



Office of
the Schools
Adjudicator

Determination

Case reference: LAN80

Applicant: the governing board for Westwood Primary School, Bodmin Garth, Leeds

Application: Transfer of land to the governing board of Westwood Primary School on removal of the school's foundation

Date of direction: 29 November 2019

Direction

Under the powers conferred on me by regulation 6 of The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, I hereby direct that the freehold land and buildings known as Westwood Primary School registered at HM Land Registry under title number WYK814621 to Leeds City Council shall be transferred to the governing board of Westwood Primary School, Leeds, upon the removal of its foundation.

The Referral

1. On 13 June 2019 solicitors made an application to the adjudicator on behalf of the governing board for Westwood Primary School (the school). The school is a primary school for children aged between 3 and 11 years. It is a foundation school with a foundation (also referred to – including in this determination – as a trust). The Learning Trust (South Leeds) is the foundation or trust for the school; and Leeds City Council is the local authority for the area in which the school is situated (the local authority).
2. The application was that the land used by the school should transfer to the governing board of the school on removal of the school's foundation.

Jurisdiction

3. Regulation 6 of The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 (the 2007 Regulations) requires that: *“(1) Before publishing proposals to remove the school’s foundation, the governing body must agree with the trustees and the local education authority all matters relating to—

(a) the land to be transferred under regulation 17, including, where appropriate, the terms of any transfer agreement to be made for the purposes of regulation 17(3), and
(b) any payment to be made under regulation 18(1) or (2),
which would arise as a result of the governing body’s approval of the proposals (with or without modification).
(2) Where the governing body has not reached agreement with the trustees and the local education authority as to any of the matters set out in paragraph (1) within 3 months of—
(a) the initial decision to publish proposals under regulation 4, or
(b) receipt of notice by the clerk under regulation 5(2),
such matters must be referred to the adjudicator for his determination.”*
4. In accordance with the procedure set out in regulation 4(a) of the 2007 Regulations, the governing board took an initial decision to publish proposals to remove the school’s foundation on 4 July 2017. No agreement has been reached between the local authority, the trust and the governing board of the school concerning the transfer of land within three months of the decision by the governing board to propose to remove the foundation and so I am satisfied that this matter is within my jurisdiction.
5. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 replaced the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (the 2007 School Organisation Regulations) which were accordingly revoked. Notwithstanding this revocation the 2007 School Organisation Regulations continue to apply in relation to proposals published by a governing board under section 19 of the Education and Inspections Act 2006 before 28 January 2014. The 2007 School Organisation Regulations therefore apply in this case as the instrument of governance came into effect on 1 July 2011.

Procedures

6. In considering this matter I have had regard to all relevant legislation and guidance. I have considered all papers put before me including:

- a) the letter from the school's solicitors dated 13 June 2019, the attachments to that letter and responses to my subsequent enquiries;
- b) an email dated 9 September 2019 from the governing board confirming that the solicitors were acting for it on this matter;
- c) a letter from the local authority dated 11 July 2019 and responses to my subsequent enquiries; and
- d) an email from the secretary to the trust dated 14 October 2019 and subsequent correspondence.

The Application

7. The school explained in its application its understanding that no action was taken by the local authority to transfer to and vest in the trust the land held or used by the local authority for the purposes of the school immediately before the implementation date (the date on which the school joined the trust). This would not meet the requirements of the 2007 School Organisation Regulations. It also meant that when the school made the decision on 4 July 2017 to publish proposals to leave the trust and therefore become a foundation school without a foundation, the trust could not, as required by the 2007 Regulations, transfer the land to the school. This in turn meant that the school could not publish its proposals to become a foundation school without a foundation.
8. The school therefore requested that the adjudicator require that the land was transferred to the governing board on the removal of the trust as a foundation.

Consideration

On 19 May 2011 a statutory notice was published that the school, together with three other local schools, should make prescribed alterations to change category from community to foundation with the name of the foundation proposed as The Learning Trust (South Leeds). In such circumstances paragraph 2(2) of Schedule 6 of the 2007 School Organisation Regulations requires that *“any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in—*

(a) the trustees of the school, to be held by them on trust for the purposes of the school; or

(b) if the school has no trustees, the governing body, to be held by that body for the relevant purposes.”

9. The local authority and the school have confirmed that the formalities required to register the land as transferred to the trust did not occur. In a letter to the Office of

the Schools Adjudicator dated 11 July 2019 the local authority said that it did not dispute the entitlement of the trust, and subsequently the governing board, to the land and buildings at the school and that it recognised it was under a duty to transfer them. The local authority said that the delay in what it referred to as “transferring” the land was due to “*the high volume of trust and academy conversions the Council has to deal with.*” There is no dispute as to the land under consideration as this is clear from the land registry document, and there is no question of compensation for any costs incurred.

10. Regulation 7 of the 2007 School Organisation Regulations says in paragraph 1:
*“Where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities—
(a) enjoyed or incurred by the transferor in connection with the land; and
(b) subsisting immediately before the implementation date, also transfer to, and by virtue of these Regulations, vest in, that body.”*
11. Paragraph 8 of the same schedule also says, *“Where immediately before the implementation date in relation to any change of category— (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of a school, but (b) the land has not yet been so transferred, paragraphs 2 to 7 are to apply to the school as if it had been so transferred by that time.”*
12. It is therefore my view that although the local authority had not registered the transfer of the land to the trust as it was required to do, the land had in fact transferred to the trust by the operation of the law.
13. The Office of the Schools Adjudicator (OSA) had written to the trust on 28 June 2019 requesting its comments on the application. No written response was received until 14 October 2019. That letter said, *“Westwood appeared to leave The Learning Trust(South Leeds) under the aegis of the previous head.”* The trust provided no evidence to support this view. To leave a trust requires a statutory process and there is no evidence that such a process has occurred. The only signed instrument of governance provided to me is the one referred to above dated 1 July 2011. The government website, ‘Get information about schools’ also records the school as a member of the trust. I am therefore satisfied that currently the school remains a member of the trust.
14. This means that the land and buildings occupied by the school is vested in the trust by virtue of the 2007 School Organisation Regulations quoted above whether or not the local authority has registered the transfer of the land accordingly. When the governing board completes the statutory process of removing the foundation, the same land and buildings will fall to be vested in the governing board by virtue of the 2007 Regulations. Paragraph 4 of Schedule 3 to the 2007 Regulations states *“Where a transfer to which this Schedule applies relates to registered land, it is the duty of the trustees to execute any such instrument under the Land Registration*

Acts 1925 to 2002(a), to deliver any such certificate under those Acts and to do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer agreement.”

15. Paragraph 19 of the 2007 School Organisation Regulations says, *“The adjudicator may issue a certificate stating that any property specified in the certificate, or any interest in or right over any such property as may be so specified, or any right or liability so specified, was or was not transferred by virtue of these Regulations to any body corporate or persons so specified; and any such certificate is to be conclusive evidence for all purposes of that fact.”*
16. For the avoidance of doubt, this determination serves as a certificate for the purposes of paragraph 19 of the 2007 School Organisation Regulations and of paragraph 5 of Schedule 3 to the 2007 Regulations.

Direction

17. Under the powers conferred on me by regulation 6 of The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, I hereby direct that the freehold land and buildings known as Westwood Primary School registered at HM Land Registry under title number WYK814621 to Leeds City Council shall be transferred to the governing board of Westwood Primary School, Leeds, upon the removal of its foundation.

Dated: 29 November 2019

Signed:

Schools Adjudicator: Deborah Pritchard