

DETERMINATION

Case reference: LAN/000053

Applicant: The governing body of Pebble Brook Primary School, Crewe

Application: Regarding the freehold of the plant and meter room located within the children's centre which adjoins Pebble Brook Primary School

Date of direction: 28 August 2013

Direction

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 from Cheshire East Council to the Trust of the school, shall not include the plant and meter room that is housed within the adjoining children's centre. The council must protect the interests of the school by means of a contractual agreement which grants rights to the school to access the room to read meters and to maintain and repair any existing plant that exclusively serves the school and to renew and replace such items. The agreement must make clear that the council will retain financial responsibility for both the maintenance of equipment and services within the room that exclusively serves the children's centre and for the maintenance and all other associated costs of the room and installed services, other than those that relate to the school.

The Application

1. The governing body of Pebble Brook Primary School (the school), a foundation school referred an application for a direction to the Office of the Schools Adjudicator on 8 April 2013 to request that the transfer of land from Cheshire East Council, (the council) to the school, that took place on the school becoming a foundation school on 1 January 2012, be determined to resolve the dispute which relates to the transfer of the plant and meter room (the room), as the school and the council have been unable to reach an agreement.

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 land held and used by the council solely for the purposes of the school transferred to the governing body of the school, pursuant to the school becoming a foundation school on 1 January 2012.

3. Paragraph 17 of Schedule 6, provides that, as respects the division and apportionment of land, in the event that a local authority and the governing body of a foundation school are unable to reach agreement as to the apportionment of land held partly for the purposes of that school and partly for other purposes, within six months of the school becoming a foundation school; either the council or the governing body of the school might apply to the Adjudicator for a direction as to whether any land should be excluded from the transfer. The Adjudicator may make a direction determining the matter.

4. The case was referred to an adjudicator, Dr Stephen Venner. It became necessary to reassign the case and with the parties' agreement I took over as the adjudicator. I am satisfied that I have jurisdiction to consider this matter under the powers conferred on me.

Procedure

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

- the referral from the governing body dated 8 April 2013 and plans of the school campus and children's centre; received when the case was transferred on to me 17 May 2013;
- the response from the council, including Land Registry documents and a plan of the combined site of the school and children's centre dated 13 May 2013;
- a copy of the Transfer Control Agreement and plan dated 2008 provided by the school on 4 June 2013, and further comments submitted on 2 July 2013; and
- the council's response dated 24 June 2013 to a request for further information on 24 May 2013, additional comments dated 28 June 2013 and the final submission from the council dated 18 July 2013.

6. Correspondence submitted to me following the application has been copied to the council or the school, as appropriate, to afford both parties the opportunity to comment.

The application

7. The school became a foundation school supported by a trust, the Crewe South Co-operative Learning Partnership, on 1 January 2012 and as part of the negotiation about the extent of the land that would be transferred from the council to the school; the governing body requested the freehold of the room be transferred to the foundation trust. When this request was refused and in an effort to bring about a resolution, the school asked the council for a leasehold transfer of the room but this was also refused.

8. The school cites regulation 2 of Schedule 6 the regulations which applies when a community school converts to a foundation school. This states that, ' In such a case, 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..... vest in the trustees of the school.....'.

9. The school says that it requires the meters in the room to be returned to their original position (that is, within the school buildings); or failing that, the freehold of the room to be transferred to the trust; or at the very least that the trust receives a leasehold transfer of the room.

Background

10. The school which is situated on the southern outskirts of Crewe changed its status from a community school to a foundation school in January 2012. It is now a member of the Co-operative Association and supported by a trust, the Crewe South Co-operative Learning Partnership. The school and the council have reached agreement about the school premises but have been unable to reach an agreement about whether or not the council should retain the freehold of the plant and the room, which forms part of the buildings of the children's centre which adjoins the school.

11. An upgrade to services to accommodate a new nursery extension in 2007, led to alteration works within the school and children's centre to ensure that the site had sufficient capacity to cope with current and future power supply requirements. The council commissioned work on the school premises, when the school was a community school, to install a new electrical section board, within the electrical switch cupboard. Arrangements were made for the utility supplier to undertake the upgrade over the summer holiday period, when the site would be quieter than normal and disruption to the school could be avoided.

12. During the works, the school was advised that electricians would need to excavate the corridor and the head teacher's office for new main cabling to be laid but the school representatives on site at the time referred workmen back to their plans and asked for clarification. They then expected further discussions but as there were none; it was presumed that everything had been sorted out. The school switchboard and meters were relocated to a new plant room within the children's centre complete with sub-metering of the children's centre to monitor electrical usage.

13. Following representations from the school, the council noted there had been discussions on site with school representatives and that these had resulted in a change to the arrangements agreed by the council, as the client, with the contractor. When subsequently this appeared to be unsatisfactory to the school, the council pointed out that there had been no site meetings at which the council had been represented and concluded that it was unfortunate that the upgraded mains supply for the whole site had been relocated within

the new children's centre; and not the in main school, where they had arranged for it to be. The school says that it did not issue any direct instructions, but only asked for further clarification.

The views of the school

14. The school explains that as part of the negotiations with the council about the extent of the land that would be transferred to the school, following its conversion to foundation status, the governing body had requested the freehold of the room be transferred to the Trust. The dispute follows from the refusal of the council to include the room, which is located in a children's centre that adjoins the school buildings, in the transfer.

15. The school acknowledges that having the freehold of the room might cause some (undefined) difficulties and suggests that as the meters in the room serve both the children's centre and the school, a long term leasehold interest should be granted, together with rights to retain, and as necessary maintain existing services, in the room and the right to add new ones from time to time. However, when the council said it would not grant a leasehold agreement the school says it reluctantly agreed to a transfer of control agreement. The school says this agreement requires it to retain responsibility for the maintenance of the room in relation to its service to the school.

16. The key issue from the school's perspective is that the meters they wish to access had been originally located in the school building and the school asserts that the meters were moved during the summer holidays of 2007, into a room in the children's centre, without any discussion or consent being given by the school. When the school discovered that the meters had been moved out of the school building, the governing body made immediate representations to the council asking for the meters to be returned to their original position on the school site. They were advised by the council that the cost to the school would be £30,000, funding which the school did not have to spare.

17. The school contends that unrestricted access to the meters is required for the efficient running of the school. It is the school's view that the room was held and used for the purposes of the school and in addition the current transfer of control agreement states that the room is the responsibility of the school. The school would prefer that the meters were returned to their original location within the school buildings, or failing that redress, that it is legally entitled to the freehold of the room. At the very least the trust should be entitled to enter into a leasehold agreement with the council.

The views of the council

18. In its initial response to the application, the council explained that the children's centre buildings have been leased by the council to the proprietor of Safehands Care Limited and a lease dated 11 January 2013, which covers the period from 6 June 2011 for nine years, states that the permitted use of the centre is for a day nursery for the provision of childcare. The disputed

room is not included in this lease. In the council's view it would be not be practical to transfer the freehold of a room that is the plant and meter room for the whole site, to Crewe South Co-operative Learning Partnership, because the room forms part of a building which houses the children's centre. Therefore, the council has decided to retain the freehold of the room which serves both the children's centre and the school.

19. A transfer of control agreement issued in 2008 ensures there are rights for the transferee (the school) to access the room to read meters and maintain and repair their existing plant. The agreement outlines rights for the school to install new services and meters within the room at any point in the future but this right will be subject to the provision of sufficiently detailed plans and the full specification of the proposed works. Consent from the council would be withheld if in its opinion existing conduits would be overloaded as a result of such works.

20. The council has advised me that there was an informal meeting with the project team to discuss the events that led to the metering of the electricity supply being moved to the children's centre but there is no formal record of minutes on file from that meeting. A budget estimate was given by the contractor of approximately £30,000 to relocate the mains supply and the associated electrical works back into the school demesne, although for affordability reasons, this option was not pursued. The shared use of the new plant room, located within the children's centre was proposed and this was reflected at the time within the amended transfer of control agreement. For practical reasons of maintaining the plant and equipment, the council did not agree that the electricity store within the centre should become totally owned and managed by the school, but rather that the freehold should be retained by the council.

Consideration of the factors

21. The overarching assumption is that except where there is good cause all land used by the school before it proposes to change category should transfer to its governing body when the change of category is implemented. Land is defined in Sect 579(1) of the Education Act 1996 as "buildings and other structures, land covered in water and any interest in land." In this case 'land' refers to the room which contains the meters for both the school and the children's centre.

22. Paragraph 2(2) of Schedule 6 to the Regulations specifies that the land and buildings to transfer to the governing body is the land which before the implementation date was "held or used by a local authority for the purposes of the community school". This transfer of land has been agreed.

23. Land held by the council partly for the purpose of the school and partly for other purposes should have its ownership determined by reference to the statutory tests set out in the Schedule 6 of the Regulations and the first consideration must be given to whether it is practically possible to divide and apportion the land, in such proportions as may be appropriate.

24. As the freeholder, the council met the costs of upgrading the electrical services in 2007. Through some miscommunications on site, during a holiday period, the services for the school were moved into an adjoining but separate centre; and the school made representations at the time about the matter, but neither the school nor the council wished to bear the costs that would accrue from the works required to separate the services within the room. It is not for me to determine retrospectively, as part of this application, what actually led to the change to the council's contract with the supplier.

25. The children's centre is currently leased by the council to a private child care company, but the room which serves both the centre and the school, has been excluded from the lease. As explained above it would not be practical or possible to divide the room equally between the council and the school without incurring considerable public expenditure. I do not consider that this property could be apportioned.

26. In cases where the land and property or interest in such, does not permit its division or apportionment the next test to be applied is whether it is possible to determine which party has greatest need of the security afforded by owning the land. 'Security' applies not only to the physical security of the pupils and the school site but also to the security necessary to provide the activities conducted on the site.

27. The history of the land use and recent practice indicate that the council held the land originally and on a continual basis for the purposes of both the school and the children's centre. When the meters were installed in the new room sited within the children's centre in 2007, the school was a community school. Access was formalised in a transfer of control agreement between the governing body of the school and Cheshire County Council six years ago. The agreement which covers the period from 31 August 2007 to 30 August 2107. Between 2007 and 2012 when the school became a foundation school with a trust, access to the room was readily available to both the school and the children's centre jointly and remains so.

28. In my view the council has the greater need of the security afforded by owning the land, because it has primary responsibility for the provision of children's centres in the area, for use by and for the benefit of the community. It wishes to retain the freehold of the room in order to make continuing provision of child care services on the site. The room has not therefore been maintained solely for the purposes of the school and a leasehold agreement has not been issued because access to the room is also required by the current proprietor of the company that leases the centre.

29. My decision therefore is that the council has the greater need for the security that is afforded by owning the land. However, the guidance for decision makers states that 'Whichever party is awarded ownership of the land will need to make arrangements to protect the interests of the other party by means of a lease, licence or contractual arrangement.' While the room serves also the children's centre, the school will continue to require access into the room to reach utility services. In the draft transfer of land agreement

to Crewe South Co-Operative Learning Partnership, the council confirms the rights of the transferee (the school) to access the plant and meter room. It states in a section, 'Rights granted to foundation,' that the school is granted rights to enter the room to read meters and maintain and repair existing plant and to remain upon so much as is necessary of the retained land to inspect, clean, repair or maintain such. It also provides for the school to renew and/or replace any such items related to the electrical supply and metering subject to making good at its own expense any physical damage caused to the room in exercising such rights and in default the cost of any remedial works required by the council to the room, as a result of the exercise of the above rights by the school will be recoverable as a debt due to the school.

30. The right to install new services and meters within the room in the future is subject to council's consent and the provision of sufficient detail of such works including plans and specification of the proposed works, consent can be withheld if in the council's opinion existing conduits would be overloaded as a result of such works.

Conclusion

31. I have concluded for reasons given above that the council should retain the freehold of the room. Clause 5.1.6 of the transfer of control agreement in 2008 stated that the council would retain financial responsibility for the maintenance of equipment and services with the room that exclusively serves the children's centre. However that agreement also stated that school would retain responsibility for the maintenance and all other associated costs of the plant room and installed services other than costs incurred as set out in clause 5.1.6.

32. In retaining the freehold of the room the council must protect the interests of the school by means of a licence or contractual arrangement. This must state clearly that although the school will continue to be responsible for the maintenance of equipment and services within the room that exclusively serves the school, the council will retain financial responsibility for both the maintenance of equipment and services within the room that exclusively serves the children's centre and for the maintenance and all other associated costs of the room and installed services, other than those that relate to the school.

Direction

33. 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 from Cheshire East Council to the Trust of the school, shall not include the plant and meter room that is housed within the adjoining children's centre. The council must protect the interests of the school by

means of a contractual agreement which grants rights to the school to access the room to read meters and to maintain and repair any existing plant that exclusively serves the school and to renew and replace such items. The agreement must make clear that the council will retain financial responsibility for both the maintenance of equipment and services within the room that exclusively serves the children's centre and for the maintenance and all other associated costs of the room and installed services, other than those that relate to the school.

Dated: 28 August 2013

Signed:

Schools Adjudicator: Mrs Carol Parsons