

BUYING A PLOT AT AUCTION OR BY TENDER

This fact sheet has been written in order to give you a better understanding of buying a plot through auction or by tender.

KEY POINTS:

1. Buying land through private treaty could include auction or tender
2. Always study the detail in a contract before you sign it
3. Do not bid over your own personally set price
4. Bidding at tender is not legally binding

BUYING LAND BY PRIVATE TREATY:

Buying land by private treaty, where the price is agreed between the parties before solicitors are instructed, is perhaps the favourite and best path for self builders to follow. However, in many areas the plots are so sought after that the agents and vendors feel it impossible to accurately predict the maximum price they can possibly achieve. In these cases, it may be decided that the best course of action is to take the property to auction or tender.

AUCTIONING:

Buying land at auction is a highly legal process whereby at the fall of the hammer, the highest bidder is deemed to have accepted all of the terms and conditions of sale. At that point, they are legally binding themselves to purchase, and the sellers to sell, just like in the way of exchanging a legal contract. Failure to complete means that the purchaser will be charged interest at a pre-determined rate, usually 4-5% above bank rates, and that if they back out altogether, they can be sued for any re-marketing costs and any discrepancy in value.

This entire legal framework is the reason why most reputable auction particulars contain within their terms and conditions:

- All or most of the questions that a proposing purchaser's solicitors would wish or need to ask
- Copies of the searches.

Nevertheless, sole reliance on these particulars is not to be recommended. If you are proposing to bid at an auction, you should give your own solicitors time to study the detail, with time to make any enquiries they feel necessary or appropriate.

GUIDELINE PRICING:

Many auction details include a guideline price; though experience has shown that this can often be wildly misleading, employed simply to attract more interest - the guideline price is usually set at about two thirds of the eventually realised figure. Most auctions are subject to a reserve price which does not actually need be disclosed to any of the interested parties, and unless the bids reach that figure, the auctioneer can choose to withdraw the property. Remember, it is all too easy to get carried away in an auction room so it is important that you go in with a set ceiling beyond which you can not, or will not go.

TYPES OF TENDER:

Various forms of tender exist. Open tender, closed tender, formal and informal tender are all words that are used to describe the process. Essentially, they are all variations on the theme whereby offers are solicited in writing for a property. The conditions of sale, dictated by the agents or the sellers are the rules by which the sale will be governed.

TENDER V. AUCTION:

The details for a tender often take on a similar form to auction particulars, save for the fact that they normally require all bids are received in writing by a certain date. Closer inspection, however, will reveal that in most cases, the vendors reserve the right not to accept the highest offer or indeed, any offer at all. In fact, unlike an auction, where the fall of the gavel has distinct legal connotations and is binding on both parties, success by virtue of being the highest bidder in a tender does not guarantee that you'll be able to buy the property.

DISADVANTAGES OF THE TENDER PROCESS:

The problem with tenders is the lack of legal framework to an otherwise highly legal process. Sometimes the conditions of sale will require that offers are submitted together with a cheque for the deposit, then go on to insist that acceptance of the tender will constitute an exchange of contracts.

With no legal requirement to accept the highest offer, this really is a one way street. The system can be open to abuse or manipulation or, just as damagingly, the mere suspicion that this is the case. Buying land by tender has been likened to entering an auction room blindfolded and with earplugs. It is hugely unpopular with purchasers because, whatever they bid, they may never know whether they have missed out by £1, or obtained the land for well over the odds. The best advice is to put in an offer at a price that you are comfortable with plus that little bit extra.