

DETERMINATION

Case reference: LAN/000035

Applicant: The Chafford School, London Borough of Havering

Application: Regarding land and a leisure complex at The Chafford School

Date of direction: 8 September 2011

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 The Chafford School from the London Borough of Havering to the governing body of the School consequent upon the School becoming a foundation school, shall include the area shown edged in red on the map held by the Council and the School with an agreement that the Leisure Complex shown edged in blue will be managed and used as set out in the draft agreement until the Council's contract with SLM Ltd ends on 30 September 2016 or the Council has terminated SLM's management of the Leisure Complex, if sooner. The terms for other maintenance and use of the School's premises shall be as set out in the draft agreement.

The referral

1. The governing body of The Chafford School (the School) wrote to the Office of the Schools Adjudicator (OSA) on 25 June 2011 to request that the transfer of land from the London Borough of Havering (the Council), the local authority, that took place when the School became a foundation school on 1 April 2008 be determined as the Council and School have not been able to reach full agreement on the transfer.

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 its becoming a foundation school in April 2008. Failing local agreement within six months of the School becoming a foundation school, either the Council or the governing body might apply to the Adjudicator for a direction. 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.
4. I have considered all the papers put before me including:
 - a. correspondence from the school;
 - b. correspondence from the Council with supporting documents; and
 - c. plans of the site and buildings of the school.
5. Correspondence submitted to me following the application has been seen by the Council or the School, as appropriate.

Background

6. On 1 April 2008 the School changed its category to foundation status. The Council did not raise any objections to this change and soon after the School became a foundation school the Council and School met to discuss the transfer of the freehold to the School. On the School's site there is a sports complex which is used daily by the School. It is also used out of school hours by the public. The complex known as the Chafford Sports Complex is subject to a lease and management agreement between the Council and Sports and Leisure Management Ltd (SLM). This agreement between the Council and SLM is subject to review on 31 March 2012 and ends on 30 September 2016.
7. Despite meetings between the School and various representatives of the Council no agreement has been reached over the transfer of land to the School following its change of status to a foundation school. The School has provided a "Heads of Terms" document produced by the Council after some of these meetings, but it has not been signed off by the Council.

The application

8. The School became a foundation school on 1 April 2008, when a land transfer took place on the basis of law. The application by the School refers to formalisation of this fact and resolution of the lease and management of the sports complex, an area marked in blue within the outer area marked in red denoting the School's boundaries on a map appended to the Heads of Terms document.
9. The referral indicates that the School believes the Council agrees with the content of Heads of Terms document in relation to the arrangements for the sports complex until either the review date or expiry of the agreement with SLM, but that no one within the Council seems to be authorised to sign it.
10. The School says it simply wants the issue resolved to transfer formally the freehold of the site and reach an agreement over the sports complex.

The view of the Council

11. The Council, after several reminders, replied in a letter of 4 August 2011 apologising for the delay and saying that the School had fairly set out the context and history of the case. It added that the sports complex is effectively a public leisure facility that is used extensively by the School during the school day, but is funded by the Council using its leisure provider powers rather than as a local education authority. The situation is further complicated as the facility is run for the Council by SLM Ltd with an agreement that runs until 2016.

12. The Council says it has been looking for a simpler solution than presented in the Heads of Terms document. The proposal is shown in the draft agreement as described below. The Council suggests that the benefits would be to have straightforward freehold transfer rather than have detailed lease provisions that would incur legal costs. The Council has provided a draft agreement which I have shared with the School. The Council has offered this agreement or, if the Schools prefers, it could still use the draft Heads of Terms agreement. The Council says the freehold transfer route was agreed with the School at a meeting on 24 January 2011.

The View of the School

13. The School has considered the Council's draft agreement that I forwarded from the Council. The School says it does not have any record of a meeting on 24 January 2011 and has not seen the draft agreement. However, it is content, indeed says it would willingly sign, such an agreement and thus accepts the Council's proposed solution with respect to the sports complex.

Consideration of Factors

14. 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" must transfer to the governing body on the date that the change of status takes effect.

15. I have taken note that the sports complex is wholly within the area shown as the school site. However, it is also clear that the complex was not funded as if it were school premises and has been managed by a third party, SLM Ltd on behalf of the Council. The agreement between the Council and SLM runs until 2016.

16. The draft agreement offered by the Council clearly sets out the transfer of "The Land" defined as "The site of the School as shown edged in red on Plan 1 annexed to this Agreement". It also specifies the arrangements with respect to the "Leisure Complex", that is the sports complex, defined as "The buildings and facilities shown coloured blue on Plan 2 annexed to this Agreement". The agreement also refers to parking arrangements out of the school day during term time for the public using the leisure complex and for maintenance of the leisure complex. In addition it says the School will not be

responsible for the maintenance and repair of the boundary fence along the common boundary between the School and Brady Primary School. The agreement records the School's intention to continue to provide certain facilities on its land and access to these facilities for the pupils of Brady Primary School which will be agreed between the School and Brady Primary School. The School has noted that there is one typographical correction to be made in line 4 of paragraph 7 of the agreement such that "lace" is amended to "place".

17. I have considered the draft agreement and the map provided by the Council and I note the acceptance of the School of the proposed agreement. Given that the School accepts the proposed agreement, I consulted the School on whether they wished me to prepare a determination on its referral or to proceed directly to signing the agreement with the Council. The School wishes to have a formal determination.

Conclusion

18. I have concluded that I should make my determination and accept the terms set out in the Council's draft agreement provided for me.

Direction

19. 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 The Chafford School from the London Borough of Havering to the governing body of the School consequent upon the School becoming a foundation school, shall include the area shown edged in red on the map held by the Council and the School with an agreement that the Leisure Complex shown edged in blue will be managed and used as set out in the draft agreement until the Council's contract with SLM Ltd ends on 30 September 2016 or the Council has terminated SLM's management of the Leisure Complex, if sooner. The terms for other maintenance and use of the School's premises shall be as set out in the draft agreement.

Dated: 8 September 2011

Signed:

Schools Adjudicator: Dr E L Passmore