

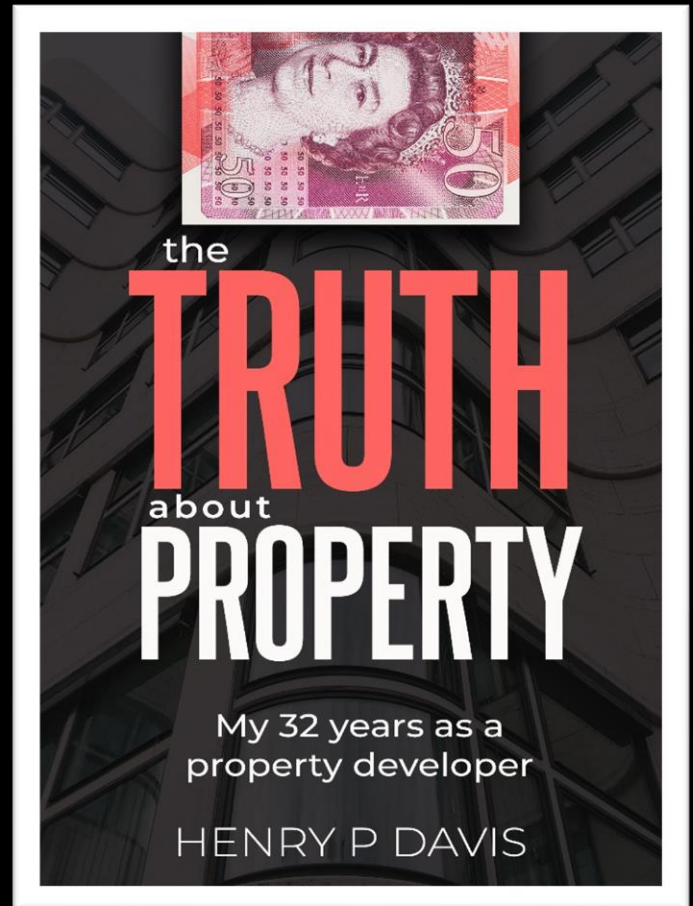
THE 'TRICKS OF THE TRADE' OF THE PROPERTY AUCTION INDUSTRY

This FREE PDF is a chapter called "Auctions Tricks of the Trade" which is taken from Henry's bestselling property book and the ultimate guide for anyone buying or selling at auction.

Henry Davis is the CEO of We Buy Any House and Genii Developments Ltd and a developer for over 32 years. He is also an accredited Property trainer for the National Residential Landlords Association.

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PHONE: 07766 317744

EMAIL: henry@webuyanyhouseliverpool.com

henrydavis
PROPERTY.COM

This document is an excerpt from one of the chapters from a book called: THE TRUTH ABOUT PROPERTY written by NRLA trainer, Henry Davis, www.henrydavisproperty.com

THE 'TRICKS OF THE TRADE' OF THE AUCTION INDUSTRY

I'm a big fan of selling at auctions, but more cautious when it comes to *buying* at auctions. Buying property at the auction is not for the faint hearted, as, like all financial decisions, there are risks as well as rewards.

This chapter isn't suggesting the auction isn't a great place to grab a bargain, but I want to draw your attention to the sharp practice of some of the industry. However, these tricks are not the 'norm' as most auction houses are largely honest.

Trying to value an auction lot is a challenge, often because there are vague and minimalistic descriptions and often missing paperwork. This is an industry without full disclosure. The legal pack or other undisclosed issues are sometimes deliberately hidden by the vendor. Another common problem is misdescription; for example, something presented as a larger piece of land or parking space, and realising this is not actually the case after closer legal attention.

In terms of current trends, the biggest for many unsuspecting buyers is fees, or extra fees, on top of hammer price. These are often discovered to the surprise of many buyers, after purchase, because they simply do little or no due diligence and because some auctions don't exactly make it easy to find or understand the fee information.

So, why are auctions risky? And how do you reduce your overall risk? The best way to reduce your risk at auction is to allow yourself as much time as possible to do your research. You should have enough time to complete better due diligence and bring in the right professionals where needed so you are not on the back foot all the time, i.e., pushed into making rushed decisions without all the information at your fingertips.

Starting your due diligence ahead of the competition decreases your risk and helps level the playing field. More time means better due diligence. Buying right at the auctions, means you need to accurately value a property, but with Land Registry data being three to four months out of date, you might ask how this can be achieved. The answer is you need all recent auction sales price data, and even though this information is available, it is hidden behind a paywall.

The auction house understandably wants to instil a sense of urgency and with the hope of a bargain, push buyers into making fast decisions on the premise of finding

a great deal and that elusive bargain. The event and atmosphere are unlike any other: pushing our sense of rationality and inherent (normal) caution away with the wind as we get emotionally involved and drawn into FOMO.

The auctioneer wants a successful event by creating sales hype to draw us into the 'Fear of Missing Out' (FOMO) with low and sometimes misleading guide prices. This is all part of the additional hype with sales suggesting previous successful auctions were 70-80% sold. This misconception isn't so accurate, as this figure doesn't take into account withdrawn lots, often withdrawn because of lack of interest. There is also a common misconception that property sells for crazy prices, and most of the time they do. But, that's not the true story of guide prices. What is really happening is that lots get offered with crazy guide prices in order to draw buyers into bidding in the hope of finding a bargain.

All this leads me back to understanding what levels of due diligence are really needed. When I look at an auction lot, I have a few fundamental questions I need to answer before I can honestly say that I completed a reasonable standard of due diligence. The fundamental problem will be trying to work out if you have, in fact, purchased a bargain, and unfortunately, it's common for many to realise this *after* completion, rather than before.

Given the obvious, but not insurmountable challenges, you need a clear idea in your mind as to what the most important queries or questions you need answered are, which might enable you to at least *try* to level the completely unlevel auction casino playing field.

In order to do this, you need the most up-to-date information and specific auction sales history data. I do my comparables based on auction sales data as well as generally available non-auction sales price data. And a valuable source to this information is a paid subscription to EIG Auction Data, which will give you access to the latest general sales prices and previous auction entry only figures.

This source is the only weekly updated sales market history tracking information, unlike the Land Registry. These figures are updated every time there is an auction and it is the only place where you will be able to ascertain recent price details. In addition, it shows you how many times a property has previously been through a UK auction. It shows current sold prices without having to wait three or four months for the information to be updated on the Land Registry. EIG gives historic sales entry and price data also. I have no affiliation with EIG whatsoever, but it is an invaluable resource if you want more accurate valuation information.

Below is an example of the main questions you should consider asking:

- Is there anything in the title or special conditions stopping it from being bridgeable now and mortgageable later, and what are the likely costs to resolve these issues?
- What are the reasons why it has been entered into the auction? And is it one of the 30% of properties which have already been through the auction? (EIG Data is the only source to find this information.)
- If there is a tenant in situ, have they signed the appropriate contracts, and if not, am I likely to secure vacant possession in future with the tenants' agreement?
- Assuming it's a refurbishment project, how soon can I get my Quantity Surveyor and Structural Engineer to assess?
- Are there any legal restrictions for developing the property, or, if it's land, are there any overage clauses?

I will cover how I answer the above questions through this chapter, but I want to start by trying to highlight the fact that the odds are stacked against buyers.

Think of the auction house as a bit like a Casino, where the odds are stacked in favour of the house. Because of the lack of disclosure requirements under current legislation, the odds are firmly stacked against buyers.

Why auction due diligence stacks the odds against you

One of the key legal differences when it comes to due diligence between auction sale and a conventional sale, is that pre-auction legal enquiries can be raised by your solicitor with the buyer, but the seller is under no obligation to respond, and, if it's a problem property, it may not be in their interests to do so. This is the *key reason* why the odds are stacked in favour of the auction house and are one-sided, effectively passing on all the risk (and normally the cost) to the successful bidder.

Auction clauses further protect sellers by saying that anything not included in the contract cannot be relied upon if they turn out to be inaccurate.

Another common dilemma of buying at auction poses the question of whether you want to pay for legal advice for a property you may or may not win.

Unfortunately, although I strongly recommend you do not do this, in reality, most take the risk. They end up buying lots without knowing the true facts due to understandably being reluctant to pay for legal advice without the security of knowing they will win any of them. This further pushes the risks on to buyers who are in a difficult position of not wanting to spend on legal fees for a property they

may not win. I strongly recommend you resist the temptation to buy in this way as it will come back to bite you!

But, like all risks, where there are risks and uncertainties, there are also rewards. The trick is, believe nothing you read in the catalogue, and be extra cautious and thorough with your due diligence.

You cannot rely on the information provided by the auctioneers being correct. The terms and conditions usually stipulate, "Buyers are to rely on their own searches", and with this in mind, you should always carry out your own checks before purchasing.

I'm not saying an auction is not a great place for a bargain; there *are* bargains to be had. But don't always assume you're getting a bargain, just because it's in the auction.

From my experience, some lots seem to go cheaply with at least 30 to 50% achieving higher prices than they would should they have been sold via a conventional Private Treaty. I have no statistical evidence to back this up, however. It is merely my view based on my own experience valuing and trading in property over three decades.

One important statistic to remember is that according to the platform which provides the (back end) management software for 98% of all UK auctions, i.e., EIG Auction Data, 30% of all properties have already been previously sold through auction.

These are often what I call "recycled bad ones" which are problem properties, often being unable to obtain mortgages, and some even unbridgeable (unable to refurbish or do anything with). These properties are recycled, in-and-out of the auction "Merry Go Round."

Auctions do, however, have their downsides in terms of lack of transparency and the challenge of de-risking. I would argue that the current level for protection for buyers is reasonable given it's an auction sale, and as a professional you will have the opportunity to solve those problems and complications, and then add value.

On the auction Merry Go Round, I've often seen the same properties advertised a few times in a short period of time as problem properties get sold over and over again to unsuspecting buyers who effectively buy blind. These buyers do little or no due diligence and the cycle then repeats itself when each new buyer of a troubled property gets caught out buying a 'bad one. Then, they can simply re-advertise the same troubled property without disclosing its problems or sales history from

another auction, knowing there will be plenty more unsuspecting buyers like them who have also completed zero due diligence. The only way to check how many times a property has been through the auction is via EIG Auction Data, and of which I would estimate 95% of bidders won't have accessed.

Pre-Viewing, Solicitors & The Neighbours

Find the right solicitor

The first thing you need is the right solicitor. I always advise clients I mentor to use a solicitor who regularly deals with auction transactions as those solicitors will understand the dynamics of an auction legal pack and are therefore better equipped with knowledge on the auction process. I recommend searching keywords such as, 'Auction Conveyancing' or 'Auction Solicitor', or have a look at the adverts in any auction catalogue. Never try to save money on a bargain price solicitor; they are over-burdened with too many clients, and a total disaster in my experience. When you pay for solicitors, you definitely get the service you pay for. This is obviously true for most services, and in the legal profession, more so than any other industry, the fee payable seems to have such a direct correlation to the service levels received.

With regards to allowing yourself more time to do your research, the clock starts ticking once the catalogue has been released. Giving yourself more time will give you a strategic advantage, and I start my research before I attend a viewing by doing my own unofficial viewing.

I start by checking sales price history on the Land Registry and the usual places online, but first, on EIG Auction Data. The other key issue here is that I am using previous auction sales as my sales history data, rather than using data from a conventional sale.

I then check that it's not an Article 4 Direction (a governed rule that will restrict planning permission for structural refurbishment, for example, turning the property into an HMO), or not listed, and then have a look at my local LPA (Local Planning Authority) Planning Portal, to see any planning history, including any floor plans from previous planning applications. I also check the EPC Register (Energy Performance Certificate) for floor plans, although they are not guaranteed to be accurate.

Once I've done my background data research, it's time to think about viewings. But, why would you wait for the official viewing, when you can do your own?

Personally, I don't like the rushed feeling of the official auction house viewings. Although we're spending considerable sums, we're all herded in quickly with no time to really understand the dynamics or structural problems inherent with the property. It's not in the auction houses' interest to give you enough time to find issues, as this reduces bidding demand.

I like plenty of time to complete my due diligence before the official viewing. I prefer to do my own (unofficial) outside-only viewing and I do this for the following reasons:

1. To give myself time to speak to the tenants and the neighbours.
2. To allow myself time to uncover any outside structural issues or Japanese Knotweed.

This will help me get ahead of the competition and enable me to make better buying decisions. To start my due diligence process, I will drive to the property and walk around outside, taking quality photos of the external area and structure. I spend plenty of time looking closely for any faults, including cracks, bendy lintels over the windows or bulges in walls, dodgy roofs, and any leaning buildings which may suggest subsidence. Without the rush of an official viewing, by doing this I am able to find any obvious faults in the structure and the grounds, such as signs of recently cut branches hiding Japanese Knotweed in the garden areas.

One of the most important parts of my due diligence is trying to find out the reasons as to why it's been sold in the auction. To find out this information before the official viewing, my unofficial preview is also my chance to talk to the neighbour or tenants in situ as they will often know the full history about the property, and in many cases, the reason as to why it's been put into the auction. The neighbours, too, often know the full history, and if you have a problem knocking on a stranger's door asking for help, then I respectfully suggest buying at auction just isn't for you! Another simple idea is to knock and introduce yourself as the potential future buyer and speak to the tenants. Sitting tenants are a valuable source of information and more likely to be in when you make your unofficial viewing, as they are often out during the official auction viewing.

The idea here is to do as much due diligence as soon as the property is listed, making it unrushed unlike the auction houses' organised viewing. I view the building as soon as possible after catalogue launch so that I have more time than the competition to work through my options, and this will give me extra time to bring in further professional help, like a structural engineer, at the earliest possible stage. The

whole process is weighted against you carrying out due diligence in a timely manner, so speed of your work is vital.

Learning from my previous mistakes over the years, I believe the faster I needed to make a buying decision, the higher the chances became that I made a 'bad' decision.

Once back in the office, I do a viewing debrief, and then blow up the photos on my computer to have a closer look at anything which appears suspect. I have a good look overhead on 'Birds Eye View' and look closer at quality photos of all walls and the roof, zooming in on any areas which I feel may need further investigation.

Then, if anything is a potential problem, I will send these photos to my structural surveyor for comment. As mentioned before, it's key to be ahead of the competition and start as early as possible. More time gets you a better assessment on the potential risks, rewards and costs associated with remedial work, so you don't feel rushed into making decisions without all the information.

Tip:

I repeat again as it's so important, and will help improve your valuation knowledge, watch live local auctions in full, so you can see what's hot and what's not. Record the level of interest and number of bids on each lot, then review this data to establish bidding, price and yield trends. This is more effective than reading the sales history data on a screen after the live auction has ended.

Official Viewings

When it's time for the official auction viewing, I usually take a set of screwdrivers, super high-powered flashlight, a damp meter, and an electronic measuring device, together with a notepad and pen. I take a good quality photo of all rooms, plus a photo of the electrical box, which is usually located in the hallway, and another photo of the boiler. Check for new paint or plaster hiding cracks, and furniture strategically located to hide issues.

The biggest cost apart from any structural work like underpinning, will be the need to replace the roof or replace floorboards, so look out for this. If floors are not very level, this can make a big difference to your refurbishment budget. Asbestos is also another big cost, so take lots of photos if anything looks untoward. I walk slowly around each room looking for faults and taking it all in at my own pace. Don't allow the auction viewer to rush you. It is really important to concentrate on the job in-hand, avoiding the temptation of chatting to others during the viewing and spend a good half an hour taking lots of photos and looking for all the obvious faults, cracks

and bulging walls. In my experience, the bigger the crack or bulge, the more expensive they will be to remedy.

The official auctioneer viewing, for me, is focused on the inside only as I will already have a good idea of the outside condition from my previous unofficial viewing. The official viewing is effectively my second look at the property, even though I didn't have internal access for my own private viewing. Remember, my own private viewing was spent taking quality photos of outside walls and the roof, and looking for all outside faults including Japanese Knotweed, which will be an instant refusal for a mortgage. It is also expensive to remove.

Tip:

Structurally, if the property looks in any way suspect, don't waste money on a RICS Building Survey (Royal Institution of Chartered Surveyors). They will merely advise you to obtain structural advice, if anything structural is found. I, therefore, go straight for a structural survey by taking my structural engineer and quantity surveyor to a second official viewing, as most auctions will have at least two official viewings. Once I have purchased and the hammer falls, the clock is ticking, and I will then politely insist on access to carry out further inspections. If the auction house refuses access during exchange, I often suggest it may delay completion and security of my funding, which I find tends to be the door opener. Do not be tempted to do any building work without employing the services of a quantity surveyor before you even speak to any builder, otherwise you are building blind without independent professional costing advice, which your builder definitely won't provide. Without a quantity surveyor, I would guess you have an 80% chance of cost overruns and disputes, or falling out with your builder, which is very common.

Legal Pack and Special Conditions

The next stage is to have a closer look at the legal pack. I strongly suggest you employ the services of a solicitor and do not buy any property at auction without your solicitor reviewing the legal pack first. It amazes me that most would never consider buying a less risky conventional property through an estate agent (with disclosed faults) without a solicitor, yet many are happy to buy a property (with undisclosed faults) at the auction, without asking a solicitor to look at the legal pack.

In the legal pack it is also common for there to be separate special conditions relating to each property in the sale called 'The Special Conditions' and 'The addendum'. The addendum is effectively an update of the special conditions and usually available at the last minute on the day of the auction. It is vital you pay very close attention to

both. Such special conditions of sale could, for example, impose new restrictive covenants on the property or requiring the buyer to reimburse the seller for the cost of searches and remove the buyer's right to raise any requisitions on title after the auction.

The most common and growing onerous area to beware of is what the terms say about the fees, as a clause obliging the bidder to pay the seller's legal costs could prove to be quite high. Furthermore, many auctioneers charge a 'Buyer's Premium', which is another fee payable by a potential buyer to the auctioneer directly.

For example, here are the fees from an Auction House North West listing recently:

"Additional Fees Buyer's Premium - 1.2% including VAT, of the purchase price payable on exchange of contracts, PLUS an administration charge of 1.2% including VAT, of the purchase price, subject to a minimum of £1,200 including VAT, payable on exchange of contracts."

Title Document

There are often 'charges' over the property or 'unilateral notices' and these need to be discharged and paid off on sale completion. But from my experience, unfortunately this doesn't always happen before completion.

If a property has ever suffered from subsidence, damp or Japanese Knotweed, these should be declared in the legal pack and warranties provided. However, I often find the work has only been partly done and not completed to a good standard, or that the work is no longer covered against future issues, or, worse still, there are unsolved current ongoing issues. Often, there are no warranties for this work; the warranty may have expired or the company who provided this warranty no longer exists.

Tip:

Be extra wary of missing information and poorly drafted legal packs, or one that is uploaded very late. Look out for building control or council enforcement notices: these are normally located on the 'local search'. Also, check the title document copy has been recently downloaded from the Land Registry as if it's an old copy, someone could have since registered some new changes or notices.

Leasehold Property

Leasehold apartments can have any number of other issues, which should be declared in the 'Leasehold Information Pack'. Older conversations often do not have any management company in place, which will be a problem for some lenders. Some

older flats may have conversions where the title of each flat was split and where the developer didn't bother to set up or employ a management company to manage and maintain the common areas. This is automatically done for new builds.

Where leasehold properties are concerned, one of the most common issues is establishing there are no outstanding liabilities which could be transferable to you.

You also need to know who controls the management of the building and how well it has been maintained. Has the freeholder gone 'missing'? This often happens. Are there any major works planned for the building, and, if so, do they have enough money in the sinking fund (i.e., a fund set aside for future expenses, such as maintenance, debt repayments, refurbishment costs)? If not, you may have to pay out yourself, which means an increase in your monthly costs, thus making it less saleable should these costs rise too much.

Worst case scenario could be a substantial bill for you to pay for upgrading outside cladding, post the Grenfell disaster. A recent article published in March 2020 by Inside Housing summed up these difficulties:

“Inside Housing has spoken to a resident living in one block in Birmingham that has seen its building insurance premium increase by more than 390% this year, from £39,000 to £191,000, which will have to be split between the tower's 141 households. Other blocks have seen their insurance cost more than double. Residents of the Islington Gates development in central Birmingham were made aware that their block had dangerous cladding last year and are now facing a combined bill of £8m – between £35,000 and £100,000 per leaseholder – to cover the costs of removing the cladding and other fire safety measures.”

One of the most common issues you will face as an auction buyer in terms of being able to mortgage flats is, anything above a food outlet severely restricts your lending options with funding via a commercial investment mortgage, rather than a standard buy-to-let mortgage. Another common issue is forfeiture of the lease for unauthorised alterations carried out by the seller, which was already subject to forfeiture proceedings by the landlord. This can leave the service charge account massively in arrears. I have noticed that instead of these arrears being discharged by the seller as is normal in a conventional sale, the special condition sometimes makes you liable for these arrears, plus the liabilities from disputes or proceedings.

Points to take into account:

- Any flat with a lease less than 75 years will be impossible to mortgage, yet many traders buy these as they are a good potential opportunity.
- Any flats in blocks over ten storeys can be problematic to finance, although blocks in London tend to be easier as high rise is more common there.
- If the property has been tenanted by a tenant before 15th January 1989, then the tenant could be considered a regulated tenant which is another issue for lending and for you getting vacant possession in the future.

Flying freeholds or creeping freeholds are also problematic where part of your property goes over or under a neighbour's property, or vice versa. This could be a balcony overlapping a neighbouring property, or perhaps an added room that overhangs next door's driveway. A mortgage may be difficult to obtain or only given as long as the flying freehold is within certain size limits.

The important question to ask is if it is currently bridgeable now or mortgageable after issues are resolved. If not, can all issues be resolved under your control so that it can at least be bridgeable to complete for the auction and mortgageable at a later stage?

Tip:

Talk to the other residents in any leasehold block of apartments; they are a valuable information resource. Don't be afraid to knock on neighbours' doors.

How do you measure value at auction?

Any adverse findings in the due diligence process should determine the price that you are willing to pay. Unfortunately, the risk with auction is trying to uncover them when, in some cases, they are deliberately hidden. Often my potential profit is based on a judgement call even after I have done as much due diligence as possible.

Given there are issues with a property, does this mean you always get the appropriate discount to reflect the costs of any remedy? The answer is that sometimes you do, as with a problem property you *would* expect an appropriate discount. But, because the playing field isn't always transparent, this isn't always the way the auction market works. Sometimes you get the discount to reflect remedial costs, especially if the issues are clear and disclosed, though sometimes you don't.

Comparing a Private Treaty

In a normal everyday Private Treaty Sale, a property unable to obtain a mortgage should be worth circa 15-50% less than one which is mortgageable. However, in practice for some (not all) auction sales from my own experience, I find that many buyers end up paying the full value without that discount. That's because it's an auction sale, where people get Fear of Missing Out (FOMO) and where you don't have the time to uncover often deliberately hidden issues, or, indeed, where many didn't bother to instruct a solicitor to read the legal pack.

Many also get too emotionally and financially engaged in the process and then end up bidding over the odds as they are desperate to realise the dream of buying that perfect auction property. I measure value by how much work, hassle, stress and uncertainty I have to endure to get a suitable profit from a lot. The more hassle, the higher the return I expect, and the amount of profit depends on how desperate I am for a deal at the time, or to make that profit. But I always try for at least a 30-40% profit on any deal before tax, based on GDV (Gross Development Value), expressed as a percentage. If the project may take longer, I use IRR calculations (Internal Rate of Return), assuming I can accurately estimate cash flow costs, which is essential in order to calculate IRR correctly. The IRR, in effect, measures profit over the time you've spent on any project, together with the monetary value generated during the time you own it expressed as a percentage of interest. A longer project should give a higher IRR than a shorter time frame project. IRR looks beyond the property's net operating income and purchase price.

Contrary to obvious logic of getting a bargain in the auction, my view over three decades of watching the auctions is that many of the lots offered, if sold via Private Treaty, would, in fact, obtain a lower price through a normal Estate Agent sale. This is because of better disclosure in the sales literature, and because legislation protects the buyer, plus practically all Private Treaty buyers use a solicitor. When you think about it logically, it's utter madness as to why many buy via auction without a solicitor reading the legal pack. They are often not doing any due diligence on the property type that is most likely to have troubled issues. Then they exchange contracts via auction conditions which is a lot more onerous than buying from your local Estate Agent.

30% of all properties have already been previously sold through auction

When it comes to the 30% of properties EIG Auction Data reports say have already been sold at auction, often what happens is that because it sells through the auction, many buyers have not employed a solicitor or haven't carried out any due diligence before buying. This then leads them to paying a price which doesn't actually reflect the asset value because they failed to discover issues which they likely would have

found should they have purchased via a normal Private Treaty. Unfortunately, some have the misconception that auctions are always cheaper, which just isn't always the case.

Covenants and their devastating implications

Covenants can tie you into ongoing maintenance costs, which devalues an asset or accrues other recurring costs, and can also stop you from developing or give rise to you paying someone else a claw-back payment on any planning gain. They are legal obligations written into the deeds of a property. These obligations need close attention by your solicitor as they can have a big impact on a property's value yet are discreetly hidden in complicated legal jargon. I have tried unsuccessfully over the years to understand them, so I always refer to my solicitor to correctly advise on their implications. I now use a specialist Covenant Expert Solicitor because of the challenges.

Covenants rule what you can and cannot do on the property or land. There are two types of covenant: positive and negative. Positive covenants are usually obligations to do something such as building work or fixing a fence, or perhaps contributing to the maintenance of a footpath, shared drive or road for example.

Negative (also known as restrictive) covenants prevent things being done on the property or land, like further development. They can range from restrictions on activities such as keeping animals, to restrictions against trade or doing business on the property. The one to look out for and one of the most common issues that auction buyers tend to have is a covenant which affects the ability to obtain a mortgage and restricts the use of the property to a 'Private Dwelling'. This makes it difficult to mortgage (not bridge) for a buy-to-let lender as many will refuse. Although, limited lenders may accept covenant insurance.

You need to understand their hidden implications as they can have a big impact on development potential in particular, by restricting development. From my experience I have found the newer the covenant, the harder it will be to overcome with covenant insurance, which is a common method to resolve covenant risk. There can be recurring costs which you will be responsible for in the future, and any property that has a legally enforceable recurring ongoing cost to you, the buyer, has an impact on the property valuation as any monthly costs for you are effectively a liability. I have learned over the years that many older covenants are not enforceable and there is case history to support this. Ultimately, it's a matter of how any future lender looks at your particular case, as it's one thing having a covenant and another

issue to understand how it affects the mortgage. Often, you won't find this one out until the deal goes through the final stages of the legal process.

Tip:

Use a specialist solicitor for any covenant issues. I find all solicitors *claim* to understand them, but this isn't my personal experience. Many covenants may be enforceable if over 30 years old, but each case is different, which is why you need a specialist solicitor. Feel free to contact me at www.henrydavisproperty for a recommendation.

Boundary and Lease Plans

A few basic questions you need to ask are:

1. How many years are left on the lease?
2. How much is the annual ground rent and monthly maintenance?
3. Does the maintenance have escalating costs?

Check that the boundary plan correctly reflects the actual boundary map copy in the legal pack (go on Maps and click on Birds Eye), and check if the boundary looks like it should do based on reading the boundary map you got in the legal pack. If it's not in the pack, download your copy from the Land Registry.

Another common problem concerns the lease plan in an apartment block and if it doesn't actually reflect the apartment configuration. This happened to me once when the previous leasehold owner decided to reconfigure his apartment, but without permission from the freeholder. The apartments were listed as two-bed apartments, but when my solicitor read the lease plan, the apartment I was interested in was actually shown as a one-bed apartment on the Land Registry, and it was unlawfully converted with an extra bedroom without the freeholders' consent. Effectively, it's a one-bedroom apartment and should be valued as such, but if you don't read the lease plan you can easily end up paying for an illegal conversion which is worth significantly less.

Boundaries

Make sure the boundaries are clearly defined, edged in red and shown by reference on an HM Land Registry compliant scale plan. Inspect the site and make sure the physical boundaries on the ground match the plan and that there are no anomalies. A plot will often be formed from part of an existing dwelling, someone's garden or

one of several adjacent self-build plots. Make sure they are accurately indicated to reflect the scaled plan.

How Overage Clauses Kills Profits on Land

Although overage is technically another form of covenant, I feel overage clauses deserved a special mention. It can cause absolute devastation on land value in particular, yet it's a challenge to work out the exact impact in percentage terms of original sale price. Overage clauses often give rise to legal disputes because of the legal complexity when it comes to their enforcement. This is a hidden clause in the title deeds, which can sometimes make or break a deal when it comes to land in particular. An overage clause is also known as claw-back or uplift. The concept is that if planning permission is obtained after purchase, the seller will be entitled to a share in any uplift in value. This sounds simple, but provisions of this nature give rise to a wide range of legal implications as to how the overage will be calculated. This can be complicated and requires close attention from your solicitor.

Overage clauses may have tax implications. If an overage payment is triggered, further Stamp Duty Land Tax (SDLT) may be due on completion of the purchase, and the buyer could end up paying this on the purchase price, plus the estimated enhanced value. In the case of a commercial property, if the original sale was subject to VAT, then VAT may also be due on any overage payment.

It is often used to protect against the risk of embarrassment should the new buyer achieve a significant profit from quickly re-selling.

This clause, often designed as a positive or restrictive covenant, may severely impact your profit opportunity, especially when buying land. I have seen many developers over the years buying land with these complicated clauses because they didn't bother to instruct a solicitor to read the legal pack. Land with overage clauses is often sold at auction because in a Private Treaty sale, their complications give rise to extended negotiations. This inevitably results in additional legal fees and delays, hence why auction is an ideal sale platform for sellers. I also think sellers know a particularly onerous claw-back simply won't receive the same level of due diligence, which would occur during a Private Treaty sale.

Worst case scenario

I've only had one property on which I was unable to raise a mortgage or even a bridge, and that was a commercial property with tenants in situ who had not signed a tenancy agreement. Given auction timescales, it's not usually possible to raise a conventional mortgage on an auction property anyway, so most buy with cash or a

bridging loan with a view to getting the property to a point where it's mortgageable at a later stage.

Most property is bridgeable, but although I purchased this property, and because the current tenants were in situ with no formal written contract, I was unable to raise even bridging finance. I also had issues securing lending on a property where the flats were below the minimum room sizes and only had one lending option (Fleet Mortgages) available to me with low LTV (Loan-to-Value) and a valuation that was quite frankly a joke. This was to re-mortgage an old conversion of flats, completed before my purchase, where some of the rooms were below the current minimum room size. It was very challenging and although lenders always knock you down on valuations, Fleet Mortgages were particularly ruthless in terms of *their* valuations. This left me very unhappy with the LTV or the valuation, which was way below anything reasonable, despite me providing relevant comparable valuation evidence. Once I had provided this evidence, they kept changing the rules, but as they were the only lender available, I had no better option.

Generally speaking, most lenders do not lend on properties valued below £50,000. If a property is not habitable, with structural issues or with a non-compliant EPC, it will not qualify for a buy-to-let mortgage, but you *will* be able to use bridging finance.

It would be very unusual to be unable to raise at least bridging finance, but as far as making a property unmortgageable, here are a list of issues which will challenge lenders:

- Tenants in situ with no written contract is both unmortgageable and unbridgeable.
- Derelict or non-standard construction, including any flats with a lease under 75 years or blocks of flats. Any blocks over ten storeys can also be problematic.
- Ex local authority, especially with entrances to flats along an exterior corridor, and don't have their own separate access via an internal entrance hall or stairwell.
- Grade I Listed Buildings are a challenge to mortgage and likely to fail the new Minimum Energy Efficiency Performance rules.
- Granny flats and annexes, as lenders prefer single unit properties and this may take the property into the specialist lending area.
- If a compulsory purchase order is in place.

- Properties with mixed freehold/leasehold titles. This is where the landlord may own the freehold title of a multi-unit block of flats but some of the flats within the property are on long leasehold titles, which may be owned by others. Lenders prefer the landlords to be the sole freeholder of the block, again bringing the property into the specialist lending area.
- Properties where there are boundary disputes or where planning applications have not been applied for correctly, although lenders may in some cases accept insurance for any future claims.
- Japanese Knotweed or Himalayan Balsam will also stop a lender until the weed has been correctly eradicated and suitable warranties provided.
- If flooding is a common occurrence and it's uninsurable for flood risks, or near a landfill, mining works or an area of known subsidence, which appear in search results.
- There's been a recent trend for builders to sell homes on a leasehold basis with the ground rent doubling every ten years. However, the Government are taking action to resolve this.

These are all areas I believe you may have particular difficulty to mortgage, but the many other issues which may be of a lesser challenge are those such as flats over commercial premises, mixed-use properties, properties with mixed freehold/leasehold titles, properties with flying freeholds, kit houses, log cabins, colt bungalows, property with sitting tenants or regulated tenancies.

Property Traders' Tricks of the Trade

I asked some of my contacts in the auction industry for their take on some of the sharp practice on the auction business, and in particular some of the tactics property traders get up to. These are the auction attraction & auction killers. These guys don't buy investment properties, they buy a commodity to sell and even if they sell at what they paid for it, they would still make a profit via fees with no capital gains tax payable. So, they only have to get what they paid for it, and then can add thousands in fees to the hammer price, yet still make a profit.

If a property has been sold multiple times, the reason for this is generally that a trader has bought before, after or during auction; they tend to like to buy before or after as the figure it sold for is not disclosed. By doing the deal pre-auction, there is no sales price history.

Another reason it is recycled is that the seller bought at £25,000, plus costs, then they enter it into the auction for £5,000 with £20,000 fees, but if the bidding stops at £20,000 they will either bid on their own or get a "friend" to bid on their behalf and effectively buy back the property. Therefore, the only cost to them is the auctioneers' selling fee and they will try and sell it again at the next auction.

My advice concerning the legal pack is to check who is selling the property, if it's an individual sale of an inheritance, if it's a liquidator or asset manager, if it's a part exchange company (growing), or if it's a limited company. If so, you can do a check on them and see what they do. I think this is an important part of your due diligence. Do be extra cautious if it's a property development company or a trader who's selling.

Also, with the legal pack, it's great that you read it as soon as possible. However, what about the special conditions the unscrupulous sellers add the day before auction? I have seen many first-time buyers view ten houses, their solicitor reads the legal pack and declares it all to be legitimate, only to then get ten update emails that they don't read, which will inevitably catch you out.

One general trick of the trader is to put their lot behind a very popular genuine lot, and if thirty people are bidding where only one of them can win, there will then be twenty-nine bidders ready for your lot who probably haven't read the legal pack.

Auctions generally sell 70-80% of their auction lots, so always beware of the auction house which sells 99%. Ask yourself, is the really true?

SUMMARY

Beware of words used in the legal pack rather than numbers, when referring to fees. As with a more trustworthy auctioneer, all fees are in numerical format because they have compliance officers (ex-solicitors) who check every single legal pack. If the auction house you are using has worded fees, it highlights that their clients are complicit in the deception, and, my advice is to avoid the auction house, or you will be stung. These are also the auction houses that have a huge amount of ridiculously cheap properties in their catalogue.

One of the most important aspects to focus on is that you need to start your due diligence ahead of the competition by being ready the moment the property is listed on the auction website.

Perhaps there's a right of way through your property or maybe even the property should never have been built on this land in the first place. Once you have

understood the legal pack, it is advisable to take out Covenant Risk Insurance through a specialist Covenant Risk Insurance company.

It's important that you're the first to get the details of the property for sale. By doing your own unofficial viewing first, you'll be way ahead of the competition if you start your due diligence before everyone else.

It's paramount to understand the legal pack, and you'll be putting yourself at risk if you were to buy any auction property without this knowledge. Most people would never buy a property through an estate agent without getting a solicitor involved. Some would, of course, and many do buy a property at the auction without getting a solicitor to read the legal pack. But the auction sale is the one most likely to give you problems in terms of the legalities. This area has high risks if you fail to learn about the hidden clauses and any arising issues that could pose problems *after* sale.

The auction platform is a high risk area, therefore, you should instruct a solicitor *before* your auction purchase. I imagine the vast majority of people reading this book will be buying a property at the auction in need of refurbishment, and it's such a common aspect for people to not only overpay, but then underestimate the refurbishment costs, which will make a total mess of managing the actual construction project. The easiest way to stop that happening is to instruct a quantity surveyor.

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