



## The Xafinity SIPP Development & Property Works Guide



If you require this document in another format for ease of reading, please let us know.

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## Important notes

This document is updated regularly. Check you're referring to the latest document by downloading it from our website.

### Our products

This document has been written for The Xafinity SIPP. If you have a Xafinity Self Invested Personal Pension Plan (i.e. your policy number is 5 digits starting '5') this document is still correct in its technical content but there are some minor differences. In particular, your SIPP is the Xafinity Self Invested Personal Pension Plan and it's not Defaqto rated, whereas The Xafinity SIPP holds a Defaqto 5 Star Rating.

Property isn't an investment option with the SimplySIPP. If you have a SimplySIPP and wish to invest in property, please contact us about moving to the full Xafinity SIPP.

### The terms we use

In this guide we use the following terms:

- 'Us', 'Our' and 'We' refer to Xafinity Group companies.
- 'You' and 'Your' normally refers to you the SIPP member.
- 'Property' includes land.

### The paperwork we'll need

After reading this guide in full, you need to complete and return the following form:

- 'SIPP - Development & Property Works questionnaire'.



Please also refer to the general terms contained within the following guide:

- 'SIPP - Commercial Property Guide'.

Both documents can be found on our website or from your Xafinity SIPP consultant.

When transacting with connected parties, you must provide evidence that the costs are at a market rate at the earliest opportunity.

Please ensure you refer to the 'Terms and Links' at the end of this guide to ensure you're familiar with key terms.

**No property transaction should be considered without professional written financial advice.**

# Development / property works: an overview

## Background

Developing or carrying out works to a commercial property held within a SIPP can be complex. This guide helps you, your adviser and other parties to undertake a property transaction. **When we refer to commercial property in this guide, we're also referring to land.**

All property transactions must satisfy HM Revenue and Customs (HMRC) and other regulatory requirements, which may vary from time to time. So that we can meet these requirements we, and our professional partners, have certain requirements as described in this guide.

We can refuse any proposed property transaction where we foresee significant problems or issues for the SIPP or you (e.g. environmental issues, taxable property, or connected party concerns).

## Things to think about

Property is usually a long-term investment. With this in mind, especially if you're within ten years of your selected retirement date, you must seriously think about (and obtain suitable advice) whether carrying out works to the property is a suitable transaction for your investment asset, and by extension, your SIPP. As a guide, you and your adviser should consider:

- when you actually intend to take benefits, including purchasing an annuity;
- whether there will be sufficient liquidity in the SIPP to provide your intended retirement option(s);

- whether the property may need to be sold whilst still being developed to provide your benefits (e.g. death / retirement benefits).

## Our role

Our key role is to try and ensure that any transaction meets HMRC and other regulatory requirements. We're also here to help co-ordinate and assist all parties through the various stages. However, please note that we do not provide property management services.

As Xafinity Pension Trustees Limited (XPTL) will be the property owner, we must be fully involved in the process.

## Timescales

If a full site development is involved the overall timescales for the contractors' works involved can be lengthy and can, depending on the scope of the works, take years to conclude in some circumstances.

In terms of Xafinity reviewing proposed works, we will aim to reply to all enquiries as promptly as possible. To help us to do so, as there can be a number of parties involved in these transactions, co-operation is vital.

## Fees

Our fees for property transactions are outlined in our Fee Schedule (available on our website). Normally, for property works, no fees are chargeable.

However, this may be reviewed on a case-by-case basis where additional administration is required due to the nature of the property works in progress and the contracts entered into.

## Legal agreement

Before any development or works commence, we may need to enter into an agreement with the contractor / project manager, via a legal agreement.

Our preferred type of agreement is a Joint Contracts Tribunal Agreement (JCT), SBCC (in Scotland), or RUSA (in Northern Ireland)), which are industry recognised standard documents.

There are of course other types of legal agreements available and you are free to choose whichever type your appointed contractor / project manager recommends, however these must be reviewed and agreed on behalf of the SIPP.

## Legal representation

Where a JCT / SBCC / RUSA agreement is not used, the SIPP will need to be represented by your nominated solicitor. Any costs involved for their time will be charged to the SIPP.

**All contracts must limit XPTL's liability to the value of your SIPP assets.**

## Written consent

All of the requirements set out below must be in place before we'll give our written consent for work to start. Also, if the scheme is borrowing money to pay for the work, we must also confirm that the borrowing is acceptable before it can proceed.

## Project manager and plans

As we can't be on-site or supervise the contract, the main contractor or a quantity surveyor, or similarly qualified party (RICS / RIBA), must be appointed to act for XPTL. You must nominate the relevant party and provide their details. A contract will be put in place between XPTL and the project manager.

You must provide us and the project manager with details of planned works, including statutory approvals (e.g. planning permissions), architectural plans, details of expected costs, proposed start date of the work and the expected

completion date. We'll also need details of how the SIPP will pay for the work.

## Residential development

A property is deemed 'residential' when it's first used, or capable of being used, as a dwelling. This is normally when a certificate of habitation is issued (or building control certificate in Northern Ireland). Hence, the property must be sold before the certificate is applied for. In addition, the site **must not** be used for habitation or dwelling by anyone at any point of the development whilst **owned** by the SIPP. Failure to observe these requirements could lead to a significant tax charge being levied by HMRC against the SIPP.

## Connected parties

If anyone carrying out work for the SIPP, in any capacity, is connected to you we'll need copies of quotations (ideally two competing quotes) for the work to be carried out. These are needed to show that the work is on fully commercial terms. Alternatively, you can obtain a written statement from a RICS-registered Quantity Surveyor which confirms that the proposed project cost is on commercial terms. If the contractor / project manager / architect is unconnected, we won't insist on quotations, although it's always prudent to get some.

## Revised valuations

Following completion of work, the property must be revalued by an independent surveyor. The valuation should show the new open market value and revised rental value. Where the property is leased to a connected party, the new rental amount must mirror the revised open market rental valuation.

## Invoices

All invoices must be made out to, and paid by, your SIPP. No other party should pay any invoices for the SIPP as they might not be repaid.

## Tenants Exempt from VAT

In some cases the SIPP may not be able to recover the purchase VAT. For example where the development costs are £250,000 or more and the

property is to be leased to a connected tenant that is wholly or partially VAT exempt. VAT advice should always be taken where this is the case.

# Development or property works?

## Plans / planning permission

To ascertain as to whether proposed works to the scheme property will be considered basic works or a full development we broadly look at two main criteria:

- Have the works to be carried out been designed?
- Is planning permission required from the local council prior to works being carried out?

**We will of course need to review proposals on a case-by-case basis to look at specific circumstances.**

## Basic works

Where the answer to the above points is 'no', then the changes to be carried out at the scheme property will be considered basic works and cover:

- Basic maintenance / refurbishment;
- Utility works;
- Boundary works.

As a result we would not expect any legal agreements, or JCT (or similar), to be needed to proceed with the works.

**However, where the scale of the works, or the cost to be paid, is deemed significant we may require a qualified individual (RICS / RIBA) to confirm that an agreement (or similar) is not required.**

## Development

Alternatively, where the answer to either, or both, of the main criteria is a 'yes' then the works would be considered, in the main, as a full development of the property. This covers:

- Building works (with building regulation approval requirements); and
- Construction (full site planning and development).

For works of this nature we would expect, and require, the following:

- Legal agreement (or similar) to be entered into by the SIPP, contractor, and project manager (if applicable) - as specified by the party overseeing the build;
- For the main contractor, or an appointed project manager (a RICS / RIBA qualified person), to oversee the works;
- The SIPP to be involved in all stages of the works and to see copies of all documents involved; and
- Collateral warranties to be provided by all relevant parties.

As a result we will not be able to provide our written consent to the works commencing without a legal agreement, JCT (or similar), being entered into, or without the above requirements being catered for, as part of the transaction.



# Landlord's works or tenant's work?

## Vacant properties

Where the scheme property is vacant the cost for any, and all, development or works carried out will fall to the SIPP as landlord.

## Lease terms

Where a property has a tenant in place the terms of the existing lease will determine whether, in broad terms, it is the tenant or the SIPP (as landlord) that bears the cost of any works carried out.

**There can of course be situations where the costs to be paid will be split between both parties.**

## Landlord's works

For landlord's works we will require a copy of the following documents to allow us to review, and approve, the proposed works (and to assess whether the works are solely landlord's costs):

- Details of the work to be undertaken (via our questionnaire);
- Plans (where applicable);
- Planning permission (where applicable);
- Full detailed costings;
- Confirmation of the contractor / architect / project manager involved;
- Confirmation of whether any connected party is involved (along with the appropriate cost evidence when this is applicable);

- The appropriate legal contract or similar put in place for the works (or appropriate JCT or similar agreement).

## Tenant's works

For tenant's works Xafinity, as the trustee landlord, will need to grant permission to any property changes being carried out.

To provide this permission we will require the following items to be provided:

- Details of the work to be undertaken (via our questionnaire);
- Plans (where applicable);
- Planning permission (where applicable); and
- Full detailed costings (where tenant is connected).

## Mixed costs

Where there is a tenant in place, and costs are being shared, we will need to ensure that the appropriate costs are paid by the relevant party as part of the overall transaction.

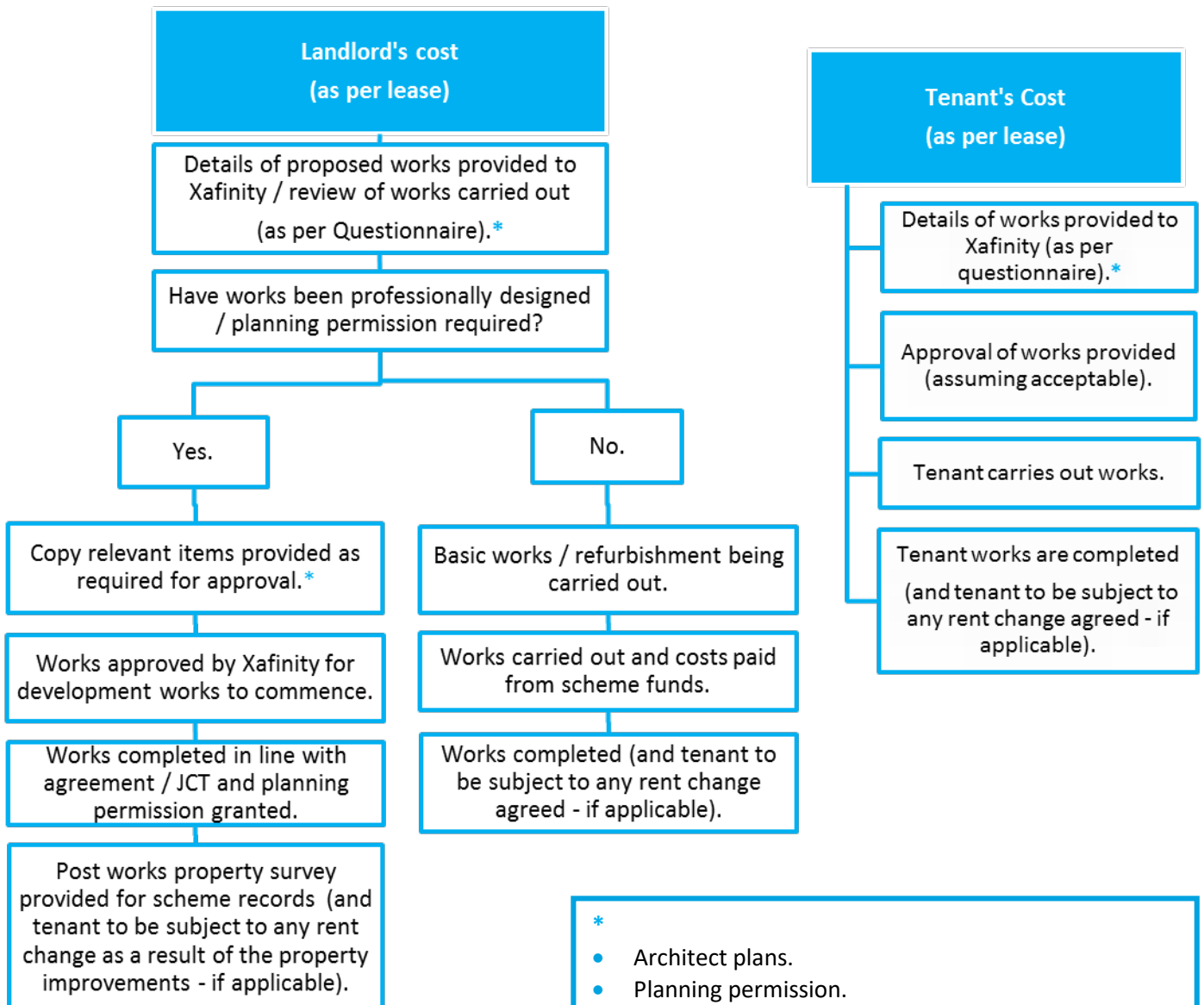
**This is especially important where the tenant may be a connected party.**





# Process overview

The flowcharts below outline the overall process involved for development / property works where the works are either tenant's cost or landlord's cost:



- \*
- Architect plans.
  - Planning permission.
  - The appropriate JCT (or SBCC / RUSA equivalent) / legal agreement for the type of work along with the relevant forms for appointing the project manager (if not catered for within the JCT / legal agreement).
  - Full detailed costing.
  - Details as to whether the contractor or project manager is a connected party.

## Terms and links

This section helps explain the various terms you may run into during a SIPP property transaction.

### Connected person

- Your relatives and their spouses or civil partners; and
- Your spouse or civil partner, any of their relatives and their relatives' spouses or civil partners.

### Connected company

A company is connected with another company if:

- a person has control of one and he (either alone or with persons 'connected' to him) has control of the other; or
- a group of two or more persons has control of each company, and the groups consist of the same people (or could be replaced by people 'connected' to them).

A company is connected with another person if that person has control (either alone or with persons 'connected' with him).

Any two or more persons acting together (or any person acting on their directions) to secure or exercise control of a company are treated (in relation to that company) as 'connected' with one another.

### Company

A body corporate or unincorporated association, but not a partnership.

### JCT agreements

The Joint Contracts Tribunal (JCT) produces standard contracts, guidance notes and other documentation for use in the construction industry.

These are normally prepared by architects and surveyors at the design stage of any development and will need reviewed and agreed by solicitors representing the SIPP. The main purpose of a JCT Agreement is to document the agreed terms of the particular development between the owner and the developer / builder.

For a SIPP development, the JCT must limit any potential liabilities that may occur to the value of the assets held under the individual SIPP. For further details on the JCT and their agreements, please see [www.jctltd.co.uk](http://www.jctltd.co.uk).

### SBCC agreements

The Scottish Building Contract is the Scottish equivalent of the JCT, as outlined above, and fulfils the same aims and objectives.

Please see [www.sbcconline.com](http://www.sbcconline.com).

### RSUA agreements

The Royal Society of Ulster Architects contract is the Irish equivalent of the JCT, as outlined above, and fulfils the same aims and objectives.

Please see [www.rsua.org.uk](http://www.rsua.org.uk).

Please see your SIPP Member Handbook for other defined terms.

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