

DETERMINATION

Case reference: LAN/000043

Applicant: Lampton School Academy Trust

Application: that the land used as playing fields by Lampton School be transferred by Hounslow London Borough Council to the School

Date of direction: 23 May 2012

Direction

Under the powers conferred on me by regulation 7 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 to Lampton School (now an academy) from Hounslow Borough Council consequent upon the former school having become a foundation school in December 2008, should include the land used for playing fields.

Jurisdiction

1. Schedule 6 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (the Regulations) applies in relation to the transfer of land where a school changes category or acquires a foundation. Paragraph 17 of Schedule 6, in effect, 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 the Schools Adjudicator may make a direction determining the matter.
2. Lampton School (the School) has recently become an Academy, but the matters for consideration in this case relate to the period when it was a foundation school. The Regulations therefore apply, and I am satisfied that I have the jurisdiction to determine the matters referred to me.

Background

3. The School became a foundation school in December 2008.
4. By operation of the law, the land and buildings held or used by the London Borough of Hounslow Council (the Borough Council) for the purposes of the School transferred to its governing body. But there was a disagreement between the Borough Council and the School as to the extent of the land to be transferred which needed to be resolved before the

transfer could be formally registered.

5. Whilst there was no disagreement regarding the buildings (including the caretaker's house - although there was some misunderstanding about this) and the land on which they stand, there was a disagreement regarding the adjoining playing fields. This disagreement had not been resolved at the time the School became an academy. Whilst this latter development has no direct bearing on the dispute, it has led the Academy Trust to refer the unresolved matter to the Schools Adjudicator.

Procedures

6. In considering this matter I have had regard to all relevant legislation and guidance.
7. I have considered all the papers put before me including:
 - Letters and supporting documents from the Lampton School Academy Trust dated 3 February and 25 April 2012 ;
 - letters and supporting documents from the Borough Council dated 24 February and 12 April 2012; and
 - a plan of the site and buildings of the School.
8. Correspondence submitted to me by the parties has been copied to the Council or the Trust, as appropriate: they have had the opportunity to comment.

The Dispute

9. The Borough Council has submitted that it should retain ownership of the playing field land because this would be the best way of securing the continuation of arrangements whereby the playing fields have (a) been shared between Lampton School and St Mark's School, and (b) been used as public open space, used "by the general community of Hounslow."
10. The Borough Council acknowledges that St Mark's School does not currently use the playing fields adjoining Lampton School, but contends that it did so up until 2008, and seeks to reserve the right to do so.
11. In response the Academy Trust argues that St Mark's School has not needed to use the playing fields in question for several years, and was certainly not using them in the period immediately prior to the School becoming a foundation school. It is further submitted that, as St Mark's School now has its own playing fields, it has no need to use any part of the disputed land.
12. In referring this matter to me the School submitted that there was also a dispute relating to the ownership of the caretaker's house. I note that, in their response to the School's submissions, the Borough Council advise

that they agree that this building and the associated land should transfer to the School. Indeed, they submit that they have never argued otherwise.

Consideration

13. The facts in this case are disputed. Most significantly, there is no agreement as to whether St Mark's School was making use of any part of the playing field during the autumn term of 2008, the period immediately prior to Lampton School's change of status to become a foundation school.
14. If the facts are as set out by the Borough Council and the land in question was used by two schools and, informally, by the general public in the period immediately before the School became a foundation school, the relevant provision is 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 Borough Council; or, where the nature of the property does not permit such apportionment, should be retained or transferred according to whichever party has the greater need of the security of ownership.
15. It does not appear to me in this case that it is feasible to divide the land. Neither has either party suggested this. So I turn to the question of which has the greater need of security. St Mark's School now has playing fields of its own, and, whilst it might wish to retain any right to use Lampton School's playing fields, it has not, even on the Borough Council's case, needed to use them since 2008. The Borough Council does not need to own land to which the public have access. Lampton School has no other playing fields and therefore needs to be able to make use of the disputed land for this purpose. On the facts presented by the Borough Council, I find that the School has the greater need of the security of ownership; if in fact the playing fields have been used exclusively by the School since 2001 (as the School contends) then the balance of need shifts further away from the Council and in favour of the School. Consequently in my view the disputed land should transfer to the School.
16. I stress that this relates only to the question of *ownership* of the land. Any legal right that might arise for St Mark's or the public to continue to use the playing fields would, by virtue of paragraph 1 of Schedule 6 to the Regulations transfer with the land. That is not, however, a matter for consideration by me.

Conclusion

17. I have not sought to resolve the differences of fact as to whether the land was used by St Mark's school or as a public open space immediately before the transfer. It has not been necessary to do so for the purpose of making my determination
18. I have concluded that the land used by the School as playing fields should have transferred to the governing body of Lampton School when it became

a foundation school, and thus transferred to the Academy Trust.

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 to Lampton School (now an academy) from Hounslow Borough Council consequent upon the former school having become a foundation school in December 2008, should include the land used for playing fields.

Dated: 23 May 2012

Signed:

Schools Adjudicator: Andrew Baxter