

DETERMINATION

Case reference: LAN 51

Applicant: North Tyneside Council

Application: Regarding land at Hadrian Park Primary School

Date of direction: 25 February 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 at Hadrian Park Primary School from North Tyneside Council to the Governing Body of Hadrian Park Primary School Trust, consequent upon the School becoming a foundation school, shall exclude the unmade road and footpaths to the south of the School. There will be a lease, licence or other contractual agreement from North Tyneside Council to the School in respect of the unmade road and footpaths to the south of the School until the Council adopts the road as a highway and installs appropriate safety measures. (See plan at Annex A)

The application

1. North Tyneside Council (the Council) wrote to the Office of the Schools Adjudicator on 28 November 2012 to request that the transfer of land from the Council by operation of law on Hadrian Park Primary School (the School) becoming a foundation school on 1 September 2011, be determined to exclude the unmade road and footpaths to the south of the 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 and vested in the governing body of the School, pursuant to the School becoming a foundation school on 1 September 2011. Failing local agreement, either the Council or the governing body/trust might apply to the Adjudicator for a direction as to whether any land should be excluded from the transfer. I am satisfied that I have jurisdiction to consider this matter under the powers conferred on me.

Procedures

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

- correspondence from the School's governing body;
- correspondence from the Council; and
- various plans and maps of the site and buildings of the School.

4. Correspondence submitted to me following the application has been copied to the Council or the School, as appropriate, who have had the opportunity to comment.

5. I have also visited the School, in order to view at first hand the School site and accommodation and the geography of the locality. I arranged an informal meeting on 15 January 2013 attended by representatives of the Council and the head teacher and chair of governors of the School. At that meeting I consulted the parties about the matters of fact and the areas for consideration. I have considered the representations made to me at that meeting and subsequently and allowed a further consultation period for parties to comment.

The application

6. Although the School became a foundation school on 1 September 2011, when the land transferred by operation of law, no agreement has been reached about whether or not the unmade road and footpaths to the south of the School should be included in the transfer and therefore in the formalisation of the transfer documents. The School has insisted that the road should be included, but the Council has resisted that view.

The view of the School

7. The School argues that all the land to the boundary shown on the land registry document belongs to them. It argues that maps and plans of the site of the School show the boundary of the school to lie outside the fence and to include the footpath between the road and the school (the north footpath). The lamp posts on that footpath are connected to an electricity supply in the School and are therefore paid for from the School's budget as is the ground maintenance of shrubs and hedges of the southern, narrower footpath on the far side of the road.

The view of the Council

8. The Council argues that the footpath running along the southern boundary of the School lies outside the boundary fence, wall and access gates of the School's site and while the footpath and the road abutting it are used by the School, it is not, and has not been, exclusively used by the School. It contends that the access road and associated footpaths form part of the wider site owned by the Council which includes the Hadrian Park Education Centre (the "HEC") and is used as a means of access to this building by the Council and other parties.

Background

9. Hadrian Park Primary School became a foundation school when it joined the North Tyneside Learning Trust (the Trust) on 1 September 2011. The School was formed in September 2002 following the move from a three to two tier system of education in North Tyneside. There had previously been

two schools, a First School and a Middle School on the site; the Middle school was to the east and this was used to become the new primary school. The school and land on the west of the site was used for the HEC.

10. The HEC was closed 31 March 2012. The Council has declared this land surplus to requirements and is negotiating a sale of this land. The prospective buyer of the land has submitted a planning application for the “demolition of existing buildings and development of 66 family dwellings and associated parking, access, landscaping and highway works at the former Hadrian Park First School.” This application was refused by letter dated 8 March 2012 (but negotiations are continuing). Three reasons were given of which one was; “the opening of the existing access road to general traffic will result in conflict with pedestrians travelling to and from the School to the detriment of highway safety”.

11 To the south of the School perimeter and the HEC is a road and adjacent footpaths and this is the “existing access road” referred to above. This is the land that is in dispute.

12. It seems there is no viable alternative for access to the HEC site. To allow the development or any other use of the site to go ahead, the Council requires either ownership of the road and footpaths or full access rights over and along the road and footpaths with installation of various measures to allow highway adoption to take place.

The Dispute

13. The land that is the subject of this dispute is the section of access road to the south of the School site. However, ownership of this land is likely, to a large extent, to determine the use of the Council owned west site, as this road is the only identified suitable access to the site irrespective of whether it is for a potential building development or for other use. Both parties make reference in their evidence to possible use of the west site. The use of this west site land is not within my jurisdiction and I make no judgement upon it, however, reference to it is unavoidable as it has implications for the future use of the disputed land.

14. For the purposes of clarity, I intend to refer to the land in dispute as “the road” to include both areas of roadway for vehicles and footpaths for pedestrians, where it is necessary to distinguish between routes for vehicles and those for pedestrians I shall use the terms “roadway” and “footpaths”. Where further detail is necessary, the main wider footpath I shall refer to as the “northern footpath” and the other narrower one on the other side of the roadway is the “southern”.

15. In addition, in the initial papers, there was a further area of the site, the MUGA (multi use games area) that was still not resolved. I have been notified by the parties however that that matter has been decided and shall not comment further on this. It is shown on Annex A.

Consideration

16. I consider these matters with reference to the statutory tests set out in the legislation and the guidance. The first question is whether, at the point the School became a foundation school, the land was held for the purposes of the school; and, if so, was it held exclusively for the school?

There are a number of factors that I have considered in order to answer this question.

Maintenance and oversight

17. The School argues that the maintenance and supervision of the road has been their responsibility and demonstrates that it has been held on behalf of the School since before the change to foundation status. The School reports as follows;

- *“Access from the main road, Addington Drive, is restricted by pedestrian and vehicular (security) gates. This security gate has always been utilised to restrict access to the School (and, previously, schools) site by closing it when children were entering and leaving school to preserve the safety of children entering the School site. In addition, the gates are closed (and the site secured) when School is closed – 6.00pm to 7.30am Monday to Friday; all weekend; and all School holidays. This negates North Tyneside Council’s (NTC) claim that the footpath is a right of way – access is restricted for vehicles and pedestrians, initially to the first and middle schools and now to this School.”* The internal gate to the front entrance reception area (shown on plans as Gate B) *“does not secure the school grounds as this gate and adjacent fence are purely decorative and at the highest point on the curved panels is approximately five feet.*
- *Costs associated with the footpaths, road, grass, hedges and fencing were shared by the two schools, these costs being taken from allocated school budgets when Local Management of Schools was introduced in 1988/89 and schools were allocated budgets directly. NTC have made no contribution to the upkeep of these areas.*
- *Since this School was formed in 2001, the cost of maintaining footpaths, road, grass, hedges and fencing has been borne solely by the School – including adapting the footpath when the Disability Discrimination Act was introduced. Again, NTC has made no contribution to the upkeep of these areas. For example, requests for snow clearance has always been refused by NTC.*
- *Street lights on the northern footpath are financed totally by the School – this being the repair and maintenance of the lights and the ‘day-to-day’ running costs. Again, NTC has made no contribution to the upkeep of street lighting on this private road. In addition, the electrical wiring for these lamps runs into the School where control switches are also placed.”*

18. The Council argues that it also has taken responsibility for maintenance

and supervision, as follows;

- *“Prior to the closure of the Hadrian Education Centre (“HEC”) on 31st March 2012, the vehicular gates to the site were closed at certain times of the day to minimise vehicular movement during times of heavy pupil/pedestrian movement. This was restricted to the start and end of the school day and at the Nursery Unit arrival and departure times. At all other times between 6.30am and 6.00pm the gates remained open for access to visitors of the School and HEC, and for general pedestrian access across the access roads and paths from Augusta Court to Addington Drive.*
- *The caretaker is not the only key holder for the keys to the site. The Council commissions Council security services to retain a set of keys under a Service Level Agreement to provide security services for the HEC.*
- *With regard to holiday access, whilst the HEC was an operational Education Service provision venue, the gates remained open outside of school term time to allow access to staff during these periods. The School caretaker was employed under a separate employment agreement with the Council to provide opening and closing of the site and the HEC premises throughout the year. On personal leave periods, Security Services provided opening and closing services for the site and the HEC. Since the closure of the HEC as an Educational Service venue (July 2009), a number of community groups continued to use the premises, and the caretaker continued with his contract of additional hours to provide access to the site until March 2012. Again, this included use during periods of school holidays, during which payment was made and access was managed.*
- *The Council has installed highway restrictions on the road in the form of double yellow lines, a formal crossing place and traffic calming “cushions”.*”

19. Both parties have sought to demonstrate their assumption of responsibility by virtue of snow clearance and have had some correspondence over the matter. My view is that the snow is cleared for the convenience and safety of building users without necessarily being indicative of ownership.

20. Both parties have taken responsibility in some form for the maintenance and supervision of the road, for example the School funds the electricity for the external lighting and the Council pays for the caretaker’s additional hours to ensure access to the site out of normal school hours. I consider therefore that this demonstrates shared ownership by both parties (see paragraph 31 below).

Usage

21. The School argues that it is the major user, and, following my meeting at the School 15 January 2013 sent details of a survey it undertook, “We carried out a survey of pupils, parents, siblings, carers, etc entering the School at the Foundation Stage/KS1 entrance and a total of 374 ‘people’ were

counted between 8.35am and 8.55am. We estimate approximately 70 pupils and others using the Nursery/Main School entrance between these times. “

22. The Council argues that it has less, though yearlong, usage since the change from school to education and community centre.

23. I accept that the road at present has more people related to the School using it. However, the Council has used the road in some form since it was constructed, and was using it on the date the School changed its status and subsequently so again I consider this indicates that the road is in shared use.

Documentary Evidence as to extent of School site

24. The School argues that a plan at the time of the formation of the primary school in 2002 clearly shows the School boundary to be to the edge of the pavement outside the School fence. The boundary was established by the Council and has been used by the School since inception for all repair, maintenance and ‘updating’. It refutes that this is an architectural plan, as to the right of the plan is a key that states categorically that the dotted line refers to the ‘site boundary’.

25. The School draws attention to the timing of the transfer plans in that plans drawn up for transfer of land to the Trust did not take place until December 2011, well after the advertised sale of the land which was in September 2011.

26. It argues further that the record held by HM Land Registry shows that the land boundary for the School actually encompasses not only the northern footpath but also the private road and footpath to the south – up to the neighbouring houses. There has been no update to Land Registry records since this documentation was compiled and registered. On this basis, the School contends that as a consequence of the statutory transfer and vesting of land, that the transferee, the Trust, continues to hold the same title to the land that the transferor held – in this case, that land registered with HM Land Registry.

27. The Council’s view is that the plan to which the School refers is an architectural plan used for design purposes and is not a boundary plan drawn up to define the boundaries of the School. The footpath was constructed at the time the School was formed.

28. Its view of the land registry document is that the land registered under title TY275071 at the Land Registry Office is not specific to the School and comprises a wider title owned by the Council. Only the land used exclusively by the School before it changed category should transfer to the Trust, not all of the land within that title.

29. I accept that the plans for the formation of the primary school do indeed demonstrate a boundary outside the fence and appear to include the north footpath. It does not include the roadway or southern footpath. The land registry document shows the Council land in 1976, it shows the external

boundary of the entire site; I do not accept that it is a reliable indicator of how the land was divided at the point the School changed category, and it does not outweigh the evidence of shared ownership.

30. The question I now have is does the evidence above lead me to think that the land is held for purposes wider than the school, or for the purposes of the School and for other purposes?

Shared Ownership

31. It seems to me that both parties have used and contributed to the upkeep of the land. It is the main entrance and only vehicular access to both sites. A common sense view would be that it is a shared or joint drive. As such it belongs, in my opinion, to both parties. This is provided for in paragraph 15 of Schedule 6 to the Regulations. This provides that, where property is held, used or subsists partly for the purposes of the School and partly for other purposes, the property may be apportioned between the School and the Council; or, where the nature of the property does not permit such apportionment, it should be retained or transferred according to whichever party has the greater need of the security of ownership; or, where neither appears to be in greater need, whichever party is likely to make use of the land to the greater extent. The other party is to be protected by means of a lease, licence or other contractual agreement.

Division of land

32. I have considered whether it is possible to divide the land. The School in the first instance, and again at the meeting I held, indicated that it would be satisfied with the north footpath. This would of course prevent modifications to the road without their consent.

33. It does not appear to me that it is feasible to divide the land in this way. The Council has indicated that the building development could go ahead without the reduction to the width of the north footpath; I cannot then see what benefit it would be to the School to have the responsibility to maintain the footpath if were being used as pedestrian access to a housing estate or access for any purpose for which the site may be used .

34. As I consider the property is held, used or subsists partly for the purposes of the School and partly for other purposes, and it cannot sensibly be divided, it must either be transferred to the School, or be retained by the Council, with arrangements put in place for the protection of the other party. The test for whether it is to be transferred or retained is in two parts: who has the greater need for the security ownership affords; or, where both parties have an equal need, who appears likely to make use of the land to a greater extent?

When applying this test I have taken into account what might happen in the future and there are a number of factors that I have considered.

Use of the Council site

35. There is no direct educational use of the land in dispute. However the School has concerns about the proposed use of the west site (it describes it as an "overriding issue"). It refers to a commitment made by the Council that the site should be developed for educational and community purposes. It argues that should the development go ahead then the Council will not be utilising the footpath or road/footpaths for educational purposes. It refers to a letter dated 14 March 2002, written by the now Director of Children, Young People and Learning, to members of the community indicating that the site will be used for education and community purposes and that there was no intention of disposing of the school playing fields for housing or other purposes.

36. The Council's view is that the purpose for which its land, that is the west site, is to be used is not relevant to the boundary issue. The Council's Cabinet in 2011 decided to declare the site surplus to requirements and available for disposal.

37. While I recognise that the possible change of usage of the west site from education to residential will have implications for the use of the road and therefore for the School, the sale or not of the site is a matter for the Council and its planning process and as such it is not a matter for this determination.
School organisation and safety

38. The School has argued for the road to be included in the transfer on safety grounds. It is concerned that should the site to the west be sold for building purposes then there will be serious consequences for the School. It raises the following concerns:

- *"In the initial (rejected) planning application, there was a proposal to reduce the footpath outside the School by 0.7metres to extend the footpath on the southern side. With the addition of a proposed safety rail, this would drastically reduce the northern footpath and make it congested at school starting and leaving times.*
- *The private road is 5.2 metres wide (the minimum width for an adopted road is usually 5.5 metres) and it is not possible to enhance this road unless footpaths are further reduced.*
- *The impact of pollution on the School is difficult to ascertain. But on the basis that there are no vehicles currently using the private road and that the developers are proposing 184 car park spaces, there will be pollution issues relating to noise and air by the volume of residents and visitors cars, delivery vehicles and other vehicles visiting the site throughout the day.*
- *The School been informed that the development could take up to five years and during this time the 'pollution' (air and noise) will be enhanced by employees, building work, delivery lorries, etc on the site. Regardless of the actual build time, this will have a great impact on the School and its pupils."*

39. The Council argues that, should the site be sold, then:

- *"Early discussions / proposals from the developer provided for the reduction of the northern footpath and the widening of the southern*

footpath. This was replaced with a proposal for the footpaths to the north and south of the road remaining in their current width with the inclusion of safety barriers along parts of the footpath.

- Raised crossing points and traffic speed humps will also be installed. This will restrict crossing other than at two raised designated pedestrian crossing points. Parking and speed restrictions along the road will also be implemented*
- The Council's highways department has confirmed that the general regulations for highway width do indeed indicate that the highway should be no less than 4.8 metres for developments of 50 dwellings or fewer; in respect of developments of more than 50 the highway should ideally be 5.5 metres. However a highway for a development of 66 units would be acceptable at 5.0 metres.*
- The Council's environmental service department has confirmed there would be no pollution risk from a development of 66 dwellings.*
- Planning permission is granted that the development would be completed within three years. There is no evidence that the development would span five years."*

40. Clearly, increased traffic, whatever the mitigation measures, increases the risk of accident. There would undoubtedly be more noise and congestion as traffic queues to leave the access road and join the main road. In addition the increased volume of traffic and pedestrians would change the largely private, controlled environment into an entirely public one. The Council is requiring considerable safety measures as a condition of the scheme. Many primary schools are surrounded on more than one side by roads, in some cases all sides, and manage the situation successfully. All parties have the welfare of children as a main concern so, while I see the disadvantages, I do not consider this to be an insuperable difficulty.

Future Use and Access

41. The School has offered access to the west site by letter dated 17 October 2012 from the governing body to the Council. The access it offers is "that enjoyed by the NTC since First and Middle Schools were established on the site of the (old) Middle School – any employee of North Tyneside would have access to the site when required though if the site was secured, NTC would have to bear the costs of opening".

42. The Council has undertaken "to ensure that any sale will result in the upgrade of the road with the implementation of road safety features and parking restrictions to ensure the safety of children entering and leaving the school, as would be expected with any access to a school."

43. I understand the wish of the governing body to reduce the risk to pedestrians entering and leaving their school and minimise nuisance; I consider this to be a shared access and do not think it reasonable that one party should dictate who may use the other's site. For this reason I think the Council has a greater need for security of ownership.

Benefit to the local community

Both parties use this factor as their argument.

44. The School wants to protect its community from heavy traffic use and is concerned about noise and other pollution from building works. It wishes also that the Council's site remain for community and educational use.

45. The Council argues that the site is surplus to requirements and it is therefore in the community's interest to sell the site so that houses, including 17 affordable properties, are built.

46. I consider the wider community's benefit to be the overriding factor in the test of security of ownership. Who is best placed to decide on the benefits to the community of the use of west site? This decision should not, in my judgment, be dependent on the decision on the ownership of a piece of footpath or road. The community, that is the residents, the School and the Council should decide about the use of the west site through planning procedures. I note that planning permission has already been refused for reasons reflecting the School's concerns. For the greater benefit of the community then, I think it is best the road is owned by the Council, with protection for the School by means of a lease, licence or other contractual agreement until such time as the road is adopted as a highway.

Conclusion

47. My judgement is that both parties have demonstrated usage, maintenance and supervision of the road in varying degrees. I consider the land to be the means of access to both the School's and the Council's site. I conclude therefore that the land is held for purposes wider than the School. I view the road to be held jointly and that it cannot be reasonably divided. I must decide then who has the greater need for the security of ownership.

48. The School wants to safeguard its users by restricting access to those presently using the road. I consider this gives inadequate security to the Council and the future use of its land.

49. The Council too has responsibilities for the safety of users and is offering a number of safety and traffic measures if given ownership. In addition the School has been protected thus far by the planning procedures of the Council. I accept there may be significant consequences for the School on the disposal of the west site so the use of that land should be decided by the appropriate mechanism of Council consideration and consultation and not be dependent on this determination.

50. I therefore consider that the Council has the greatest need for security of ownership and the disputed land should be owned by the Council, with protection for the School by means of a lease, licence or other contractual agreement, until such time as the road is adopted as a highway.

Direction

51. 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 Hadrian Park Primary School from North Tyneside Council to the Governing Body of Hadrian Park Primary School Trust, consequent upon the School becoming a foundation school, shall exclude the unmade road and footpaths to the south of the School.

There will be a lease, licence or other contractual agreement from North Tyneside Council to the School in respect of the unmade road and footpaths to the south of the School until the Council adopts the road as a highway and installs appropriate safety measures.

Dated: 25 February 2013

Signed:

Schools Adjudicator: Jill Pullen

Annex A

