

DETERMINATION

Case reference: LAN 00039

Applicant: The Governing Body of Cressex School

Application: Regarding land at Cressex School

Date of direction: 3 July 2012

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 Cressex School from Buckinghamshire County Council to the Governing Body of Cressex School, consequent upon the School becoming a foundation school, include the disputed land. I further direct that the Deed of Transfer should include appropriate rights and reservations over the Disputed Land for the purpose of access to the Council's retained land together with appropriate obligations for the Council to contribute a fair proportion towards maintenance of the access road comprised in the Disputed Land.

The application

1. The governing body of Cressex School (the School) wrote to the Office of the Schools Adjudicator on 16 November 2011 to request that the transfer of land from Buckinghamshire County Council (the Council) that took place in law on the School's becoming a foundation school on 1 April 2010 be determined to include the disputed land.

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 the School becoming a foundation school on 1 April 2010. Failing local agreement, either the Council or the governing body/trust of 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.

I have considered all the papers put before me including:

correspondence from the School's governing body;

correspondence from the Council;

photos of the disputed land;

the Landscape Master plan for the Building Schools for the Future (BSF) development;

plans for the new buildings in which the School is now housed;

the School's most recent inspection report; and

correspondence from Bucks Tennis concerning proposed development.

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.

4. 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 9 March 2012. This was attended by the Chair of Governors and an additional Governor together with the Head Teacher. The original intention was to meet all parties on the same day but this proved difficult. Officers of the County Council asked for a date change and I eventually met them together with a representative of the Bucks Tennis Association, who was present at the request of the Council, on 22 March 2012 at County Hall, Aylesbury. At the meeting on 22 March 2012 I suggested to the Council that a further meeting might be held with both parties together but they did not want to pursue this suggestion.

5. A further issue was raised by the Council following the March meeting as a result of which I convened another meeting at the School on 27 June 2012. This was attended by the Chair of Governors, an additional Governor and the Head Teacher. I have considered the representations made to me all three meetings.

6. I have also discussed the content of this Direction with the main parties.

The application

7. Although the School became a foundation school with a trust on 1 April 2010, when a land transfer took place on the basis of law, no agreement had been reached about whether or not the disputed land should be included in the transfer and therefore in the formalisation of the transfer. The School has insisted that the disputed land should be included, but the Council has resisted that view. The present school buildings were constructed under the BSF scheme. Funding was made available in 2007 and handover was on 28 June 2010, with external areas being handed over on 18 April 2011. The Council continues to own the land housing the Tennis Centre, the nursery and the all-weather sports pitch. The School accepts the Council's continued ownership of this part of the site. The disputed land includes the main access route into the School's site, the access spur serving the Tennis Centre and

nursery, four disabled parking spaces and a triangular area of open land on the south west side of the access road. Following completion of the BSF works, the old school buildings on the disputed land were demolished. The disputed land was not landscaped as illustrated in the BSF Masterplan but left as waste ground in a prominent position within the school grounds.

The view of the School

8. The School states that the disputed land forms part of the School's site and has done so from the original date of construction of the School in the 1960s. The land was occupied by the School for the School's purposes up to the implementation date of 1 April 2010. It was only after designation as a foundation school with a trust that land ownership became an issue. The School maintains that the County does not have "a strong and immediate need" for the disputed land and that it was therefore in effect transferred on the implementation date.

9. The School states that the Council has said that it has a strong strategic need for the disputed land in order to provide sporting facilities for the local community. There is agreement between the School and the Council about use of the disputed land for community sports. There is however a major divergence of views about the nature of the community sports that should be offered on the disputed land.

10. While the Council wishes to extend the tennis facilities on the site, the School does not believe that such an extension would benefit the vast majority of the community it serves. The local community is not an affluent one and a substantial proportion of it is of Pakistani minority ethnic heritage.

11. According to the School, tennis is not a major sporting activity within the local community. But there is a need to offer more generally enjoyed sporting activities. Following the recent withdrawal of district council plans to extend local sporting facilities, the School has had discussions with a wide range of local sports organisations including badminton, cricket and hockey clubs about the further development of sports on the School site.

12. In conjunction with some of these organisations, the School has developed a vision for bringing increased opportunities for a range of sporting activities to a deprived area. These sports (in particular cricket) would develop existing local interests while offering local people and school students opportunities to develop new sporting skills.

13. The new School has already established itself as a local hub and resource in a disadvantaged area where amenities were scarce. Its roll is rising rapidly. It is becoming a venue for a wide range of activities. Community use and lettings have burgeoned and are now at full capacity. Furthermore, during examination periods the School's main gymnasium is frequently occupied for that purpose.

14. The School therefore proposes the development of sporting facilities within a multi-use facility on the disputed land. In conjunction with its partners, the School would raise funds to make this vision a reality.

The view of the Council

15. The Council contends that there was an understanding between itself and the School regarding the disputed land. The understanding was to the effect that the disputed land was only to be occupied by the School on a temporary basis and that upon completion of the re-building and re-development of the new School site, the disputed land would revert back to the Council and be used for the provision of community use facilities including community sports facilities.

16. In support of this contention the Council refers to minutes of meetings in 2007 and 2008 at which the redevelopment plans were discussed. The minutes show discussion of various possibilities for the development of sports facilities including specific discussion of proposals by Bucks Tennis.

17. However, there is no written agreement regarding the use of the disputed land. This is not surprising because in 2007/8 the School was a community school with no plans to change its status. There was therefore no question of land transfer.

18. The council contends that the disputed land is surplus to the school's requirements since the school is currently only half full.

19. It also states that it has identified a strategic need for the land to be used for sporting and community facilities which would be of benefit to the wider community. It cites correspondence with Bucks Tennis in particular in support of its sports development intentions. It says that the School's change of status prevented the Council from progressing negotiations with third parties who were interested in providing sporting facilities on the disputed land.

Consideration of Factors

20. The School is a mixed secondary modern school in a fully selective system. At its last full inspection it was judged to need improvement. Much has changed since then and the report of the last monitoring visit in May 2011 judged that "the school has made good progress in making improvements and good progress in demonstrating a better capacity for sustained improvement. Good progress has been made in raising achievement, in improving learning and in accelerating the progress students make."

21. Since the new buildings opened and the School started to develop its new role as a local community hub, the roll has increased rapidly and first preferences have trebled for September 2012. Four hundred families attended the last meeting for parents. This suggests that the school will continue to expand rapidly and will need space.

22. Almost three quarters of pupils speak English as an additional language. Around 70 per cent of pupils are of Pakistani heritage. Over a third are eligible for free school meals and around 40 per cent are on the special needs

register. Pupils' attainment on entry to the School is well below the national average.

23. The Governing Body's vision places the School at the centre of the local community and sees building links with families as one of the keys to raising achievement. Engaging the community through offering enhanced community sports facilities is central to this vision.

24. The School's sports and other facilities are currently fully booked. As a result, on average two groups a week are turned away.

25. Bucks Tennis already occupies premises on the site. It would like to expand and develop its facilities. It is generally working at 78 per cent capacity during off-peak hours and 96 per cent capacity during peak hours. It would like to develop a facility of national importance on site in association with the Lawn Tennis Association.

26. Bucks Tennis also runs school holiday courses, coaching courses for local schools, an after school club and has launched various initiatives to attract local residents. It says that 30 to 40 per cent of participants in children's activities are from the local Asian heritage community while usage of courts by local adults is between 10 and 15 per cent.

27. Bucks Tennis clearly provides very well used and important facilities for one sport. Enhanced facilities would enable that sport to develop further in Buckinghamshire. The Council says that such development is part of its strategic thinking but it is not set out in any of the Council's plans.

28. The School's vision for community sports is a wider and more local one, encompassing a range of activities and building upon the known preferences of the local community. It is set out in "Planning for Our Sports". This ambitious plan, developed in conjunction with Wycombe Sports Village Group who are a group of local sports and business people, details the aspiration, the financial basis and the potential timelines for the realisation of the vision. The aspiration is for the School to become a centre where all of the community can play, participate or watch sport as part of a partnership between school, community, youth and sports.

29. It is also intrinsically linked to the School's strategy for engaging parents and thereby helping to raise achievement. I therefore judge that the School's claim will give greater benefit to the school and to the local community.

30. The Council contends that the disputed land is surplus to the School's requirements since the school is only half full. It is true that the School is currently only half full, but the roll is expanding rapidly. In the light of the School's rapid expansion, coupled with its powerful vision for community use of the site, I cannot agree that the disputed land is surplus to the School's requirements.

31. Schools are charged with safeguarding their pupils. Though neither of the proposals in question raises particular safety issues, the current situation does. The current arrangements for access to the School are hazardous but I

have been told that works are about to be undertaken that will resolve this. However, the present state of the disputed land is not just unsightly but also, in the words of the head teacher, “an invitation to nefarious activities”. It is important that work is done as soon as this dispute is resolved to make short term improvements on the ground. Both parties have assured me that they have funding in place that would enable them to move forward immediately and rectify this situation.

Conclusion

32. In principle, when a school changes category all the land used by the school should transfer unless there is good cause to the contrary. The Council has argued that in this case, the disputed land is surplus to the reasonable needs of the School. The School has a pressing need to raise achievement. Building strong links with the local community is central to its strategy for doing so. Extending community use of the site through enhanced sports provision forms part of that strategy. I therefore rule that the school has a reasonable need for the disputed land.

33. The Council has also argued that it has a permitted, strategic use for the land and that this is for the benefit of the local community. It has not provided me with any strategic plans that include this use. I accept that the proposed use would offer some benefit to the School and the local community, but I consider that the School’s proposed use offers a far greater benefit to both.

34. I therefore rule that the transfer of land should include the disputed land. This site will continue to be shared and the parties have agreed in principle that a transfer of rights, liabilities and contributions towards maintenance of the access route is needed if the disputed land transfers to the school. The tennis centre’s access to its premises is currently via the access road situated on the disputed land. The right of access is specified in the lease, but the use of the current access route is not formally recorded. The same is true for the nursery. These rights should transfer. The leases for the nursery and the tennis centre contain obligations for both tenants to contribute towards the costs of maintaining the access road. These obligations should transfer. The Council is content to continue the arrangement whereby the School has use of the all-weather pitch and for this use to be protected for the life time of the School. The Council has also agreed that, were it to be necessary for the pitch area to revert to a grassed surface, the School would still retain its right to use of the area.

35. This had been a lengthy case. A large part of the disputed land is in a neglected state and this detracts significantly from the otherwise impressive impact of the School’s new buildings. It is therefore to be hoped that the deed of transfer can now be speedily agreed.

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 Cressex School from Buckinghamshire County Council to the Governing

Body of Cressex School, consequent upon the School becoming a foundation school, include the disputed land. I further direct that the Deed of Transfer should include appropriate rights and reservations over the Disputed Land for the purpose of access to the Council's retained land together with appropriate obligations for the Council to contribute towards maintenance of the access road comprised in the Disputed Land.

Dated: 3 July 2012

Signed:

Schools Adjudicator: Janet Mokades