

## Determination

**Case reference:** LAN/000038

**Applicant:** Peel Park Primary School, Accrington

**Application:** that a parcel of land used for maintenance access to the School's playing field and a neighbouring residential property be excluded from the land transfer required pursuant to the School's change of status.

**Date of determination:** 5 December 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 determine**

**that all the land held for the purposes of the School, including the disputed parcel, shall transfer to the Trustees of Peel Park Primary School.**

### **The application**

1. The head teacher of Peel Park Primary School (the School) wrote to the Office of the Schools Adjudicator on 26 September 2011 on behalf of the School's governors and the Futures Learning Trust. There being no agreement on the matter between Lancashire County Council (the County Council) and the School, the governors and Trustees have submitted that the Adjudicator should direct that a strip of land used for access to the School's playing field and to a neighbouring private house be excluded from the land to be transferred from the County Council following the School's change of status.

### **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), made under the Education and Inspections Act 2006 (the Act), the prescribed land transfers to the governing body of the School, pursuant to the School becoming a foundation school. This School became a foundation school in December 2008.
3. The Regulations provide that, when the parties have not agreed the division or apportionment of property held for purposes wider than that of

the School, or held partly for the purposes of the School and partly for other purposes, the Adjudicator may make a direction determining the matter.

4. I am satisfied that I have jurisdiction to consider this matter under the powers conferred on me.

### **Procedures**

5. I have had full regard to the Regulations, the guidance given by the Secretary of State and to all other relevant legislation.
6. I have considered all the papers put before me including:
  - a. the School's initial application and subsequent additional material and submissions;
  - b. the County Council's comments on the School and Trust's submissions and supporting documents.
  - c. photographs and plans showing the site and the disputed parcel.
7. Correspondence submitted to me following the application has been copied to County Council or the School, as appropriate. Both parties have had the opportunity to comment on the other's submissions, and have, indeed, done so.

### **The view of the School**

8. The principal points made in support of the School's position are as follow.
  - a. The School accepts that the disputed land belongs to the County Council and has been held in part for the purposes of the School, providing occasional access to the School's playing field for grounds maintenance purposes.
  - b. They contend, however, that this is only one of the purposes for which the land is held, and that the other is to provide access to an adjacent residential property, the land for which was previously owned by the County Council and sold for development purposes. Since the occupiers of this property require daily access across the land, this is now the primary purpose of the land.
  - c. As the County Council benefitted from the sale of the land adjacent to the disputed parcel, giving rise to the right of access across the disputed parcel, it is unreasonable to require the School to bear the maintenance costs of this land.
  - d. The School requires a right of access across the land, but does not accept that it should own the land or inherit the maintenance costs associated with it.
  - e. The School is critical of the County Council's poor management of

the situation, and argue that it should not have to bear the consequences of any deficiencies in this regard.

### **The view of the County Council**

9. The County Council makes the following points in support of its position.
  - a. The records of the purchase of the land (a copy of which was submitted to me) demonstrate that the disputed parcel was acquired at the same time as the rest of the School's site for the purpose of the School.
  - b. It contends that its only interest in the disputed parcel has been its use for the purposes of the School. It has not been used by the County Council for any other purpose. The County Council reinforces its position by asserting that, if the land were not transfer to the School, it would seek to sell it.
  - c. The County Council acknowledges that part of the land is shared access used by the residents of the house at 1, Durham Street, but points out that the majority of the land is used only for access to the School's playing field.
  - d. The County Council does not accept that the maintenance cost of an area of land, most of which is under grass, would be excessive.
  - e. The County Council disputes the School's view of the ownership of the adjacent land. It argues that the land on which the adjacent house (1, Durham Street) was built has never belonged to it. It could hardly, therefore, have benefitted from the proceeds of any sale, as asserted by the School.

### **Consideration of Factors**

10. The Regulations made under the Act provide that where land is transferred in circumstances such as these, any rights and liabilities previously enjoyed by the transferor (in this case the County Council) are transferred to the School.
11. It is clear that the only use to which the County Council itself has put the disputed land has been to provide access to the School's playing fields. This does not seem to me to be affected by the fact that the occupants of 1 Durham Street may have acquired a right of access across the land. Such right would be one of the liabilities associated with the land.
12. The School argues that the County Council has held the disputed parcel for the dual purpose of providing access to the School's playing fields and meeting its obligation to respect the rights of access acquired by the owners of the neighbouring private house. Accepting, for the purpose of

this consideration, that the owners of that house have acquired such a right, I have taken account of the provisions of paragraph 15 of Schedule 6 to the Regulations. This states (inter alia) that the ownership of any property which is held partly for the purposes of a school and partly for other purposes and which it is not appropriate to divide shall be determined by reference to which body has the “greater need of security afforded” by the land in question. It is clear in this case that it is not appropriate to divide the disputed land: the whole strip is required for access whether to the School’s playing fields or to the neighbouring house. Applying, the “greater need” test, the School clearly needs to secure an access route for maintenance vehicles. The County Council has no need of the land. Indeed they have said that, if it does not transfer to the School, they would seek to sell it, with any liabilities regarding access transferring to the purchaser. On this basis, the School’s need for this land is clearly greater than the County Council’s.

13. The sale of the site of 1, Durham Street is clearly not a material consideration, as it was not sold by the County Council. In any event, even if the County Council had benefitted from such a sale, I am not persuaded that this would affect the position. Any proceeds would have contributed to the capital resources of the County Council from which the School would certainly have benefitted from time to time.

14. I cannot accept that the costs of maintaining this strip of land will be excessive or an unreasonable burden on the School. The costs of maintenance are also one of the liabilities which properly transfer to the School with its new status. It is open to the School to seek to resolve any matters relating to the land in the manner they argue the County Council should have done.

### **Conclusion**

15. I have concluded that there are no grounds for agreeing with the School that any portion of the land held by the County Council for the purpose of the School should be excluded from the land transfer occasioned by its change of status.

### **Determination**

16. 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 determine that all the land held for the purposes of the School, including the disputed parcel, shall transfer to the Trustees of Peel Park Primary School.

Dated: 5 December 2011

Signed:  
Schools Adjudicator: Andrew Baxter