DP Pensions Ltd

SIPP Information Guide

Property Development

About this leaflet

This booklet is based on our understanding of current legislation and HM Revenue & Customs (HMRC) practice and every care has been taken to ensure it is correct. It is issued by DP Pensions Ltd for use by our SIPP clients and no responsibility to any third party is accepted if the information in this booklet is used for any other purpose. The legislation and HMRC practice may change in the future.

This is an important document. You should keep it safe for future reference.

About property development

Summary

Properties owned within schemes can be developed for commercial use, but the cost of the development must be met by the scheme (proportionate to its percentage ownership). If residential development is proposed, the property must be sold before the development is commenced. Your pension scheme can develop any land or property that it holds. If you opt to tax the property for VAT purposes then we can reclaim the VAT paid on contractor's invoices.

Contact Us

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PROPERTY DEVELOPMENT

Any property purchased by a pension scheme must be legally classed as commercial at the point of purchase. It is not possible to purchase a residential property (even if it is derelict) with the intention of developing it to commercial. Residential development cannot be carried out by a pension scheme (due to significant and prohibitive tax charges) and if a change of use to residential is applied for, the property must be sold before development is commenced. Any development should add capital and rental value to the property investment.

If you intend for your pension scheme to undertake commercial property development and/or fit out works you must supply a list of the proposed works and confirm any associated planning permission(s) have been obtained and provide us with the planning permission number. 'Fit out' is a term used to describe the process of making interior spaces suitable for occupation.

We are not property experts and cannot check that the proposed works are in line with any planning permission(s), but what we can check is that the works are appropriate for the pension scheme to pay for in terms of HMRC practice. If the property is being fitted out and there is or will be a connected tenant in occupation then the fit out needs to be carefully scrutinised to ensure that the pension scheme is not paying for works that would usually be paid for by the tenant, or that are specific to that particular tenant.

The pension scheme is also not able to purchase tangible moveable property, this too would be subject to significant and prohibitive tax charges. Tangible moveable property is things that can be touched and that are moveable rather than immovable property. It includes assets such as art, antiques, classic cars, desk, office equipment and also plant and machinery.

If works are carried out beyond those permitted then there is a risk of significant tax charges on the scheme.

Please also note that if works are carried out without appropriate planning permission(s) or in breach of any planning regulations or permissions the Trustees of your pension scheme will be responsible for the costs of rectifying any planning permission breaches. The local council planning authority will issue notices and check appropriate rectification works have been carried out. If your pension scheme has insufficient funds to meet any such costs then the property may have to be sold. Breach of planning permission can result in an unlimited fine and it is illegal to disobey an enforcement notice.

LISTED BUILDINGS

If the property in question is a listed building we will require written confirmation that the appropriate listed building consents have been obtained. It is a criminal offence to undertake certain works to listed buildings without the appropriate consents. The penalties for breach of listed building permissions/consents can include imprisonment and/or an unlimited fine.

BUILDING WORKS CONTRACTS

Please make sure to contact us before any work contracts are entered into.

Any development or works to be carried out to a property held within your pension scheme must be financed by your pension scheme. A contract is usually entered into before work can commence and in any such contract liability must be limited to the value of your pension scheme.

FUNDING THE DEVELOPMENT

Sufficient money to cover the costs of development **must** be available in your pension scheme before work begins. Until these monies are in place we cannot enter into a contract for development. You may borrow funds from a commercial lender, a connected party, or a third party for the purposes of development. Please refer to the Borrowing section for details of the rules that relate to borrowing.

Development should add capital and rental value to the property. The increased rent must be assessed by an independent surveyor and applied immediately upon completion of the development where there is a connected party tenant, and by agreement with a third party tenant. In practice an increased rent payment will be charged at the next rent payment date and going forward, with an apportionment of the increased rent payable from the date of completion of the works to the day before that rent payment date.

Fit out works can be paid by the tenant or by you personally. If you are looking for your pension scheme to pay for some or all of the fit out works, then you must send us a list of the proposed works to consider if they are suitable for the scheme to pay for to ensure no tangible moveable property is included in the development plans.

BORROWING

If you require borrowing in order to develop the property -who can you borrow from?

Your pension scheme can borrow from any individual (including yourself), company or financial institution. The borrowing must be on commercial terms if borrowing from a connected party, otherwise tax charges will apply. We will contact your lender to provide them with details of our requirements. The loan offer must be addressed to you and D A Phillips & Co Ltd as trustees of your SIPP. If you have already received a loan offer please provide us with a copy.

How much can you borrow?

The maximum amount that your pension scheme is permitted to borrow is 50% of the net value of the assets of the scheme. This must also take into account any existing borrowing. Any additional borrowing that was/is needed to cover VAT on the purchase price or the purchase price itself is also included in this 50% limit.

We will assess your pension scheme value when checking the viability and confirm whether the borrowing falls within the limit. We will not take any responsibility for changes in fund value after that point. If the fund value changes between the date of our assessment and the date on which the loan is actually drawn down, which results in you borrowing more than 50% of the net asset value of your pension scheme, there will be tax implications for you.

We cannot take out Life Assurance on your or anyone else’s life to cover the borrowing as this is prohibited by HMRC.

PROPERTY DEVELOPMENT AND VAT

If a pension scheme is proposing to carry out substantial development on a property and the scheme is not registered for VAT and/or the property is not opted to tax, then you should take advice about whether or not to register the pension scheme for VAT and/or opt the property to tax (if the scheme is VAT registered but the property is not opted then the property would still need to be opted) so that the VAT on the contractors invoices can be reclaimed by the pension scheme. If you do not wish to register the pension scheme for VAT and/or opt the property to tax, then please confirm to us in writing that you do not wish to (we will need confirmation from all interested members) as it may be against the best interests of the pension scheme not to do this, unless there is a reason why the scheme cannot be registered and the property opted. A legitimate reason as to why this cannot be done is that the business operating from the property is a VAT exempt business, such as financial advisors, funeral directors, nursing homes and etc.

If the scheme is registered and/or the property opted to tax then the consequences will be as follows:

1. VAT will have to be charged on the rent; and
2. VAT will have to be charged on the sale of the property; and
3. The VAT option cannot be disapplied until 20 years have passed.

If VAT is to be claimed on invoices for building works, the invoices will need to post date the date of submission of the request to register for VAT and/or opt to tax. Obviously any VAT cannot be actually reclaimed until HMRC have granted the option. So you will need to let us know your decision as to whether you wish us to apply for permission to opt the property to tax as soon as possible.

If the property has not been leased since it was in the pension scheme ownership, then applying for voluntary registration and opting to tax is reasonably straightforward we can apply for this online and there is an automatic right to make an option to tax, which is attached to the online application. Processing time by HMRC does vary, but may be dealt with potentially within a few weeks.

If the property has been or is currently being leased then the process is more complicated, because of VAT exempt supplies having being made (rent received). In these cases there is no automatic right to opt to tax, instead the VAT registration is submitted together with an application for permission to opt. In these cases HMRC processing time is considerably slower and can take up to 12 weeks for HMRC to process. We will deal with this, but will need additional information from you regarding the proposed works in order to deal with the application for permission to opt, including the estimated cost of the works, the estimated amount of VAT to be reclaimed on these costs, and the estimated rental to be received once the works have completed.

Please note that we are not VAT experts and you should take advice from someone expert in such matters. If this is a new registration advice should include, but not be limited to, advice to ensure that we are able to register your pension scheme for VAT (particularly if your business is exempt from VAT as this may not be possible).

JOINT VENTURES WITH DEVELOPERS

A joint venture is a business arrangement in which two or more parties agree to combine their resources in order to accomplish a specific task. It is possible for a pension scheme to enter into a joint venture with a developer provided that the developer is a third party that is not connected with the pension scheme members. The pension scheme members would need to negotiate such terms as they see fit with the joint venture partner as to that partner's profit share.

SUMMARY

As stated above, we are not property or development experts. It is your responsibility to make sure all relevant advice, consents and permissions are obtained for any intended development works.

You must:

- ensure you obtain the necessary professional advice before embarking on any works,
- keep us and/or the property insurer updated as to what is proposed and being undertaken and when,
- take advice regarding the VAT position, to consider whether or not the scheme should be VAT registered or whether the property ought to be opted to tax,
- make sure that all those involved in the development such as builders, plumbers and electricians etc are fully qualified and insured to undertake the work; and
- make sure an up to date property and rental valuation is carried out on completion of the works.

(The costs associated with the above should be met by the scheme and any invoices must be addressed to the Trustees of your scheme.)

The information in this booklet is a summary of our understanding of our requirements under current legislation and is not exhaustive and no responsibility or liability is accepted for any inaccuracies or omissions. For further details do not hesitate to contact us on 01580 762555 or at the address on the last page.

We hope that you found this booklet useful. We would appreciate any feedback on it and on any other aspect of our service that you feel could be improved.

If you have any further questions then please do not hesitate to contact us.

DP Pensions Ltd is registered in England at Bridewell House, Bridewell Lane, Tenterden, Kent TN30 6FA. Registered No. 4622475. DP Pensions Ltd is authorised and regulated by the Financial Conduct Authority.

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Our SIPPs are operated and administered by DP Pensions Ltd. The trustee of the schemes is D A Phillips & Co Ltd.

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