transfers – what are they?**

An in specie transfer of property is the re-registration of the ownership of a property to your pension scheme usually for nil consideration. There are two types of in specie transfer:

1. In specie transfer from another pension scheme. Typically this would occur if you are changing the structure or provider of your pension arrangements. Stamp duty is not normally payable (confirmation will be sought from the appointed solicitor).
2. In specie contribution of property. Typically this occurs when you or your employer wish to make pension contributions by way of a transfer of an existing property asset rather than a cash payment. When carried out in accordance with HMRC guidelines such contributions can attract tax relief in the same way as a cash contribution. A formal valuation of the property will be required to establish the actual amount of contribution (see notes on valuations below) Note however that stamp duty is normally payable and you / your employer may be subject to tax on any capital gains made prior to the transfer.

It is important to note that:

- Your Westerby pension scheme may only receive in specie transfers or contributions of suitable commercial property.
- All other requirements specified elsewhere in this guide apply to in specie transfers and contributions, including the need for an environmental screening report, other relevant searches, formal appointment of legal advisers and valuers, valid buildings insurance etc.
- There must be a formal lease between the pension scheme and the tenant whether connected or unconnected.
- If the tenant is a connected party then a formal rental valuation must be carried out and the level of rent payable set in accordance with the valuation regardless of whether the rent payable prior to the in specie transfer or contribution was a lesser or greater amount.
- In specie transfers of properties with existing borrowing under existing pension arrangements must comply with the current 50% borrowing rule or be submitted to HMRC for approval prior to the transfer.
- In specie transfers of property from another pension scheme carry a fixed fee of £200 + VAT payable to Westerby Trustee Services Ltd plus any legal and other costs payable to external advisers.
- In specie contributions of property carry a fixed fee of £750+ VAT payable to Westerby Trustee Services Ltd plus legal and other costs payable to external advisers.

## **Can I operate my business from property owned by my pension scheme?**

Yes - the pension scheme can grant a commercial lease to your own business provided that it is at the open market rental value and on standard commercial terms.

Under standard commercial lease terms you will not be able to sublet any part of the property or assign the lease to another party without the prior written consent of Westerby Trustee Services Ltd. In addition your business will be responsible for the maintenance and repair of the property and will be required to reimburse the pension scheme for premiums paid in respect of buildings insurance.

The open market rental value must be determined by an independent FRICS or MRICS qualified valuer.

**Note that the lease agreement will be legally binding upon you business and rental can not be reduced or deferred to alleviate any cash flow problems in your business. If you fall into arrears the trustees will need to take legal action to recover the debt.**

**In addition any outstanding rent is technically an “unauthorised payment” from the pension scheme to you / your company. Unauthorised payments are reportable to HM Revenue & Customs and will be subject to tax charges.**

## **Property Improvements**

Under a standard commercial lease regular repair and maintenance of the property is normally the liability of the tenant. The tenant can also be expected to pay for any alterations that they require specifically for their own business requirements. This might include internal partitioning, repositioning of electrical supply points, fitting of blinds etc.

Structural improvements, major redevelopment, refurbishment or extensions that add value to the property will generally be the responsibility of the pension scheme.

Where a property is extended an addendum to the lease (or surrender and new lease) will be required to cover the additional area. In addition after any major refurbishment has taken place a revised rental valuation will be required where the tenant is a connected party.

If you are contemplating making improvements to property already owned or to be purchased by your pension scheme please discuss any work to be carried out with us prior to instructing contractors so that we can ensure that it is allowable under current pension legislation and that we can agree what it is legitimate for the pension scheme to pay for.

**Contractors invoices must be addressed to and paid by the pension fund. Under no circumstances should you or your company settle such invoices as your pension scheme will be unable to reimburse you.**

**Westerby Trustee Services Ltd will charge additional fees on a time cost basis for any work carried out in relation to property improvements.**

## **Can I choose which solicitor acts for my pension scheme?**

Yes – generally we do not insist on using a solicitor of our choice. In some circumstances, such as a particularly complex case or a case where there are environmental issues, we may however insist on referring matters to our own legal advisers. The cost of this must be paid from your pension scheme.

If the pension scheme is borrowing the lender will require that the chosen solicitor is on their panel. You should therefore check with the lender before making your choice.

Under the provisions of The Pensions Act 1995 Trustees are required to formally appoint a solicitor to act for them. Although you are free to choose your own solicitor the appointment and instruction will be carried out by Westerby Trustee Services Ltd and any correspondence from the appointed solicitor must be addressed to the pension scheme and not to you personally.

Where the Trustees are borrowing money from a connected lender the documentation must be drafted by a solicitor appointed by Westerby Trustee Services Ltd to act for the Trustees. We will arrange a quotation for the solicitor's fee once we have details and these will be payable by the pension fund. The lender is free to appoint their own solicitor in addition to the above if they choose to do so and you are still free to use your own choice of solicitor for the conveyancing should you wish to do so.

## **Searches and Environmental issues**

In addition to the requirement for full clean searches we will not accept any property where there is any potential liability on the pension scheme to environmental clean up (remediation) costs.

We will therefore arrange for a desktop environmental screening report to be carried out at the earliest opportunity and inform you of any issues arising. The cost of the report is typically in the region of £150 to £230 + VAT and must be borne by your pension scheme.

If the report highlights any issues then we will seek your guidance as to whether you wish to proceed with further in depth surveys, including a site visit, by specialist environmental consultants. The environmental consultants will determine what remedial action is necessary and estimate what it might cost to carry out the remediation work. All survey and remediation costs must be borne by the pension scheme.

**Due to the increasing statutory liabilities on property owners for historic environmental pollution and future pollution we strongly advise that comprehensive environmental insurance is taken out. Westerby Trustee Services Ltd cannot be held liable for any future environmental remediation costs should you decide against such insurance.**

**Environmental insurance is available through our block property owners insurance policy (see the section on Property Insurance below).**

**Please note that Westerby Trustee Services Ltd reserves the absolute right to refuse property where there are any unresolved search or environmental issues.**

## Energy Performance Certificates

Most commercial properties are required by law to have a valid Energy Performance Certificate before the owner may sell or let the property to a new tenant. Where the Trustees are purchasing a property the onus is on the vendor to supply the certificate but you should bear in mind that if a valid certificate is not in place the Trustees will have to commission and pay for a certificate on subsequent lettings or eventual sale of the property. Costs are dependent on size of the property and other factors, such as the type of heating and ventilation systems installed, so are difficult to estimate. Your solicitor can usually recommend a qualified specialist to carry out an inspection and issue the certificate.

## Property Valuations / Rental Valuations

- You are free to choose your own surveyor to carry out the valuations providing they are a Member or Fellows of the Royal Institute of Chartered Surveyors (MRICS or FRICS). Westerby Trustee Services Ltd must however carry out the formal appointment and instruction of your nominated surveyor.
- Property Valuations must be addressed to the trustees of your pension scheme and not to you personally or your business.
- The surveyor should assess the open market capital **and rental value** of the property.
- If the bank has carried out a valuation for the purposes of a loan the valuer may be happy to provide a copy addressed to the trustees of your pension scheme for a small additional cost.
- In all cases properties will need to be professionally revalued at each rent review date, immediately before any lump sum retirement or death benefit payments are made, for income drawdown reviews and for transfer calculations for multi member schemes.
- Valuations should not be dated more than six months before the purchase date / rent review date/benefit calculation date. If a valuer has carried out a valuation on the property slightly outside this time frame, (and there have been no subsequent modifications to the property) they may be willing to provide a brief “desktop” update rather than carrying out another full survey.

## Asbestos at Work Regulations 2002 & Electrical Testing

The “Dutyholder” under the Asbestos at Work Regulations will usually be the tenant but may be the Trustees as legal owners where the property (or part thereof) is vacant. Ensuring tenant and Trustee compliance with the legislation is the responsibility and liability of the Member Trustee(s). Westerby Trustee Services Ltd are not local to most of the properties held by clients and can not therefore undertake this on behalf of the Trustees.

Where the property does not have a tenant the Trustees will need to commission an Asbestos Survey. It is the responsibility of the Member Trustees to arrange the survey with a local specialist and the cost can be met by the pension fund.

It is similarly the responsibility of the Member Trustees to ensure that the tenant arranges for appropriate electrical testing. Failure to carry out the relevant checks may invalidate the property insurance.

## Property Insurance

- Westerby Trustee Services Ltd has a block policy for insurance of pension fund property. The policy attracts favourable rates and provides comprehensive cover including buildings insurance, public liability cover and loss of rent. Environmental insurance covering both historic and future risks is also included in the policy.
- Our insurance brokers will provide a quotation of the premium payable should you wish to use our block policy.
- If you choose to arrange your own insurance you will be asked to indemnify Westerby Trustee Services Ltd against any losses your pension scheme may suffer as a result of inadequate, invalid or lapsed insurance policies. You will need to ensure that the property owner is correctly detailed as the Trustees and send us a copy of the policy at outset and annually at each renewal. We will also need an invoice from the relevant broker or insurer before we can issue a cheque for the premium.
- Where the property was previously owned by you or your company you may already have a policy in force. However, it is important to inform the insurer of the change of ownership and ensure that the policy is endorsed to reflect the transfer of ownership to the pension scheme.
- A pension scheme can only pay the insurance premium in relation to the structural buildings insurance, public liability insurance and loss of rent. It cannot pay premiums in relation to contents, loss of business or any other insurance relative to the tenant's business.
- Insurance premiums are often be payable by the tenant occupying the property in accordance with the terms of the lease agreement. Under a full repairing and insuring lease it is usually (but not always) the landlord who will arrange the insurance and pay the premium, then recoup the cost from the tenant.

**Please note that Westerby Trustee Services Ltd accepts no responsibility or liability for any losses, of whatever nature, suffered by your pension scheme as a result of you opting out of our block property insurance policy. Such losses will be solely the responsibility of the Member Trustee(s).**

## **Expenses and Fees associated with the purchase**

We need to ensure that there are sufficient funds in your pension scheme to complete the transaction. Please consider the following:

- Stamp duty and VAT where applicable will need to be added to the purchase price. You should be aware that stamp duty is levied on the purchase price **inclusive** of any VAT payable.
- In most cases the property purchase fee payable to Westerby Trustee Services Ltd is fixed and transparent at £650.00 plus VAT. Where borrowing is involved there is a further fee of £250.00 plus VAT. We also charge an annual property management fee of £150.00 p.a. per property where there is a single tenant. Additional fees are payable where there are multiple tenants.
- More complex cases may be charged on a time cost basis. If time cost fees are applicable you will be informed in writing prior to us commencing any work on this basis. A full list of the fees payable to Westerby Trustee Services Ltd in relation to all our products and services is available on request.
- In addition there will be legal fees and (if applicable) lenders fees and fees due to other professional advisers such as environmental consultants. Many solicitors charge on a time cost basis and, whilst we can estimate the charges, we cannot do so with any accuracy. We would, therefore, strongly recommend that sufficient cash is retained as a leeway in case costs exceed expectations.

**Note that should the purchase not proceed for any reason then the fees due Westerby Trustee Services Ltd, together with any fees due to solicitors and other professional advisers, will still be chargeable.**

## The Purchase Process

The first step is to complete and sign our property purchase questionnaire which is available on request or from our website [www.westerby.co.uk](http://www.westerby.co.uk).

On receipt of the completed questionnaire we will assess whether the property is suitable for inclusion in a pension scheme and whether you will have sufficient funds in your pension scheme to cover the purchase price and all associated costs. We will also assess whether any proposed borrowing will be within the HMRC borrowing limits applicable to pension schemes.

If the property is suitable:

1. We will arrange for the environmental screening report to be carried out, inform you of the result and whether we are able to proceed with the purchase.
2. We will formally appoint your chosen solicitor / our solicitor to act for the scheme.
3. We will appoint the valuer in accordance with any requirements detailed above.
4. We will contact your chosen lender.
5. A formal loan offer should be obtained from the lender (agreement in principle will not suffice).
6. The solicitor will provide search results including report on title, draft contracts and loan agreements and obtain the building's Energy Performance Certificate from the vendor.
7. Obtain quotes for the buildings insurance.
8. If granting a new lease, agree lease terms with the tenant. The solicitor will draft a formal lease agreement.

At this point the pension scheme should be ready to exchange contracts and the deposit money (usually 10% of the purchase price) can be sent to the solicitor.

**Please note however that we will not authorise exchange of contracts until we are fully satisfied that:**

- **Sufficient funds (together with formal loan offer if applicable) to cover the full purchase price plus all associated costs are held in the pension scheme bank account. (Promises of future contributions or transfer values will not suffice).**
- **Any proposed borrowing does not exceed 50% of the net asset value of the pension scheme, less any existing loans, immediately prior to the loan being advanced.**
- **All environmental and search issues have been addressed to our satisfaction.**
- **Buildings insurance will be in place from date of exchange of contracts.**

## Completion of property purchase

Prior to completion the solicitor will prepare a completion statement detailing exactly how much money he will require from the pension scheme in order to complete the purchase. This will include their own fees and disbursements (search fees, land registry fees etc.) stamp duty, VAT, and take into account any borrowing that has been agreed (the lender will usually send the loan money directly to the solicitor). On receipt of the funds the solicitor can "complete" and the pension scheme becomes the legal owner of the property.

## **Timescales**

We are aware that for various reasons property transactions can be time critical and will make every endeavour to complete all purchases within your preferred timescale. There are however many parties involved in a property purchase transaction and many factors are outside of our control so we can not offer any guarantees of exchange and completion dates.

Where you are establishing a new SIPP to purchase property we can not process any transfers in to fund the purchase or exchange contracts until the 30-day cooling off period has elapsed (or you return the forms to waive your right to change your mind).

## **Post Completion**

Westerby Trustee Services Ltd will issue rental invoices to the tenant(s) and monitor the pension scheme bank account to ensure that rental is paid when due. We also record the due dates of buildings insurance renewals and rent reviews to ensure that these are dealt with in a timely and efficient manner.

We hope you have found this guide useful and that any questions you may have had have been answered.

If however, you require any further guidance, please contact us on 0116 326 0183 or via the enquiries form on our website [www.westerby.co.uk](http://www.westerby.co.uk)