

DETERMINATION

Case Reference: LAN/000046

Applicant: Heston Community School, Hounslow, TW5 0QR

Application: Regarding transfer of land to Heston Community School

Date: 21 June 2012

Determination

Under the powers conferred on me by regulation 7 of, and paragraph 17 of Schedule 6 to, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, I hereby direct that the transfer of land at Heston Community School (the School) consequent upon it becoming a foundation school shall include the dining block, the old fire station, the whole of the access road from the public highway, the sprinkler system and the sports hall. I also direct that the London Borough of Hounslow (the Council) register the unregistered land for transfer and that written agreements and licences are produced as soon as practicably possible. Shared facilities agreements (or service level agreements) which recognise the Council's legitimate expectation that its investments will provide the public purse with good value for money whilst providing the School with the ability to make flexible use of its site and premises should be drafted by the School for the dining block and the old fire station. Irrevocable licences should be drafted for the shared use of the access road, the sprinkler system, the sports hall and the bin store. Maintenance costs should be apportioned according to the sprinkled floor area for the sprinkler system and according to the number of pupils on roll for the access road. The licence for the sports hall should have a life time of five years and be initially drafted by the Council. The other licences should be initially drafted by the School. The agreements are further described in the body of this determination.

The Referral

1. Solicitors acting for Heston Community School (the School), wrote to the Office of the Schools Adjudicator on 19 March 2012 to request that the transfer of land from the London Borough of Hounslow (the Council) to the School that took place on 1 October 2010, pursuant to the School adopting foundation status, be determined so as to resolve a dispute between the School and the Council. The School contends that the transferred land should include the dining block; the old fire station; the access road which also leads to Heston Primary School (the Primary School); and a sprinkler system which benefits both the School and the Primary School.

Jurisdiction

2. Under the terms of regulation 7 of, and Schedule 6 to, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (the Regulations), the prescribed land transferred to the governing body of the School, pursuant to the School becoming a foundation school on 1 October 2010. The Regulations also specify in paragraph 17 that in the case of any matter on which agreement is required to be reached under paragraph 15 or 16, if such an agreement has not been reached within a period of six months from the implementation date of the change of category of the School, the matter may be referred to the Schools Adjudicator and the adjudicator may give a direction determining that matter, and may include in the direction any provision which may have been included in an agreement under paragraph 15 or 16.

3. I am satisfied that the transfer has been appropriately referred to me by the School and that I have jurisdiction to consider this matter under the powers conferred on me.

Procedures

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

- letters from the School's legal advisers, Browne Jacobson, dated 19 March and 14 May 2012;
- Land Registry documents AGL 14078 and AGL 139141;
- letters from the Council dated 13 April and 25 May 2012;
- a letter from the headteacher of the Primary School dated 20 April 2012;
- the School's Ofsted report of January 2012;
- plans of the disputed site provided by both the School and the Council;
- copies of the sprinkler system maintenance contract;
- copies of the draft minutes of the project board meetings of 10 September 2008 and 14 July 2009; and,
- a sports hall service level agreement dated January 2007 and a draft sports hall agreement dated 2008.

5. Correspondence submitted to me following the application has been copied to the Council or the School or the Primary School, as appropriate, all of whom have had the opportunity to comment.

6. I visited the School on 26 April 2012, and held a meeting at which

officers of the Council and representatives of the School and the Primary School were jointly present to gain a greater understanding of the details of the situation and to discuss the issues involved.

7. I have considered the representations made to me at that meeting, as well as the further information provided to me by the Council and the School.

Background to the application

8. In January 2012 OFSTED said of the School: "This school is much larger than the average sized secondary school. ... The school specialises in visual arts and is a trust/foundation school, partnered with the National Deaf Children's Society and the University of the Arts, London."

9. The School shares a campus with the Primary School.

10. The School became a foundation school on 1 October 2010, when a land transfer took place on the basis of the Regulations. However, no agreement had been reached about the extent of the land to be included in the transfer and nor was such agreement reached in the following six months.

11. Since no agreement was reached within the prescribed period, and the School now wishes to become an academy and transfer the land to the Heston Community Academy Trust, the School is seeking to resolve the dispute and its solicitors consequently wrote to the Office of the School Adjudicator on 19 March 2012 to request that a determination be made.

12. The Land Registry documents AGL 14078 and AGL 139141 show that the land in question is currently owned by the Council although the land is in two plots divided by a strip of land running south west to north east which is a water company easement and there is an unregistered strip of land running south to north.

The Issues in Dispute

13. The School's view is that the extent of the land to be transferred is clear but the Council have, until recently, failed to give any reason for not transferring the land. The School believes there are five issues or areas that are in dispute. The School contends that:

- i. the Council should provide a statutory declaration to evidence ownership of unregistered land that will be included in the transfer;

and the following should be included in the land transfer to the School:

- ii. the dining room;
- iii. the old fire station;
- iv. the access road; and,

v. the fire sprinkler system.

14. In contrast, the Council argues that the formal transfer of the land could not proceed at the time of the School's change of status as a major redevelopment of the site, due for completion in December 2011, meant that it was not possible to identify the land that would be transferred. Nonetheless the Council provided plans showing the current and indicative layout once the development was complete and believe it is incorrect for the School or its solicitors to state that they were not aware of this. The Council has two separate concerns of its own, the community use of the sports hall and the use of the bin store.

Consideration of Factors

I shall consider each of these seven issues in turn:

15. The unregistered land: The School understands that the Council has not been able to locate the documents giving title to the unregistered land and therefore should provide a statutory declaration to evidence title and that any associated costs be borne by the Council. The School believes that the wording of the statutory declaration has been largely agreed but requires confirmation of this from the Council.

16. The Council declared that it has no objection to registering the unregistered land once the Statutory Declaration has been agreed between the School and the Council and that it will meet the costs involved. At the meeting of 26 April 2012, when pressed by the School for a speedy resolution of this matter, the Council responded by stating that it anticipates that this will take no longer than a month.

17. I consider that it is entirely reasonable that the Council, which has assumed ownership of the unregistered land in the past, but is unable to locate the title documents, should now register the land in question and meet any costs of so doing. This process should be carried out promptly with the aim of completing the matter within a month of the date of this determination.

18. The dining block: The School understands that the Council wishes to use three rooms in the dining block for a proposed centre for visually impaired children. The School is, in principle, in support of this proposal but contends that, whatever the final arrangements, the School requires ownership of the rooms for pupil safeguarding reasons.

19. The School also believes:

- that substantial additional financial investment will be required;
- the proposal is subject to the Council, the School and the Royal National Institute for the Blind agreeing acceptable terms; and,
- the Council is suggesting that if the identified rooms were inappropriate for visually handicapped pupils then the School

should provide rooms elsewhere. The School states that it has no other space available for this purpose and further provision would therefore involve costly buildings or alterations.

20. The Council confirmed that it has requested the use of rooms in the dining block for visually impaired children. It explains the sequence of events leading to this by stating that it initially agreed that the block would transfer to the School but that it would need access to the three rooms that were specifically designated for exclusive use for adult education as well as toilet facilities. Following a site meeting on 1 February 2012, the Council accepted the School's view that use of these rooms by adults posed challenges to the safeguarding of children and agreed to relocate adult provision to the old fire station building.

21. The Council agrees that it then informed the School that it would require the designated rooms within the dining block, or similar sized accommodation elsewhere on the site, as a centre for visually impaired children. This would be a borough wide resource running alongside the existing hearing impaired unit and the agreed investment to establish the centre would be funded by the Council. The Council contends that the School failed to confirm whether or not it was in agreement with this proposal nor had it previously raised concern about additional financial investment being required. Furthermore, the Council is unclear what safeguarding issues remain as the centre will only be used by school children and not members of the public.

22. At the meeting of 26 April 2012, the Council agreed that the dining block should be included in the land transfer and that it will provide funding for any capital alterations required for the visually impaired centre, whether this was situated in the dining block or elsewhere. The Council stated that it was content that agreements concerning use of School accommodation should reflect the School's changing needs in response to timetable demands.

23. The dining block is an important and essential part of the School, the use of which brings a number of safeguarding challenges (see section on access road below) and, for these reasons, should in my view transfer to the School.

24. The provision of a borough wide specialist unit for visually impaired children is supported in principle by all parties but in my opinion will only succeed if there is flexibility in arrangements and a willingness to make the provision work in the long term. I therefore conclude that, if the School agrees to the use of classrooms in the dining block or elsewhere, the cost of suitable adaptations should be met by the Council and a shared facilities agreement (or service level agreement) drawn up between the School and the Council. This shared facilities agreement should be initially drafted by the School. It should recognise the Council's legitimate expectation that its investment will provide the public purse with good value for money whilst providing the School with the ability to make flexible use of its site and premises.

25. The old fire station: The School states that, with its prior agreement,

the Council currently uses the old fire station for adult education. The School is content for this to continue but subject to this building being transferred to the School and the agreement of a suitable service level agreement negotiated on an annual basis.

26. The Council contends that it has agreed that it will be transferred to the School and that a draft service level agreement has been requested of the School's solicitors but to date this has not been forthcoming. However, the Council now feels a licence to use the building will be more appropriate.

27. The old fire station is used in the most part by the School and its use involves safeguarding issues associated with pupils crossing the access road (see below). For these reasons, I believe that its access and control is best managed by the School and the old fire station should therefore be included in the land transfer.

28. The Council believe a licence is a more appropriate form of agreement for shared use of the old fire station. I am of the opinion that any agreement needs to balance the School's need to make flexible use of its site especially in response to the yearly demands of the School's timetable and the Council's legitimate expectation that any investment on its part will provide the public purse with good value for money. I conclude therefore that an irrevocable licence is not appropriate and that the School should draft an initial shared facilities agreement that may be renegotiate yearly but should recognise the Council's value for money criteria.

29. The access road: The access road is the only access to the site. There are exits for the Primary School and deliveries to the dining block to the west of the site and for the School's staff, visitors to the sports hall and other deliveries to the east of the site.

30. The School contends that the whole of the access road (as shown on the plan supplied to me by their solicitors) should be transferred to its ownership so that it can control access to the site. The School is of the opinion that this is important for safeguarding purposes, especially as the School operates a Council centre for hearing impaired children on its site. The School is content to grant rights to the Council to use the access road for the benefit of the Primary School. The School contends that the part of the access road beyond the gate, leading to the highway, should be subject to a contribution from the Council for maintenance on a 50/50 basis.

31. In contrast, the Council states that the access road has served the two schools for many years and fails to see why the change in the School's status necessitates the transfer of the access road to it. Furthermore it contends that the majority of the access road is not within the agreed land to be transferred. However the Council agrees to grant the School rights to use the access road subject to the School paying a fair proportion of the repair and maintenance costs.

32. The Primary School believes the access road to be the most significant issue. It believes that the access road is as important with regards to

safeguarding its pupils and controlling access onto its site, as it is for the School. The Primary School opened in its present building after the School had been redeveloped to its present configuration and has experienced difficulties with there being a shared access gate and shared road. This has related to the timing of deliveries (both for food deliveries for the secondary dining block and deliveries for the Primary School) and the access of staff other than at the beginning of the day. However, through liaison with the School, these have mostly been resolved.

33. Part of the access road between the dining block and the Primary School leads to the Primary School's car park and exit to the public highway. This must be crossed by Primary School children and parents at the beginning and end of school and during the school day for nursery children. The Primary School is therefore concerned about the safeguarding issues that this raises and considers it important for its needs and concerns to be accurately reflected in any agreement between the schools if the land is transferred to the School.

34. The Primary School also contends that it needs free access to travel on that part of the access road leading north to a vehicular access to its site just before the road turns east to run in front of the sports hall.

35. The Council contends that the access road has long served both schools and should remain in its ownership. I believe that the configuration of the access road is such that it provides significant management and safeguarding issues for both schools. I am of the opinion that the parties with the greatest need for security and effective management for the safety of their pupils are the two schools and especially the School, with its pupils walking across the access road at lunchtime and before and after lessons. Because I believe that the School is most in need of the security that ownership confers, I therefore conclude that the whole of the access road from the public highway ought to be included in the land transfer.

36. The use of the access road by the two schools is an essential part of the schools' ability to deliver statutory education to their pupils and for this reason I believe that the agreement between the School and Council should be in the form of an irrevocable licence. Because it will assume ownership of the access road, this should be initially drafted by the School.

37. Because there is a clear need for the Primary School to be able to address the safeguarding needs of its children and their parents, I believe it is essential that the licence reflects the shared use and supervision of the whole of the access road, including the electric entrance gate and the small parking area between the gate and the public highway. The licence should recognise both schools' needs and include the Primary School's right to access its gate near the sports hall.

38. The road and parking area between the electric gate and the public highway is used by both schools and their parents and visitors. I therefore conclude that the costs of maintenance of this section of the road should be

shared between the Council and the School. The School is considerably larger than the Primary School and will thus have greater use of this section of the road, for this reason, I am of the opinion that the costs should be shared in proportion to the two schools' number of pupils on roll and this arrangement should be included in the licence.

39. The Primary School may wish to consider installing a gate across the access road in front of the entrance to their campus beyond which parents and children may safely cross.

40. The sprinkler system: As part of a major redevelopment of the site, a new sprinkler system was installed for the benefit of the School and the Primary School. At the Meeting of 26 April 2012, all parties agreed that the sprinkler system was a fixture and fitting that fell within the terms of the land transfer. The tank is on the School's site and sprinklers are installed in the School's Hogarth building and the Primary School.

41. The School states that the Council required the School to be responsible for its maintenance and the School consequently entered into a maintenance contract at its own expense. Initially, the School contends, the Council wished to retain ownership but is now content that it be owned by the School subject to the Council having rights over it. The School is happy to give the Council rights of maintenance, limited to circumstances where the School has failed to adequately maintain the system, subject to the Council bearing a proportionate cost of the overall maintenance which they believe should be a 50/50 share. In addition, the School considers that the Council should pay the School the same proportion of maintenance costs undertaken by the School to date. This amounts to £1,040 per annum.

42. In a letter following the meeting of 26 April 2012, dated 14 May, the School stated that the maintenance contract undertaken by the School, at the Council's request, covered only the pump house and associated equipment that supplied the sprinkler valves in both schools but that the actual sprinkler valves in the Primary School were not covered. However in the accompanying information sent with this letter there is an email dated 11 May 2011, by the maintenance contractor to the site operations manager of the School, confirming to the School that "The service and maintenance agreement in place is to maintain adequate fire cover to both buildings. Although being a communal system the costs are charged to Heston Community School". This was confirmed by the Council which contacted the maintenance company on the 15 May 2012 and was similarly informed.

43. The Council contends that there is no requirement that one school or the other, or indeed the Council, should own the tank feeding the system. The Council believes this to be a simple maintenance issue and that the two schools should share the cost either on a 50/50 basis or if this is not acceptable then on a "sprinklered" floor area ratio for which the Council will supply the appropriate calculation.

44. The Primary School believes that although only a part of the School is covered by the sprinkler system, this part is larger than the Primary School and a fair system of apportionment of maintenance costs should be devised.

45. As a fixture and fitting the sprinkler system will transfer with the land to the School. I am satisfied that this is appropriate and that whatever the details of the current maintenance agreement, the system covers both schools and should be covered by one service and maintenance contract. Because the buildings covered by the system are of unequal size, the contributions from the two schools should be based on the relative size of the "sprinklered" floor areas. The agreement should be initially drafted by the School and should be in the form of an irrevocable licence to reflect the permanent and essential nature of the sprinkler system for the staff and pupils of both schools. The licence should include the Council's rights of maintenance in such circumstances where the School has failed adequately to maintain the system.

46. The School has requested that the Council pay retrospective maintenance for the system. The maintenance contract was taken out in June 2011 after the School had become a trust school in November 2010 and the land had formally transferred. It is my opinion that whatever the details of the current maintenance contract, since the agreement was willingly entered into by both parties it is inappropriate for this agreement to be changed retrospectively and I do not believe that the Council should make retrospective payments for the maintenance of the sprinkler system.

47. The Sports Hall: There is a multi-purpose sports hall on the School site, the construction of which was, the Council states, partly funded by the former Greater London Council on condition that it was available for use by members of the public.

48. At the meeting of 26 April 2012, the Council restated that this was the case and agreed to provide any supporting documentation to the Adjudicator by the 3 May. This it failed to do even after a further request and I can only conclude that the documentation is lost and given that the Greater London Council was dissolved in 1986, may no longer be in force.

49. It is clear from the School's website and brochures sent to me by the Council that there are full evening, weekend and holiday programmes for the local community. I was assured at the meeting I convened that both parties wish to continue to make the sports hall available to the community.

50. In a letter dated 14 May 2012, subsequent to the meeting, the School state that there has not been a signed sports hall agreement between the School and the Council to date and that the running of the community use of the sports hall was formally handed over to the School in January 2009. The School provided copies of draft minutes of the Project Board for the redevelopment of the site to this effect. The School also make the claim that the Council do not provide any financial support for the community use of the sports hall and that they must be free to run the sports hall as a cost recovery

centre and must be free to limit or cease the provision if this is unsuccessful.

51. In response the Council provided a copy of an agreement signed by the School and Council in 2007 but agreed that there had not been a more recent agreement. The Council further stated that the sports hall was purposely constructed for school and community use and when the responsibility for running of the sports hall community programme was transferred to the School, this was under the clear expectation that the community programme would continue, albeit without Council funding.

52. For the future, the Council maintain that it has no objection to the School running the Sports Hall on a cost recovery basis but will not agree to it limiting or ceasing provision of the community use. There is a shortage of publicly accessible sports halls in the west of the Borough and if the School at any point intends to change significantly the current public access the Council would want to be informed and have the option to discuss the alternative options. Hence the reason the Council wishes the School to enter into the community use agreement.

53. The School makes greatest use of the sports hall; it is essential to them for curriculum purposes and its use will carry inevitable safeguarding issues. I believe, therefore, it is proper that the sports hall is included in the transfer. Furthermore, the School is required to use its mainstream funding only for the provision of statutory education to its pupils, I therefore believe its policy of operating the sports hall as a cost recovery centre that must generate sufficient funding to cover the cost of running the facilities is appropriate and prudent.

54. However, the Council provided the initial capital for the sports hall on the basis that it be used by the community and a community programme has been in place for a number of years without Council funding. This provides an important facility for the School's parents and pupils, amongst others, in an area that the Council state is short of such facilities. Therefore, I am of the opinion that it is important for the community that the School does not cease or limit the community programme without consulting the Council.

55. For these reasons, I am convinced that there should be an agreement between the School and the Council defining the community programme and ensuring that it must not be limited or cease unless the School can show that it cannot recover its costs and has, with the Council's help, explored all other appropriate avenues of funding. This agreement should have a lifetime that allows both parties to plan provision in the future and should therefore have a term of five years after which it will be renegotiable. This agreement should be in the form of a licence that is initially drafted by the Council and should include a dispute resolution process.

56. Bin Store: There are bin stores on the land to be transferred to the School. One, which is used by both schools, is located on the boundary between the two schools on the east of the site. The Council states that the School has agreed that provision should be made for continued use by the Primary School but the School has stated that it will require the Primary

School to notify it on each occasion it wants to use the bin store. The Council consider this unreasonable and impracticable considering the frequency with which the bin store will be used.

57. The Primary School states that it has no other suitable alternative and requires continued access and use of the shared bin store without any restrictions.

58. In the meeting of 26 April 2012, the School explained that the bin store was on its site and it had a safeguarding duty to require suitable checks for any person who accessed their site, including the Primary School's caretaking and cleaning staff.

59. It is entirely proper and indeed a requirement that the School has in force safeguarding checks on all personnel on its site, notwithstanding that such personnel may be employees of the Primary School.

60. However, this duty can be discharged by an agreement between the two schools that the headteacher of the School is provided with written assurance that any Primary School member of staff, teaching or support staff, are on its single central record and that this record can be inspected at any time. Moreover the bin store in question is on the boundary of the School's site with the Primary School and any incursion onto the School's site is minimal.

61. It is my opinion, therefore, that the two schools should agree on suitable safeguarding procedures and protocols that will entitle the Primary School to use the bin store without unnecessary restriction. Because the use of the bin store is essential to the functioning of the Primary School and because it involves important issues of safeguarding, I am of the opinion that these procedures and protocols should be included in an irrevocable licence initially drafted by the School.

Conclusion

62. The Council contend that, for one area at least, a licence is more appropriate than an agreement. It is my view that shared facilities agreements (or service level agreements) and licences are both forms of a contract between parties that may be more or less formal. The agreements for shared use of the dining block and old fire station required are typical of shared usage arrangements which have traditionally been resolved by shared facilities or service level agreements and will require regular review and renegotiation, in particular to accommodate the School's changing demands based on its timetable requirements. I conclude that shared facilities or service level agreements are most appropriate in these two cases although they must provide value for money for Council investment. However, the use of the access road and the bin store raise important issues of safeguarding and are essential to the day to day provision of statutory education to pupils in the two schools; the maintenance of the sprinkler system is an essential safety and long term matter; and the sports hall community programme is a long term matter of importance to the local community. For these reasons, I

conclude that irrevocable licences are most appropriate in these cases.

63. Hence, having considered each of the seven issues, I conclude that for the reasons given above in the relevant sections:

- i. the unregistered land: the Council shall register the unregistered land at its own expense as soon as practicably possible.
- ii. the dining block: this will transfer to the School and, if the School agrees to the use of classrooms in the dining block or elsewhere, the cost of suitable adaptations should be met by the Council and a shared facilities agreement (or service level agreement) drawn up between the School and the Council. This should be initially drafted by the School and should recognise the Council's legitimate expectation that its investment will provide the public purse with good value for money whilst providing the School with the ability to make flexible use of its site and premises;
- iii. the old fire station: this will transfer to the School and the School should draft an initial shared facilities agreement (or service level agreement) for the use of the building by adults. As for the dining block, this should recognise the Council's legitimate expectation that any investment on their part will provide the public purse with good value for money whilst providing the School with the ability to make flexible use of its site and recognises the yearly demands of the School's timetable;
- iv. the access road: the whole of the access road from the public highway should be included in the land transfer. The agreement between the School and the Council should be in the form of an irrevocable licence initially drafted by the School; this should reflect the shared use and supervision of the whole of the access road, including the electric entrance gate and the small parking area between the gate and the public highway. The licence must recognise both schools' needs and include the Primary School's right to access its gate near the sports hall. The costs of maintenance of the road and parking area between the electric gate and the public highway should be shared, in the ratio of number of pupils on roll at the two schools, between the Council and the School and this should be included in the licence;
- v. the sprinkler system: this should be included in the land transfer. An irrevocable licence, initially drafted by the School, should be based on the relative size of the "sprinklered" floor areas and include the Council's rights of maintenance in such circumstances where the School has failed to adequately maintain the system;
- vi. the sports hall: this should be included in the land transfer. Community use of the sports hall should continue on the basis of a licenced agreement as described above. This should be initially drafted by the Council and include a dispute resolution process.

- vii. the bin store: this should be included in the land transfer. The two schools should agree on suitable safeguarding procedures and protocols that will entitle the Primary School to use the bin store without unnecessary restriction. These procedures and protocols should be included in an irrevocable licence initially drafted by the School.

64. The two parties may also wish to agree on a dispute resolution process, as determined for the sports hall licence, for other issues.

Determination

65. Under the powers conferred on me by regulation 7 of, and paragraph 17 of Schedule 6 to, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, I hereby direct that the transfer of land at Heston Community School (the School) consequent upon it becoming a foundation school shall include the dining block, the old fire station, the whole of the access road from the public highway, the sprinkler system and the sports hall. I also direct that the London Borough of Hounslow (the Council) register the unregistered land for transfer and that written agreements and licences are produced as soon as practicably possible. Shared facilities agreements (or service level agreements) which recognise the Council's legitimate expectation that its investments will provide the public purse with good value for money whilst providing the School with the ability to make flexible use of its site and premises should be drafted by the School for the dining block and the old fire station. Irrevocable licences should be drafted for the shared use of the access road, the sprinkler system, the sports hall and the bin store. Maintenance costs should be apportioned according to the sprinkled floor area for the sprinkler system and according to the number of pupils on roll for the access road. The licence for the sports hall should have a life time of five years and be initially drafted by the Council. The other licences should be initially drafted by the School. The agreements are further described in the body of this determination.

Dated: 21 June 2012

Signed:

Schools Adjudicator: Dr Melvyn Kershaw