



**DETERMINATION**

<b>Case reference:</b>	<b>LAN0059</b>
<b>Applicant:</b>	<b>NCHS The Science College, Newcastle-under-Lyme</b>
<b>Application:</b>	<b>Transfer of land from Staffordshire County Council to Westlands Primary School</b>
<b>Date of direction:</b>	<b>1 September 2014</b>

**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 from Staffordshire County to the trust of NCHS The Science College consequent upon the school becoming a foundation school with a trust, shall include shared ownership of the access road currently used by the school and Westlands Primary School, so that the trusts of NCHS The Science College and of Westlands Primary School shall own the access road equally and jointly.**

**Within the legal agreement associated with the deed of transfer there shall be the condition requiring that NCHS The Science College works with Westlands Primary School to utilise whatever preventative measures are necessary to enforce the prohibition on car parking on the access road.**

**The council shall therefore work together with the trusts of both schools to draw up the legal agreement required to formalise the joint ownership of the access road by the trusts of the two schools, and the prohibition of parking on either carriageway of the access road.**

**The application**

1. NCHS The Science College (NCHS) wrote to the Office of the Schools Adjudicator on 19 May 2014 to challenge the proposed transfer of land, a shared access road off Ostend Place in Newcastle-under-Lyme, from Staffordshire County Council (the council) to the sole ownership of the governing body of Westlands Primary School (Westlands). NCHS became a foundation school with a trust on 1 September 2013 and since that time the transfer of ownership of the land in question has remained in dispute. NCHS have requested that the transfer of land, that was to have taken place on NCHS becoming a foundation school on 1 September 2013, be determined to include shared ownership of that access road currently used by the school and Westlands Primary School (Westlands).

## **Jurisdiction**

2. I am aware that The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (2013 Regulations) came into force on 28 January 2014, but I have decided that this is not the relevant legislation as it was enacted some months after NCHS became a foundation school and the land in question had become the matter of dispute. Accordingly, the relevant legislation which was in force at the time NCHS became a foundation school is The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 as amended (the 2007 Regulations).

3. Under the terms of Regulation 7 of, and Schedule 6 to, the 2007 Regulations, the prescribed land transferred to the governing body of NCHS, pursuant to the school becoming a foundation school with a trust on 1 September 2013. However, the land has never formally transferred from Staffordshire County Council at that time as ownership of the access road used by both NCHS and Westlands has been in dispute.

4. Failing local agreement within a period of six months from the implementation date, either the council or the governing body might apply to the Adjudicator for a direction. Since no agreement was reached within the prescribed period, and since NCHS has requested that a determination be made by the Adjudicator after the end of this period, I am satisfied that the transfer has been appropriately referred to me and that I have jurisdiction to consider this matter under the powers conferred on me.

## **Procedures**

5. In considering this matter I have had regard to all relevant legislation and guidance.

I have considered all the papers put before me including:

- the application letter from NCHS dated 19 May 2014;
- email correspondence and attachments from NCHS dated 5, 11 and 16 June 2014;
- submissions from Westlands dated 3, 5, 6 and 10 June 2014;
- the council's submission of 6 June 2014 with attachments including the title plan and register of title which includes the land in dispute, the conveyance dated 11 January 1965, the deed of exchange dated 9 August 1967, and current aerial photographs of the area;
- the council's further response of 10 June 2014 including the minutes of meetings and email correspondence in the period August 2013 to May 2014;
- the presentation notes and copies of the documentation used by NCHS at the meeting on 19 June 2014 including historical site plans and appendices copied to all parties on 24 June 2014; and

- notes from an NCHS governor, and copies of communications with the local Member of Parliament, emailed by NCHS on 24 June 2014.

6. I arranged an informal meeting on 19 June 2014 (the meeting) attended by representatives of NCHS, the council, and Westlands, and before that meeting I took the opportunity to visit NCHS and Westlands in order to view at first hand the two school sites, the disputed access road, and the geography of the locality.

7. The correspondence submitted to me following the application has been copied to NCHS, the council and Westlands as appropriate. I have considered the representations made to me at the meeting, and the correspondence before and afterwards in chronological order of receipt.

### **Background to the application**

8. NCHS and Westlands occupy neighbouring sites separated only by the access road which appears to have been shared by both schools for many years. The access road leads to the main entrance and reception areas of each of the two schools. NCHS is a secondary co-educational comprehensive school for nearly 400 pupils aged 11 to 16 years. It was founded in the late 1960s as Orme Boys Secondary School, which then amalgamated with Westlands Girls School to become Edward Orme County Secondary School. Following several reorganisations and name changes, NCHS became part of the South Newcastle Federation Trust with Clayton Hall Business and Language College (Clayton Hall) in February 2010, and became a foundation school with a trust on 1 September 2013.

9. On its website, Westlands is described as *“a primary school with nursery, for children from birth to 11 years old ... serving the community of Westlands and surrounding areas.”* There are almost 200 pupils currently on roll at Westlands, and the website of the private nursery *“Little Stars”* details that it has places for 104 children and has 25 staff. Westlands changed status from being a community school to a foundation primary on 1 March 2014, and is now part of the Newcastle Co-operative Learning Trust.

10. I have received extensive documentation and will refer to much of it in this background section to set out the how the current position has been reached between the council and the two schools.

11. In an email of 6 June 2014, the council’s solicitor supplied the official copy of the register and title plan issued on 15 August 2013, Land Registry title number SF519685, which shows the extent of the land currently owned by the council on which NCHS, Westlands and the access road are located. The two schools share a site of circa 39,610m<sup>2</sup> which originated from two property transactions: a parcel of land described in the conveyance of 11 January 1965 and a second parcel of land which was the subject of the deed of exchange dated 9 August 1967. The access road is on the edge of that portion of land acquired the Deed of Exchange dated 9 August 1967.

12. Notes on the history of the school, provided by an NCHS governor who had previously been deputy headteacher at the school, indicate that at the time the predecessor schools were built, *“Newcastle Borough Council had responsibility for all educational matters within the borough, and through its Education Committee planned and maintained its own schools. This was the case until the reorganisation of local government in 1974, when responsibility for educational matters was transferred to Staffordshire County Council... [which then assumed] responsibility for the [predecessor] school some nine years after it was planned and six years after the school opened”*

13. From the historical records provided by NCHS it appears that Orme Boys County Secondary School, one of the two predecessor schools of NCHS, was the first school to open on the site in 1968. The second predecessor, Westlands Girls School, moved into an adjacent new building in 1969. NCHS also provided copies of extracts from the County Council Book of Records which at page 396 shows that the appointment of Westlands’ first headteacher was made on 13 October 1969, and at page 285 that Westlands was due to open in January 1970. The historical records therefore indicate that the primary school was built after the NCHS predecessor schools.

14. The historical plan shows the buildings of the NCHS predecessor schools, Edward Orme Boys and Westlands Girls, the access road serving the girls’ school, and two areas of land identified for a *“future nursery”* and a *“future junior, middle and infant school”* on the land directly opposite the predecessor girls’ school, but Westlands was eventually built on a different location, that which was originally proposed for *“future nursery”*. The plan indicates that the access road served the main entrance of the NCHS girls’ predecessor school before Westlands was constructed, but also that the access road was always intended to be shared between both schools.

15. Although no formal minutes or records had been taken of any discussions or meetings related to the land transfer that occurred before NCHS submitted the application, the solicitor for the council enclosed, with the submission of 10 June 2014, a large number of emails for the period August 2013 to May 2014 that record the discussions that took place between the council and the two schools. As it seems to me that the emails for the period August 2013 to May 2014 reveal the communications which may have contributed to the impasse which triggered the application by NCHS, I have decided to consider these emails separately and in detail below.

#### Emails for the period August 2013 to May 2014

16. In the email dated 21 August 2013, prior to NCHS becoming a foundation school with a trust, the development officer for the council asked Westlands for details of any existing agreements between the two schools such as how the shared electricity supply and shared water supply was billed (as Westlands does not have its own meters). The development officer also took the opportunity to discuss the plans for the land transfer to NCHS, saying that the council had decided to retain *“the access [road] and parking area [and*

so] to some extent, the access road would then fall under Westlands' responsibility (there will be certain rights granted to NCHS for use, parking and maintenance) ... At present neither the school or the trust's solicitors are aware of the proposed area of transfer, and while I'm sure that the school and their solicitors may have a different view, we'll have to wait and see what response is received and how the [council] responds. Would be obliged if this could remain confidential for the time being... Whilst the proposal is to convert on 1 September, I think given the timescale we've had to react, it will be a case of the property transfer catching up at some later date."

17. Westlands responded on 2 September 2013 to say that the school has its own gas meter and is billed directly for gas usage, and confirmed that NCHS is billed for the total utilities supplied to the site and then recharges Westlands at 12 per cent of the water bill and 11.6 per cent of the electricity bill. However, the school expressed concern about having responsibility for the access road. The school explained that the road "was resurfaced last summer and despite numerous discussions with NCHS and the fact that they have 2 car parks which are never full, the staff continue to park [along the access road] which means that all the traffic is one way – cars, bin wagons, deliveries. The one side of the drive which is used for all of this [traffic] will require resurfacing sooner than the side the NCHS staff park on and I do not think Westlands should foot the bill for this. Another couple of questions, what does the gain line sign mean at the bottom of the drive and is the gate at the bottom of the drive Westlands responsibility as well?"

18. In the response of 2 September 2013, the development officer clarified that the council intended to retain ownership of the drive and top parking area (but not those spaces immediately in front of NCHS reception), and reminded Westlands that "this is currently confidential and has not been released to [NCHS] or their solicitors as part of transfer process yet. Would appreciate it if you could retain this confidentiality for the time being." The development officer explained the council's rationale for retaining the access road was that:

- Recent information indicates the drive was obtained as part of the land package that enabled Westlands to be constructed;
- The access road is Westlands' only access point, whereas NCHS has three alternative vehicular access points; and
- It gives Westlands a certain degree of control over the access road.

19. The development officer also confirmed in the same email that as the access road had been resurfaced last summer, there should be no immediate need for maintenance into the foreseeable future. However, the council had "indicated that it will be including conditions within the transfer documentation to ensure NCHS will be required to contribute 50 per cent of any future maintenance costs ... [but] that is still to be finally ratified within the legal agreement ... Similarly, the [council's] intention is to draft the transfer agreement in such a way that would require NCHS to consult with Westlands if they wish to park along the drive and at Westlands' absolute discretion, may agree to allow them to park taking into account H&S and safeguarding issues, so there will be opportunity for you to prevent parking along the drive if you

*deem it unsafe. NCHS will, of course, have a right to pass over the drive and park in a number of spaces at the top. To be honest, I don't see an alternative. If the land is transferred to NCHS, the council lose all control over the drive and Westlands would be left with just access rights and probably a continuing maintenance contribution responsibility into the future. Whilst Westlands remains a [council] school, you do of course enjoy the support of the local authority for on-going issues and whilst funding is available, access to bid for maintenance funding. All this is still to be finalised ... and I envisage that as soon as NCHS are aware (when the documents are issued to their solicitors for approval) they will have some observations and comments to make which may require further negotiation. Presently, the gate and access bell mouth at the bottom of the drive is proposed to be retained and falls with the same conditions as above. The headteacher of NCHS mentioned that the 'gain line' is a strategy to raise behaviour levels."*

20. The development officer confirmed to Westlands, in an email dated 14 October 2013 that NCHS has *"queried the proposed restriction of parking along the drive without prior agreement of Westlands, their solicitor citing many years of custom and practice as a basis for their bemusement. I have spoken with the council, which has confirmed that it has no current reason to change the proposal, but if NCHS wish, they could appeal. (I understand that there is an appeal process within the conversion process where schools and local authorities have difficult resolving local issues.). Of course, depending on what course of action NCHS decide to follow and if that results in an appeal, then the council would be bound by any adjudication decision which may ultimately be to continue with the status quo. I just wanted to keep you up-to-date and aware of possible outcomes."* In response, Westlands confirmed that the *"parking along the drive has increased since the offices were moved to this side of their building instead of being where they were before, straight off their car parks."*

21. In the email to the council after a meeting with NCHS on 9 January 2014, the development officer notes that *"as Westlands is now consulting on conversion to a trust"* NCHS posed the question *"as to whether the council would be averse to a joint ownership arrangement between the two trusts of the then shared access drive?"* The officer offered NCHS the opinion that the council *"probably wouldn't object to such an idea provided both Trusts are in agreement."* The officer also mentioned that an NCHS governor *"has undertaken some research on the matter and has obtained plans showing NCHS and the access drive in place prior to the construction of Westlands, contrary to the information I think [the council] hold suggesting that the land on which the drive sits was purchased as a package for the development of Westlands."*

22. The development officer updated Westlands in the email of 16 January 2014, that NCHS was *"unsurprisingly 'not very happy' at the situation as proposed."* The officer added that *"as this all began before your current consultation on trust conversion, NCHS enquired whether the council would be happy to consider the two trusts jointly owning the drive. Is this something that the Westlands' Trust might wish to investigate further?"*

23. Westlands' chair of governors responded on 24 January 2014, proposing that the council continue to own and maintain the access road, with double yellow lines painted on each side of the road to enforce no parking and to allow two-way traffic. Westlands also said *"there must be designated parking spaces for all Westlands Staff and marked visitor spaces for Westlands. Six parking spaces to be allocated and used at NCHS' discretion, outside their entrance, and NCHS staff to use their Gallowstree Lane Entrance to the school and park on that car park."* Westlands said it should *"be responsible for the opening and closing as necessary of the entrance gate at the bottom of the access road - this being Westlands' only entrance, and new signage to inform these changes."*

24. In the email of 29 January 2014 to Westlands, the development officer asked again whether the Westlands' Trust might wish to investigate further the possibility of the two trusts jointly owning the access road. The officer also confirmed that *"as you have now commenced consultations on possible conversion to trust status, and should that be approved and progress, the [council's] intention at this point in time ... would be that the drive be transferred to Westlands and form part of the land transferred as part of your trust conversion. If Westlands do not wish to have ownership of the [access road] as part of your conversion, then I imagine that it would be transferred to NCHS, as essentially the council do not wish to hold operational and maintenance responsibilities for the part remains of former sites where it no longer has a major interest."* In the email messages of 6 February the officer asked again whether *"Westlands' trust would / would not wish to enter into a joint ownership arrangement with the NCHS Trust"* for the access road, and whether there would be any change in position regarding no parking on the access road.

25. Westlands replied on 7 February 2014 that *the "governors would not be prepared to consider [access road] parking ever, as it needs free flowing 2 way traffic at all times in order for it to be safe and user friendly for large delivery vehicles and in order to keep both sides of the driveway free from potholes for as long as possible. We might consider investigating the two trusts jointly owning the drive as long as a list of rules on parking was drawn up and agree. If the driveway does belong to Westlands already, we will not be willing to share it."* The development officer confirmed to Westlands in the email of 12 February 2014 that he had *"responded to NCHS yesterday following comments received."*

26. In the email of 11 February 2014 to NCHS, the development officer confirmed that following the meeting on 9 January 2014, he had raised the school's concerns at the Foundation Trust Project Board in addition to consulting with the governors of Westlands. He explained *that "whilst Westlands remains a [council] school, there is no intention to change the proposed area of transfer or wording of the agreement from that already proposed within the transfer documents sent to your solicitors as the council is simply securing access for Westlands ... via the only means available. However, the council was not adverse to the possibility of joint ownership*

*between trusts (if Westlands' conversion is approved) and if local agreement could be reached. To that end, I have also communicated with Westlands to ascertain their position now that they are consulting on trust conversion. The governors' view is that they wouldn't wish to see parking along the drive and are not minded to consider a joint ownership approach. It therefore appears that we've reached somewhat of an impasse. However and of course, now that [Westlands is] consulting on trust conversion, I seek your views and knowledge on any site issues or sharing arrangements that presently exist and any known sharing of utility supplies between the two schools in order that I may pass this information back to the council for consideration in the drafting of the transfer document between the council and Westlands' Trust. Whilst I doubt the situation will change, it is a further opportunity for you to submit your views on the matter which won't (I assume) proceed without everybody's agreement. Alternatively and as I've previously suggested, my advice to NCHS would be to speak with your solicitor with a view to referring this matter to the [adjudication] procedure if you remain unhappy with the situation as proposed. We would all then benefit from an independent assessment and determination of the situation which all parties would need to abide by."*

27. Westlands enquired in an email dated 9 May 2014 whether the officer had *"any news on the [access road] and who owns it etc as it all seems to have gone quiet and if it is ours we need to make sure changes are in place for September, re parking."* The development officer responded that there was an impasse as NCHS has *"challenged the proposed transfer arrangements to their trust and [the council] have held firm on the proposal."* The development officer explained that NCHS would have a right of apply for adjudication, and added *"I'll update you as soon as I am able but in the meantime, it is a shared drive and I would advise that you don't do anything to antagonise the situation until this is fully resolved legally."* The Westlands' headteacher replied *"Thank you for this. I have to say I have never been the one to antagonise the situation over the drive and never will be. The problem is that the parking by NCHS staff is ridiculous, right down to the gates now, making entry to the drive even more difficult for contractors, deliveries, waste disposal vehicles etc. Please keep me informed of any official updates."*

28. In an email to the development officer dated 21 May, the headteacher of NCHS commented that *"as you know we are unhappy that the access drive that we currently share with Westlands Primary is to be transferred totally to them. The group [of governors] have asked if you could provide us with a copy of the deeds of NCHS, as this will help us establish the exact dimensions of our land. In order to take further action should it be necessary we would appreciate these by June 6<sup>th</sup> at the latest."* The development officer replied *"I have spoken to the ... solicitor dealing with this transfer who confirms that a copy of the title registration documentation has been previously sent to the solicitors acting on behalf of the trust. Might I suggest that you contact your solicitors to obtain the information you seek. If you have any difficulty obtaining the information from your solicitors and require a further copy, as this is a formal legal process, you will need to make a request to the County Council's Legal Services people who retain such documentation"*



*for County Council sites.”*

29. From the emails for the period August 2013 to May 2014, it seems to me that the council communicated separately with each of the two schools. Furthermore there only appears to have been one meeting regarding discussions about the land transfer, on 9 January 2014, and this was between the council and NCHS, and did not involve the other party to the land, Westlands. Furthermore, the council appears to have kept Westlands fully informed about confidential matters related to the land transfer, but appeared to keep NCHS “in the dark” and did not inform the school until the way forward with respect to points raised by Westlands had been decided, leaving no room for NCHS to negotiate. The council has given full consideration to Westlands’ concerns about car parking on the access road, which is the only access route to the primary school. However, it seems to me that the concerns of NCHS regarding the potential loss of the main entrance may not have been given due consideration by the council. Accordingly, I am of the view that these emails for the period August 2013 to May 2014 reveal that poor communication and lack of consideration for the concerns raised by NCHS have significantly contributed to the impasse which triggered the application by NCHS.

#### Submissions in response to the application

30. In the application letter of 19 May 2014, NCHS summed up the reason for the referral. NCHS became a foundation school on 1 September 2013, supported by a Trust Board. Westlands became a foundation school with a co-operative trust some 6 months later. Although the two schools share a common access road, the council decided to give this shared access road to Westlands, saying that NCHS can negotiate with Westlands regarding access and parking rights. NCHS believes this is unfair as it removes NCHS’s rights to this road. NCHS would ideally like the road/access to remain a shared and common one. NCHS has been in dispute over this matter for nearly a year.

31. In the letter of 4 June 2014 Westlands explains that there is only one point of access to the school which is the access road off Ostend Place. The school adds that the *“access road needs to be free flowing for 2 way traffic at all times”* so that *“large delivery vehicles, waste disposal vehicles, contractors and emergency vehicles”* can pass unrestricted. Westlands reports that it *“has tried to negotiate no parking on this access road with NCHS who have three other ... entrances to their site and a large staff car park.”* Westlands *“has only the car park at the top of the access road by the school for staff and visitors to both the school and Little Stars private nursery.”* In the email of 5 June 2014, Westlands explains further that it has put up safety barriers on the footpath alongside the access road in order to protect pedestrians and children in Key Stage 1 *“are collected by an adult off the playground so they have supervision as they walk down the drive.”*

32. In the email of 5 June NCHS provided the recent history and a timeline regarding the use and ownership of the access road. NCHS considered that during the last 5 years it has worked together with Westlands regarding the

access road and that both schools have been happy with this arrangement. During the discussions relating to NCHS seeking foundation status and the consequent transfer of assets, NCHS had assumed that shared use of the access road would continue. *“The understanding of the governing body was that this shared arrangement would continue and that the [council] would be even handed in the way they dealt with this matter”* as the access road was an original and integral part of Edward Orme School and is therefore now a significant feature of NCHS. Consequently, NCHS had been surprised that, in the discussions about the transfer of assets, the council indicated that the ownership of the access road would remain the property of the council; the shared use would not transfer. NCHS was told later that the council wished to cede full control and ownership to Westlands as part of the transfer of assets to that school on acquiring foundation status with a trust. NCHS was *“dismayed and disappointed”* when advised by the council that it would have access to its site via the access road only by request to Westlands, and that NCHS staff and visitors would no longer be able to park on the access road.

33. NCHS explained that this *“decision is contrary to the existing working practices that have worked successfully between the two schools and in our view it is fundamentally unfair and unworkable. We were told by the [council] that they would inform Westlands that as part of the transfer they should discuss future usage. However there was no guidance, structure or limitation on the nature or remit of this discussion. At a meeting with the [council] we asked if reasonable areas for negotiation could be included in the documents relating to the transfer of this asset and were informed that this would not be possible.”* NCHS explained this would leave the school *“in a highly undesirable and precarious position. Should Westlands decide to deny access to the drive under the current arrangements NCHS would have no right of appeal.”*

34. NCHS believes the council have taken a unilateral decision without any consultation, and is unjustified given the documentation supplied by NCHS which clearly shows that NCHS was built prior to the construction of Westlands. Accordingly, NCHS believes it has a justifiable claim to a joint share of the access drive. NCHS explained further that the access road has always been the main entrance to the school and the adjacent parking area for the Headteacher, staff and visitors. Although the school site has three other points of entry, there are significant safeguarding issues associated with all of them in terms of visitors accessing the reception area and school offices.

35. NCHS stated it has never been any intention to seek sole ownership of the access road, and wishes only to continue with the current shared arrangement which it believes to be fair and equitable for both schools. NCHS proposes that the access road be jointly and equally owned by both schools and that this should be written into the deeds and any documentation relating to the transfer of assets.

36 In the email of 6 June 2014, the council’s solicitor explains that access to the NCHS may be gained via two access points located on Gallowstree Lane, which accommodates both vehicular and pedestrian access, and a

further two access points located on Ostend Place, again providing vehicular and pedestrian access. Whereas Ostend Place serves as the only available access point for Westlands and this is the access road shared currently with NCHS. The solicitor explains that the council has proposed that *“as a result of NCHS converting to foundation trust status, some 23,867m<sup>2</sup> of the site on which NCHS is located would transfer to the South Newcastle Federation Trust. The remaining 14,115m<sup>2</sup> would be retained by the council”* for Westlands. A further area of 1,628m<sup>2</sup> (the access road) would also be retained within council ownership as part of Westlands. The solicitor confirms that *“it is proposed that rights of way over the access road would be granted to NCHS so that access to the main entrance of the school is not impeded although the direct management responsibility for the drive would fall to Westlands ... as their sole access point. Retention of the access road is considered necessary ... to protect the interest of Westlands ... as this is the only means by which Westlands ... are afforded access onto the primary school site. It is understood that Westlands ... are presently consulting on conversion to Trust status therefore the retained land may be transferred to Westlands Primary School in the near future.”*

37. The solicitor comments that NCHS is *“concerned at the potential loss of parking along the access road... [but] ... Westlands ... has previously raised concerns about the health and safety implications to users and access arrangements when half the width of the road is impeded by NCHS parked vehicles. Parking along the access road causes a safety risk as it restricts access and effectively limits the road to a one car wide drive so, for example, if a fire engine needed to access Westlands Primary School, they would not be able to pass through.”* The solicitor assesses, from the aerial photographs attached to the same email of 6 June, that *“NCHS has 59 dedicated parking spaces available around the NCHS site, with a potential for a further 5 spaces in presently unmarked areas. Although unmarked, up to 11 vehicles regularly park on the access drive with the subsequent reduction in drive width to one lane. Westlands Primary School has only 13 marked bays for their own dedicated use.”* Whilst the council has *“not directly sought to prevent parking on the access drive, it is proposed that provision be made within the transfer documents that should NCHS wish to park on the access road, they must consult with Westlands, who in their absolute discretion may agree to allow them to park (taking into account health and safety issues and other relevant safeguarding issues).”*

38. In the email of 11 June 2014, Westlands questions the NCHS suggestion that over the last five years the two schools have worked together and been happy with this arrangement. Westlands states this is *“not the case, Westlands have compromised and endeavoured to make their one access point to the site as safe as possible for our children and on numerous occasions have beseeched NCHS not to park on the driveway itself, to no avail.”* Furthermore, Westlands comments that *“bollards for NCHS were put up during the 2011 Summer holidays in between the retiring Headteacher leaving and the new Headteacher taking up her appointment. There was no negotiation about this work and Westlands only realised it had been done when the school opened in September 2011. Likewise at a later date the*

*phrase 'Gain Line' was painted at the 4 entrances to NCHS with no negotiation with Westlands, we had to seek clarification about what this meant"*

39. Westlands comments further on the pedestrian safety concerns, explaining that it *"agreed to keep the gates open at all times, as NCHS staff insisted that they needed the freedom at all times to travel between sites [NCHS and Clayton Hall]."* Westlands acknowledges that NCHS funded the project to extend the pedestrian railings to go round the corner of the footpath at the bottom of the access road near the gates. However, Westlands had to *"reorganise the whole procedure of collecting children from the Primary school in September 2012. Key Stage 1 children are now collected from [their] playground, which means that parents have to park outside the grounds and walk up to collect them, which has created parking difficulties, traffic problems and health and safety issues at the bottom of the drive, and parents have been very vocal about this."*

40. Westlands disputes that the other three points of entry to the NCHS site present significant safeguarding issues, and claims that one of the access points leads directly onto a car park and the original main entrance to NCHS. Interestingly, Westlands also states that it *"has never been told [Westlands] own the drive by the [council]. However we are delighted to find out that we do and are happy to retain ownership of it."* Westlands adds that it does *"not wish to share our only access to the site with NCHS as it is compromising the safety of our children which is of paramount importance to us."*

41. In the email dated 11 June 2014, NCHS commented that there had only been *"one substantial meeting between ourselves and other parties and this took place on 9 January 2014" between the school and the council. The outcome of the meeting was that the council had allocated the access road to Westlands and there was to be no further discussion on this matter. We asked for a meeting with the ... Head of Strategic Planning ... but it was later refused. The only explanation we were offered relating to the decision was that the [council] did not like to transfer shared assets. There has been no further communication on this matter with the [council]."* NCHS also explained that the chair of the trust board approached the chair of Westlands' governing body to request an informal discussion about the matter but it was refused.

42. The same email of 11 June 2014 confirms that NCHS is concerned that *"neither of the other parties is prepared to talk to us."* As a result, NCHS met with the local Member of Parliament who agreed to follow up this matter with the council. NCHS remains convinced that it has a legitimate claim to joint ownership of the access road which it asserts has been successfully used by both schools for more than 40 years. NCHS reiterates that *"the main administration centre for the school including reception, and one of the main teaching blocks, can only be accessed by this entrance. All visitors and other suppliers are directed towards this building and as such use the access road, and therefore this is the main entrance and driveway to the school."* NCHS adds that it accepts that shared ownership *"will involve the school accepting a shared responsibility for the drive, its maintenance and*

*development. However, as stated, this is the main drive to the school; it is a responsibility and cost that we willingly accept. Our intention has always been to resolve this matter informally and amicably. It was only as a last resort, when the other parties refused to discuss this matter further, did we take this decision to refer this matter to [the Adjudicator].”*

43. In the email of 10 June 2014, the solicitor for the council confirmed that the council’s view *“that sharing ownership of the access road (i.e. splitting ownership of the road in half) ... would not be a satisfactory arrangement as this would complicate the rights which would have to be granted / reserved in respect of both sites. It makes more sense to retain the entire access road and grant rights of access/parking with a contribution towards repair and maintenance connected with any rights of use.”* The solicitor also advised that there had been many conversations and several meetings between the council, NCHS and Westlands.

44. As a result of a discussion with a cabinet member of the council, the lead council officer regarding strategic projects wrote to the local Member of Parliament on 17 June 2014 to explain that *“NCHS have several accesses to their site and many parking spaces, Westlands ... have just one access which over time NCHS have gained part use of. All vehicles including emergency vehicles going to Westlands ... must use this access, I have been attempting to protect their interest.”* In the response dated 18 June 2014, the Member of Parliament questioned whether it is the case that the council’s policy is *“not to conduct asset transfers on a 50/50 basis, and the reasons for this approach.”* The Member of Parliament also asked the lead officer *“whose interests the council has been trying to protect in not, as I understand it, being willing to meet NCHS to discuss this bizarre impasse – that of Westlands Primary School or the Emergency Services.”*

## **Consideration**

45. Following the application by NCHS and scrutiny of the submissions in response, I arranged an informal meeting on 19 June 2014 to allow NCHS, the council, and Westlands to meet together for what was the first round table discussion, so that the parties could present their views and have the opportunity to address any misunderstandings. Before the meeting I took the opportunity to visit NCHS and Westlands in order to view at first hand the two school sites, the disputed access road, and the geography of the locality.

### The site visit

46. Representatives of NCHS and Westlands, and the development officer representing the council accompanied me on a visit firstly to the NCHS site and then the Westlands site. We visited the four NCHS access points, gates 1 and 2 off Gallowstree Lane, and gates 3 and 4 off Ostend Place:

- Gate 4 is the access road to the main entrance/reception areas for both NCHS and for Westlands;
- Gate 3 provides access to staff car parking and to 6 parking places

available as a drop off area for parents to access the nursery building which caters for children from birth to three years of age. Some parents park there and then walk with their older child along the footpath next to the shared access road, to access the other nursery building which caters for children aged three to four years, and to the clubs before and after school and holiday care;

- Gate 2 is normally kept locked (but the pedestrian gate is usually open). This was the main entrance to the predecessor boys' school for a relatively short time, but was reorganised many years ago so there is no longer any remnants of the former reception area; and
- Gate 1 is near the caretaker's house (he is employed full-time as site supervisor for NCHS but also has opening / locking up duties for Westlands). Gate 1 is used for supervised access of pupils to the school fields across the road. There are two minibus parking spaces on the periphery as this gate is close to the main playground. The gates are kept locked except for PE and sports lessons. The words "*Gain Line*" have been painted at the gate so that pupils know that on crossing the threshold at this point, they will "gain" by dropping any social media arguments that may be ongoing. Were cars to use this gate, this would present a safety hazard for children and staff as it opens onto the main playground. There is no parking available at this location. Furthermore, at 3.15 p.m. the gate is opened for a short period in order that school buses access the main playground for the home run. The gate may be opened again at 4.30 p.m. for school lettings however, as a result of insufficient funding to cover the maintenance costs of the school's swimming pool, NCHS advised that this facility may have to be closed.

47. NCHS explained that if it lost the use of the shared access road and gate 4 as the main entrance, none of the other gates would be suitable as alternatives because of the unacceptable safeguarding risks of visitors having to walk unsupervised through the site and possibly through one or two classroom blocks in order to access the reception area. It was for this reason that NCHS decided to dispute the council's decision to transfer ownership of gate 4 and the shared access road to Westlands.

48. Westlands explained the problem caused by NCHS cars that park regularly along the access road, limiting the road to one carriageway for a significant portion of its length. This practice restricts two-way traffic, causing problems for delivery lorries and emergency vehicles, although there have been no incidents to date involving emergency vehicles. However, all parties acknowledged that the parking problems have deteriorated over the last 10 to 12 years as the number of staff and so the number of cars at each of the schools has at least doubled in the period and the development of the nursery has probably exacerbated the issue. Westlands commented that the increase in cars was particularly noticeable at lunchtimes as there are no parking spaces left so that the midday supervisors have to double and triple-park.

The views expressed at the meeting

49. The meeting was attended by the headteacher and business manager for NCHS, the solicitor and development officer for the council, and the headteacher and chair of governors of Westlands. At the meeting I outlined the adjudication process and that I would be using what was the 2007 Regulations (rather than the 2013 Regulations) as the legislation in force at the time NCHS became a foundation school on 1 September 2013. I explained what the legislation says with respect to land held for the use of the school at the time of the change of status of the school. I consulted the parties about the matters of fact and the areas for consideration, and I noted the representations made to me at that meeting.

50. NCHS reiterated that it would be content to maintain joint ownership of the access road with Westlands, but had concerns if ownership were to be transferred unilaterally to Westlands. The main concerns were that:

- NCHS would lose access to reception and the main entrance, and although there are three other access points to the school, none of these would offer a safe, cost-effective alternative;
- Westlands would close the gates again, which had previously caused problems for staff moving between the NCHS and Clayton Hall sites;
- Westlands would have full control yet would expect NCHS to make a 50 per cent contribution to maintenance and all other costs.

51. NCHS took the opportunity to address some misunderstandings. NCHS explained that access to the main entrance to the school for visitors to reception is the shared access road and gate. The main entrance to the school houses the reception area and visitor toilets, as well as the main offices (including those of the headteacher, executive headteacher and business manager). This main entrance has always been used as such since the predecessor girls' school opened in 1969, and then amalgamated soon after with the boys' school. There was another entrance to the predecessor boys' school but that stopped being used as an entrance in the 1980s, about 25 to 30 years ago, despite the opinions expressed to the contrary (by Westlands). NCHS referred the meeting to the historical documents and plans that had been sent, but as some parties had not received these, the school confirmed it would send copies to all parties as soon as possible after the meeting. The historical records indicate that before 1983 two entrances were used to access the school site, but since 1983, the only entrance has been the main entrance via the access road. NCHS said that if it lost this main entrance to the school then the reception area would have to be moved, at an estimated cost of at least £50,000 as the change would also involve moving the main offices and installing visitor toilets.

52. NCHS explained that there had been another reception area in the distant past, when the two predecessor schools had existed separately, but as this had changed use many years ago, it was no longer suitable. NCHS also explained why other access points to the campus were not suitable as an alternative main entrance for visitors: the swimming pool entrance does not offer parking as it opens into the main playground and therefore would

present a safety hazard. This gate is closed for most of the school day, only being opened for PE and sports lessons when pupils have to walk to the sports fields some distance away from the school. The gate to the final access point is usually kept locked throughout the school day as it is too distant from reception and therefore unsuitable for visitors who would have to walk unescorted through the site, through two classroom blocks to be able to access reception. Consequently, the car parking spaces near this gate are designated for the use of staff and are fully utilised.

53. NCHS explained that it had installed bollards in several areas to keep pedestrians (staff and pupils) safe from cars when moving between buildings on the school site. A serious problem had arisen when Westlands had closed the gates to the access road, so parents with children at Westlands and at the nursery drove through one of the other entrances instead to cut through the NCHS site to the access road. The bollards were installed on the NCHS site in two areas to prevent cars cutting through the site, endangering pupils and staff. NCHS had spoken to the previous headteacher at Westlands about installing the bollards as a measure to avoid further accidents on the NCHS site. The council commented that *“the ‘official line’ is that parents should not bring cars onto school sites.”*

54. NCHS reiterated the suggestion that the two schools continue to share the access road, and that the two trusts should own it jointly. However, if the Westlands trust was adamant about owning the access road, then NCHS would need to reconsider the arrangement whereby Westlands obtains electricity and water from NCHS at nominal charge. NCHS said that it would not want to break what it considered had been the good relationship with Westlands.

55. Westlands’ chair of governors said that the access road had been used exclusively by Westlands until about 20 years ago, and that the objective of owning the road was to safeguard Westlands’ children *“so that stray vehicles do not come through”* and explained that this was why *“about 3 years ago Westlands had closed [gate 4] between 8.45 and 9.15 a.m. and between 2.45 and 3.15 p.m. The chair of governors added that as NCHS was a split site school it was hard to predict when a car would come on to the site.*

56. Westlands’ chair of governors also said that *“the access road had suffered from wear and tear. As eight or nine NCHS cars parked regularly on the access road, this reduced the road to one lane, which led each week to delivery vehicles having to turn around near Westlands”*, creating a risk for Westlands pupils and pedestrians. NCHS suggested that to minimise the risk, Westlands could stipulate specific times for delivery on the purchase order, which would avoid problems during the school day.

57. NCHS mentioned that although the insurance company had not identified any safety problems with the shared access road, NCHS had investigated installing an automated barrier instead of gate 4 at the junction with Ostend place. However, remote access had not been possible because of poor mobile phone signals in the area, and the cost of the alternative



cabling and keypad was prohibitive. NCHS reminded the meeting that it had paid for the extra guard rail fence panels near gate 4 to protect children at the road junction, as evidenced by the copy purchase order and project request form. NCHS said both schools had worked together in planning this measure. She also explained that the school has an arrangement with the Dick Turpin public house so that parents are able to park safely near NCHS before the start and end of the school day.

58. The development officer explained that the council is in partnership with Capita with respect to property services. Being the development officer at the time NCHS had applied to convert to a trust school, he had *“flagged up the issues with the council’s strategic manager and with the council’s legal services team. At the time, the council had hoped to retain ownership of the access road but allow NCHS ‘unlimited access’. However, parking on the access road would be at Westlands’ discretion.”* The council had *“tried to keep both schools happy.”* However, the council had *“tried to safeguard Westlands’ interests”* as the shared road was the school’s only access. The council would regard joint ownership as acceptable if there was local agreement, but *“there had only been one meeting with NCHS and from correspondence with Westlands it was clear it did not want to pursue this idea.”* He added that *“relationships have worked for more than 20 years but there hasn’t been the traffic on the [access road] until the last 12 years as there were many more staff.”*

59. The chair of governors commented that Westlands was concerned about joint ownership of the access road as *“a big academy firm could make more of a fuss than now.”* The NCHS headteacher said that when considering academy status, she would hope that *“both schools would go together as a multi academy trust”*. Westlands confirmed that it had become a co-operative trust school on 1 March 2014, and it appeared that the council representatives were not aware that the change of status had occurred already.

60. I mentioned that if the ownership of the access road were to be shared, then the nine NCHS cars parked regularly on the access road would have to be matched by nine spaces for Westlands, which would create further issues for the access road. I noted that, from what I had heard during the meeting, the cars parked on the access road appeared to be the main stumbling block, with which Westlands concurred. NCHS reiterated that it did not have the necessary funds to move the reception area and main entrance. NCHS asserted that in order to retain shared use of the access road, it would be happy for double yellow lines to be painted on both sides of the road to prevent cars parking, and the headteacher would arrange for staff cars to park elsewhere.

## **Consideration**

61. In considering this transfer of land I am guided by paragraph 2 of Schedule 6 to the 2007 Regulations which relates to an approved proposal that a community school should become a foundation school. In particular, paragraph 2(2) specifies that *“in such a case, any land which, immediately*

*before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in—*

*(a) the trustees of the school, to be held by them on trust for the purposes of the school; or*

*(b) if the school has no trustees, the governing body, to be held by that body for the relevant purposes.”*

62. From the legislation, it is clear that “any land held ... for the purposes of the community school” must transfer to the trustees of the school on the date that the change of status takes effect, which in this case would be retrospective from 1 September 2013. There has been no debate that the land accommodating the school buildings and other school facilities should be transferred, and so has not been mentioned in the application by NCHS. The disputed portion of land is the access road off Ostend Place, which the council wanted to exclude from the transfer to NCHS, and retain for Westlands, but since the dispute began, this school has also become a foundation school with a trust. NCHS have requested that the transfer of land, that was to have taken place on NCHS becoming a foundation school on 1 September 2013, be determined to include shared ownership of the access road currently used by the school and Westlands.

63. From the evidence presented, the access road has been in use by NCHS for nearly 50 years, and was in use by NCHS even before Westlands opened as a primary school. Therefore the access road has been held for the purposes of NCHS, but the complication is that it has also been held for the purposes of Westlands, albeit for a marginally shorter time. The Regulations are clear that the land held for the school should transfer to the trustees (unless there is good reason why it should not).

64. The council’s rationale for retaining this land for Westlands appears to be for three reasons:

- the access road was obtained as part of the land package that enabled Westlands Primary School to be constructed;
- Westlands has only one point of entry, the access road, whereas NCHS has three other vehicular access points; and
- it would give Westlands control over the access road to prevent the parking of cars which impede two-way traffic on the road.

65. The first strand of the council’s rationale is that the access road was part of the land package that enabled Westlands to be constructed. It is the case that both the access road and Westlands have been constructed on the portion of land which was the subject of the 1967 deed of exchange (tinted blue on the title plan SF519685), whereas NCHS was constructed on the other parcel of land conveyed in 1965 (shown in pink). The register of title shows that on the date of issue, 15 August 2013, all the land (both the pink and the blue sectors) is owned by the council, and there is no “boundary” as such between the pink and blue sectors on the title plan. It is only when

ownership of the land transfers on 1 September 2013 as a result of NCHS changing status, that a boundary must be defined, and the position of that boundary is a matter to be decided by applying the Regulations. Furthermore, the historical plans provided by the NCHS governor show that the access road was designed to serve the NCHS predecessor school even before Westlands was built. Accordingly, I am not persuaded by this strand of the council's rationale.

66. Secondly, the council contends that the access road is Westlands' only access point, the access road accessible from Ostend Place through Gate 4. However, the access road is the only vehicular access to the reception area, main entrance and visitor parking spaces for NCHS. Although NCHS does have three other access points at Gates 1, 2 and 3, these would present safeguarding risks as they do not offer access for visitors to the reception area and main entrance unless visitors walk unsupervised through the school campus and at least one classroom block. Westlands suggested that NCHS could simply relocate the main entrance to Gate 2, as this used to be the main entrance. However, NCHS has provided historical notes which indicate that Gate 2 has not been used as a second entrance for some 30 years, and has not been used as a main entrance for up to 50 years. NCHS would not be able to move the reception area, and relocate the main entrance to be near Gate 2 without major expenditure. Furthermore, at Gate 2 there is a separate gate for pedestrian access, and as this is one of the main points of access for pupils walking into school, then adding vehicular access for visitors would present a safety hazard. The council does not seem to have given due consideration to the concerns expressed by NCHS. At a time when a funding shortfall may result in the school closing a major facility which will impact on the curriculum, I consider it is unreasonable to expect NCHS to be able to find the money to embark on the structural work to move the main entrance which it has used for more than 30 years. This is not a viable option for NCHS now, nor for the foreseeable future.

67. The final strand of the rationale relates to the problems generated by NCHS cars parking on the access road, seemingly for convenience, but at the same time impeding two-way traffic because one carriageway is obstructed. This is a legitimate concern as the access road is then restricted for delivery lorries, and more importantly, for emergency vehicles. The council decided unilaterally that the way forward was to retain ownership of the access road for Westlands which was still a community school at the time NCHS became a foundation school. However, Westlands itself became a foundation school on 1 March 2014, so as a result of the land transfer involved, ownership of the access road would then transfer to Westlands. In that event, NCHS would be concerned that Westlands would:

- close the gates again, which had previously caused problems for staff moving between the NCHS and Clayton Hall sites; and
- Westlands would have full control yet would expect NCHS to make a 50 per cent contribution to maintenance and all other costs.

68. It seems to me that when the schools were built some 50 years ago,

the possibility that the schools would be transferred from council control to become separate foundation schools with trusts was never envisaged. At that time, constructing an access road which would be shared between the schools was sensible and cost-effective. Furthermore, 50 years ago it would not have been anticipated that there would be so many staff cars, for NCHS, Westlands and Little Stars, in addition to visitor cars, having to be accommodated on the site. It remains the case that the access road is shared by the two schools, each of which needs to continue using it as access to the main school entrance and reception area. Therefore, I can see no solution where the access road can be apportioned to either school without unsafe, unacceptable or unreasonable consequences for the other school.

69. In the email of 29 January 2014, the development officer advised Westlands that the council would not wish to retain “*operational and maintenance responsibilities for the part remains of former sites where it no longer has a major interest.*” From this, I gather that the council would not wish to retain ownership of the access road once the school sites have been transferred to the relevant trusts of the foundation schools.

70. However, in the email of 11 February 2014 to NCHS, the development officer suggested that the council was not adverse to the possibility of joint ownership of the access road between the trusts if local agreement could be reached. In the meeting on 19 June 2014, which was the first time that all the parties to the disputed land were given the opportunity met together, Westlands agreed that the only stumbling block to the continued sharing of the access road was the obstruction to two-way traffic caused by NCHS cars parking on one side of the access road. By the end of the meeting NCHS agreed to make arrangements for staff cars to park elsewhere and accepted that double yellow lines should be painted on both sides of the road to prevent cars parking (and presumably would not object to any other parking prevention method deemed necessary) in order to retain shared use of the access road. As Westlands did not raise any objection to this proposal, I have taken this to indicate that local agreement has now been reached on how the two schools would be able to continue sharing the access road, and that the land transfer for each school should include an equal and joint share of the access road, with the proviso that no parking is allowed on the access road. I recognise that the council’s proposal solution to apportion the access road to Westlands may have appeared to be a simpler option, and this may have had some merit while Westlands remained a community school, but as both schools have now changed status to become foundation schools with a trust, transferring ownership of the land to just one of the trusts would not be an equitable solution in the circumstances.

## **Conclusion**

71. I conclude that for the reasons stated in paragraphs 60 to 69, the land on which the access road is constructed should transfer from the council jointly and in equal share to the trustees of NCHS The Science College and the trustees of Westlands Primary School. The legal agreement associated with the deed of transfer should also prohibit car parking on the access road

so that no vehicle travelling in either direction along the access road is obstructed or restricted by parked cars. The council should also include in the legal agreement that the two schools must jointly utilise and maintain preventative measures such as double yellow lines at the side of each carriageway to enforce no parking on the access road. The council should therefore draw up whatever legal agreement is required to formalise the joint ownership of the access road by the trusts of the two schools, and the prohibition of parking on either carriageway of the access road.

### **Determination**

72. 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 from Staffordshire County to the trust of NCHS The Science College consequent upon the school becoming a foundation school with a trust, shall include shared ownership of the access road currently used by the school and Westlands Primary School, so that the trusts of NCHS The Science College and of Westlands Primary School shall own the access road equally and jointly.

73. Within the legal agreement associated with the deed of transfer there shall be the condition requiring that NCHS The Science College works with Westlands Primary School to utilise whatever preventative measures are necessary to enforce the prohibition on car parking on the access road.

74. The council shall therefore work together with the trusts of both schools to draw up the legal agreement required to formalise the joint ownership of the access road by the trusts of the two schools, and the prohibition of parking on either carriageway of the access road.

Dated: 1 September 2014

Signed:

Schools Adjudicator: Ms Cecilia Galloway