

DETERMINATION

Case reference: LAN000030

Applicant: Aylesbury Grammar School Foundation

Application: Playing field land near Aylesbury Grammar School

Date of determination: 17 June 2011

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 Aylesbury Grammar School from Buckinghamshire County Council to Aylesbury Grammar School Foundation, consequent upon the School becoming a foundation school:

- 1. shall include the full width of the part of the Wendover Way playing fields, from the boundary with Turnfurlong Lane as far as a line drawn 110 metres from the customary position of the rugby posts at the Turnfurlong Lane end of the two pitches, as indicated in red on the plan dated 28th March 2011, produced by Brasier Freeth and appended to this adjudication as Annex 1, subject to:**
 - a. a reciprocal easement between Buckinghamshire County Council and Aylesbury Grammar School Trust for ball retrieval and the normal purposes of games across the above line, but not including a formal requirement for teachers' permissions to be obtained for the line to be crossed;**
 - b. an easement for Aylesbury Grammar School to mark and use a running track that extends no more than 10 metres across the above line;**
 - c. a restrictive covenant prohibiting the erection of any kind of fence along or near to the above line, with a reciprocal binding commitment by the Council; and**
 - d. an easement to provide access for grounds maintenance purposes for Aylesbury Grammar School through the double gates from Wendover Way and across land remaining with Buckinghamshire County Council; and**
- 2. shall not include any part of the Turnfurlong playing fields, which shall remain in the ownership of Buckinghamshire County Council, which shall give to Aylesbury Grammar School Trust a licence running for 40 years from 1st January 2008, with a requirement of two years' notice of termination, for the use of the**

rugby pitch as indicated in red on the plan dated 28th March 2011, produced by Brasier Freeth and appended to this adjudication as Annex 2, with Aylesbury Grammar School having priority of use for rugby and other physical activities, with the other schools which use the Turnfurlong playing fields being able to use the pitch at other times and with the present arrangements for the sharing of maintenance costs continuing..

1. Solicitors for Aylesbury Grammar School Foundation (“the School”) wrote to the Office of the Schools Adjudicator on 7th April 2011 to request that the transfer of land from Buckinghamshire County Council (“the Council”) that took place on the School’s becoming a foundation school on 1st January 2008 be determined to include part of the Wendover Way playing fields and part of the Turnfurlong playing fields.

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 Trust, pursuant to the School becoming a foundation school with a foundation on 1st January 2008. Failing local agreement as to the division and apportionment of property under paragraph 15 of Schedule 6 to the Regulations, either the Council or the School 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:

the referral email from the Trust’s solicitors of 7th April 2011, with accompanying papers, and a further submission of 5th May 2011;

the Council’s submission of 28th April 2011, with accompanying papers;

various plans of the playing fields in question, provided by both parties; and including plans of both playing fields dated 28th March 2011 produced by Brasier Freeth, surveyors jointly appointed by the County and the School; and

various background documents, including emails, minutes of meetings, land registry documents, a draft transfer and a draft lease.

Correspondence submitted to me following the application has been copied to the other party, who have had the opportunity to comment.

5. I visited the sites under dispute on 23rd May 2011, and met with representatives of the School and the Council, together with their legal representatives, to gain greater understanding of the details of the situation and discuss the issues involved. The meeting also included the headteacher of Grange School, which shares the Wendover Way playing fields, and the headteacher of Turnfurlong Infant School, representing Turnfurlong Infant School, Turnfurlong Junior School and St Edwards' Catholic Primary School, which are situated on the campus that also includes the Turnfurlong playing fields.

6. I have consulted the main parties on the proposed content of this adjudication, and have considered carefully the responses to that consultation.

The application

7. Although the School became a trust school on 1st January 2008, when a land transfer took place on the basis of law, no agreement has been reached about the inclusion or exclusion of particular portions of land and therefore no formalisation of the transfer has taken place. The School has insisted that portions, as defined by the School, of both playing fields should be included in the transfer, or, latterly in the case of the Turnfurlong playing fields, that a lease of 125 years should be granted. The Council has disputed the School's definition of land that might be transferred at the Wendover Way playing fields, and has disputed whether a transfer or a lease would be appropriate at the Turnfurlong playing field, where it would prefer a licence to be executed.

The School's view

8. Much of the School's submission relates to the previous negotiations that have taken place with the Council. In terms of the playing fields in question, the School's position is as follows.

a. At the Wendover Way playing fields, the School insists that, in order to maintain the position of 1st January 2008, land should be transferred by the County that provides two rugby pitches of 120 metres in length, including a 10 metres 'in goal end' (sometimes referred to as a 'run-off land') behind the goal posts at each end, and that these should be in the position shown on the Brasier Freeth plan of 28th March 2011 (appended to this adjudication as Annex 1).

b. At the Turnfurlong playing fields, the School initially requested a transfer of the area of the rugby pitch it claims to have habitually used, in the position shown on the Brasier Freeth plan of 28th March 2011 (appended to this adjudication as Annex 2), on grounds of its greater need for security and its greater usage than the Council. However, it has since moderated its position to request a 125 years lease of the pitch area.

The Council's view

9. The Council has produced evidence that it believes puts in question the validity of the School's demands. The Council's position is as follows.

a. At the Wendover Way playing fields, the Council is clear that part of the site is used by the Grange School, a community secondary school, as well part by the School. The Council questions some of the dimensions put forward by the School as being necessary for practical purposes or as being in accordance with the position on 1st January 08.

b. At the Turnfurlong playing fields, the Council may at some point have seemed to be in agreement with the School's request for a 125 years lease, but is now of the view that the shared use of the playing fields with the three schools which are situated on the campus that includes these playing fields makes a lease inappropriate. The Council believes a division of the whole playing field site is not practicable, that, on grounds of a greater need for security, the whole site should remain with the Council, and that a licence to use the pitch would be an appropriate mechanism to recognise and continue the School's usage.

Consideration

10. I recognise that, in summarising the Council's and the School's positions, above, I have not covered every contributory factor that they have brought to my attention. However, the factors that remain salient following my meeting with the parties will be mentioned in this account of my consideration of the parties' cases. The Regulations require that the point of reference for determining the matter of transfer or non-transfer of land should be the date when a school became a foundation school, in this case 1st January 2008. However, in this case, it is impossible to determine with total certainty the size and location of the areas of usage by the School as they existed on that date. I am grateful to the parties for their agreement to the principle that, where that is the case, they will accept agreed positions on the basis of there being no strong reason to believe that those positions are incorrect.

Wendover Way

11. Progress was made in terms of mutual understanding during the site visit and meeting that I held. Both parties agreed that, on the basis of land being held by the Council on 1st January 2008 for the benefit of the School, an area should be transferred to the School. This area would include the full width of the part of the Wendover Way playing fields, in length from the boundary with Turnfurlong Lane as far as a line drawn 110 metres from the customary position of the rugby posts at the Turnfurlong Lane end of the two pitches, as indicated in red on the plan dated 28th March 2011, produced by Brasier Freeth (and appended to this adjudication as Annex 1). This would enable a length of 100 metres to be maintained between the existing positions of the two pairs of goal posts, with a 10 metres 'in goal end' being provided behind the goal posts at each end of both pitches. This would not conflict with the long-jump sandpit and track that exist between the Turnfurlong Lane boundary and the end of the two pitches.

12. Discussion took place during my visit about the need for pupils from both the School and Grange School to be able to retrieve balls from their rugby and football pitches, respectively, across the new boundary that would be created by a transfer of land to the School. The Council and the School agreed that, rather than specifying precise areas, as had been previously proposed, it would be more helpful to provide for a reciprocal easement for ball retrieval and for the normal purposes of games generally across the line, and, for practical reasons, without a formal requirement for teachers' permissions to be obtained, as had also been previously proposed.

13. The School customarily, each summer, marks out an athletics track that extends beyond the boundary that is now envisaged on to land otherwise used by Grange School. Grange School has no objection to this practice continuing, and all parties have agreed that, alongside the land transfer, an easement should be granted for Aylesbury Grammar School to continue to mark and use a running track that extends no more than 5 metres across the above line (the measurement of 5 metres having been agreed between the parties subsequently to my visit). In fact, to provide some degree of flexibility, I am providing that 10 metres should be the prescribed measurement.

14. All parties are in agreement that it would be unhelpful for either the School or the Council to erect a fence along or near the new boundary, and have therefore agreed that a restrictive covenant prohibiting the School from erecting any kind of fence along or near to the above line should be included in the land transfer that is envisaged, with a reciprocal binding commitment being given by the Council.

15. The vehicular access from Wendover Way to the Wendover Way playing fields opens on to land that would be retained by the Council. So, all parties are agreed that an easement should be granted to the School for access for grounds maintenance purposes through the double gates from Wendover Way and across land remaining with the Council.

16. My attention has been drawn to a licence dated 29th May 2002 between the Council and a Mr Oxley, allowing the use of the Grange football pitches at certain times of the week. However, it is likely that the dimensions of the land that is the subject of the licence mean that the land in question includes a small portion of land included in the transfer to the School. It is unlikely, however, that reducing the area covered by the licence would have any material affect on Mr Oxley or his use of the site. It was therefore agreed at the meeting I held that the Council would forthwith give the required month's notice to Mr Oxley to terminate the licence, and grant him a revised licence that respected the anticipated new boundary, to take effect on the termination of the existing licence. The Council has, since the meeting, taken steps along these lines.

Turnfurlong

17. The School, by the time or of at the meeting I held, came to accept the Council's view that it would not be realistic to divide the Turnfurlong playing fields for partial transfer. The Regulations provide that, if division of a site used by more than one party is not possible, the foremost test to determine

which party should have ownership of the site is which party has the greater need for the security of ownership. Although the School had at some stages in the past claimed that it had the greater need for security, by the time of the meeting I held there was acceptance of the fact that, with the interests of three other schools on the site to protect, the Council had the greater need. I agree with this position, and it has therefore not been necessary to proceed to the following test, relating to the greater degree of usage. On that basis, I shall determine that the Turnfurlong site should remain with the Council.

18. The question remains of the most appropriate means of formalising and protecting the School's continuing usage of the area of the rugby pitch for rugby and other physical activities.

19. The School has argued strongly for the security of a lease, which, after an earlier proposal for a longer term, it now requests should be of 125 years' duration. The School is concerned to preserve its entitlement to use the pitch area, whatever future changes of use should occur on the overall site, and whatever, with the passage of time, should become of the three schools which share the campus with the playing fields. In order to allow some flexibility in an arrangement represented by such a lease, the School would accept some rolling break clauses in the lease to allow the Council to reposition the pitch if such a change proved necessary.

20. The Council, on the other hand, has argued equally strongly that a lease would remove the flexibility that it believes is important for fulfilling its strategic duty to look to the future and preserve the entitlement of all the schools involved. It has pointed out that it is quite conceivable that some or all of the other schools sharing the campus might – as the School hopes to do on the conclusion of this adjudication process – become academies, with a consequent need to lease further parcels of land. This, the Council maintains, would be difficult to achieve in practice, with much current shared use of the playing field by the four schools.

21. I have considered carefully the submissions on the matter of a potential lease made since my visit on behalf of the School and the Council. I recognise the goodwill being exercised by both parties in trying to adjust their demands to meet the concerns of the other side.

22. Although I recognise the School's natural and legitimate desire for maximum security, I have concluded that the Council's responsibility to protect the interests of all four schools involved outweighs the School's desire. I am therefore determining that the Council shall give the School a licence for its continuing use of the rugby pitch area, and am accepting the Council's suggestion at the meeting I held that, in deference to the School's desire for some security, the licence shall be for 40 years, terminable after no less than two years' notice. Although there has been much discussion as to the regularity and extent of the School's usage of the pitch area in question, it is clear to me, and neither does the School dispute, that other schools' children sometimes use parts of the area in question, both informally and formally. Discussion took place at the meeting I held as to a possible need to formalise a schedule of use by the School. However, as I suggested at the meeting, I

am determining for the sake of simplicity and flexibility that the School should have priority of use, other schools being able to use the pitch area when the School is not using it.

23. I have considered the Council's request, in responding to a draft of this adjudication, that I should specify that respective rights of usage for the various schools should be as obtained in practice on 1st January 2008. However, I am not convinced that total clarity could now be obtained on this matter. So, while happy to make this principle an informal recommendation to the parties, I am not including it in my determination. In its same response, the Council has reminded me of its willingness to enter into a shared use agreement in relation to the Turnfurlong playing field, alongside the licence that I am determining should be produced. I am happy to commend this opportunity to the parties.

24. I understand that the maintenance of the Turnfurlong playing field is currently organised by Turnfurlong Junior School, with each school paying a share of the costs, and I am determining that that arrangement should continue.

25. The School has, in its response to a draft of this adjudication, requested that I should specify a timetable of action to follow this adjudication and determination. I am confident that this determination in itself will be sufficient to remove any site-related obstacle to the School being designated an Academy, but nevertheless urge the Council and the School to move rapidly to implement the terms of this determination.

Conclusion

26. As described above, and for the reasons given, I am determining:

- a. that the area of the rugby pitches on the Wendover Way playing fields shall be transferred to the School, with safeguards for School and for the Council (and thus for Grange School);
- b. that the Turnfurlong playing fields shall remain with the Council, with the Council giving the School a licence for priority use of the rugby pitch.

Determination

27. 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 Aylesbury Grammar School from Buckinghamshire County Council to Aylesbury Grammar School Foundation, consequent upon the School becoming a foundation school:

1. shall include the full width of the part of the Wendover Way playing fields, from the boundary with Turnfurlong Lane as far as a line drawn 110 metres from the customary position of the rugby posts at the Turnfurlong Lane end of the two pitches, as indicated in red on the plan

dated 28th March 2011, produced by Brasier Freeth and appended to this adjudication as Annex 1, subject to:

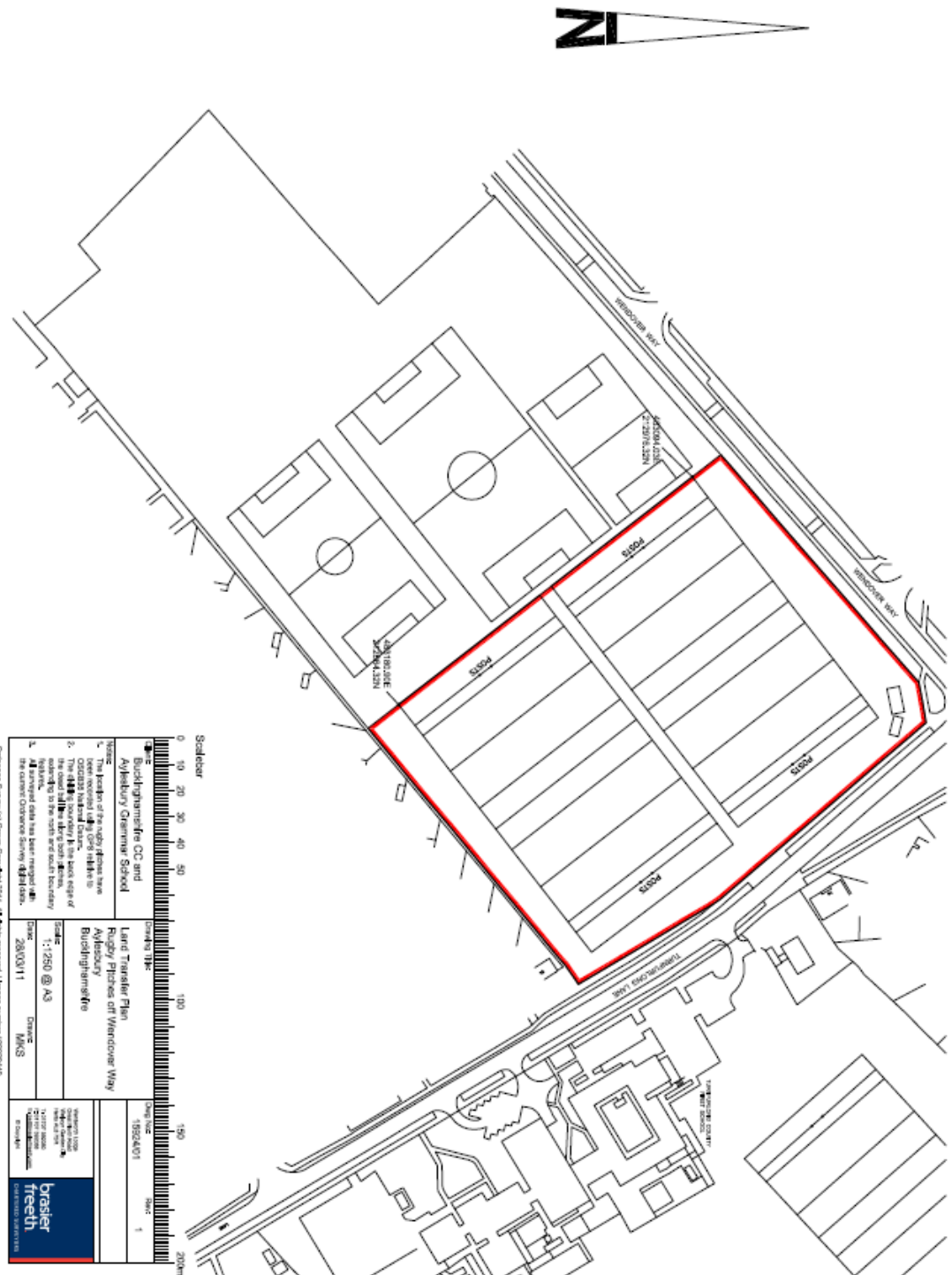
- a. a reciprocal easement between Buckinghamshire County Council and Aylesbury Grammar School Trust for ball retrieval and the normal purposes of games across the above line, but not including a formal requirement for teachers' permissions to be obtained for the line to be crossed;
 - b. an easement for Aylesbury Grammar School to mark and use a running track that extends no more than 10 metres across the above line;
 - c. a restrictive covenant prohibiting the erection of any kind of fence along or near to the above line, with a reciprocal binding commitment by the Council; and
 - d. an easement to provide access for grounds maintenance purposes for Aylesbury Grammar School through the double gates from Wendover Way and across land remaining with Buckinghamshire County Council; and
2. shall not include any part of the Turnfurlong playing fields, which shall remain in the ownership of Buckinghamshire County Council, which shall give to Aylesbury Grammar School Trust a licence running for 40 years from 1st January 2008, with a requirement of two years' notice of termination, for the use of the rugby pitch as indicated in red on the plan dated 28th March 2011, produced by Brasier Freeth and appended to this adjudication as Annex 2, with Aylesbury Grammar School having priority of use for rugby and other physical activities, with the other schools which use the Turnfurlong playing fields being able to use the pitch at other times and with the present arrangements for the sharing of maintenance costs continuing.

Dated: 17 June 2011

Signed:

Schools

Adjudicator: Canon Richard Lindley



Annex 2

