



DETERMINATION

Case reference: LAN0069

Applicant: Weston Heights Infant School, Stoke-on-Trent

Application: Transfer of land from Stoke-on-Trent City Council to Weston Heights Infant School

Date of direction: 2 June 2016

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 direct that the transfer of land from Stoke-on-Trent City Council to the trust of Weston Heights Infant School, consequent upon the school becoming a foundation school with a foundation, shall exclude the community building known as Weston Heights Community Centre. Ownership of the community building shall be retained by Stoke-on-Trent City Council.

Stoke-on-Trent City Council shall draw up, as part of the deed of transfer, whatever legal agreement is required to formalise and manage impartially the shared use of the community building by the school and the community.

The application

1. Solicitors acting for Weston Heights Infant School (the school) wrote to the Office of the Schools Adjudicator (OSA) on 22 February 2016 to request that the transfer of land from Stoke-on-Trent City Council (the council) to the Acorn Learning Trust (the trust) of the school, that was to have taken place on the school becoming a foundation school on 1 January 2014, be determined to include the community building known as Weston Heights Community Centre (the community centre) located on the school site.

Jurisdiction

2. I am aware that The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 came into force on 28 January 2014. However, by virtue of regulation 8(2) of those Regulations, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 as amended (the Regulations) continue to apply in relation to the change of category of Weston Heights Infant School to become a foundation school as that change of category took place before 28 January 2014.

3. Under the terms of Regulation 7 of, and Schedule 6 to, the Regulations, the prescribed land transferred to the school's trust, pursuant to the school becoming a foundation school with a foundation (commonly known as a trust school) on 1 January 2014 (the implementation date).

4. Paragraph 2 of Schedule 6 to the Regulations establishes that when a school changes status from community to foundation all land which immediately before the implementation date was held or used by the local authority for the purposes of the school, transfers to the school on that date. However, the land has never formally been transferred from the council to the trust as ownership of the community centre used by both the school and the local community has been in dispute.

5. Paragraph 17 of Schedule 6 of the Regulations makes provision that if "*an agreement has not been reached within a period of 6 months from the implementation date, the adjudicator may give a direction determining that matter.*" Either the council or the governing body might apply to the Adjudicator for such a direction. As no agreement was reached within the prescribed period, and the school has requested that a determination be made by the Adjudicator, I am satisfied that the transfer has been appropriately referred to me and that I have jurisdiction to consider this matter under the power conferred on me.

Procedure

6. 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 dated 22 February 2016 from the solicitors acting for the school, subsequent correspondence and supporting documentation;
- a response from the council of 10 March 2016 and subsequent correspondence;
- a letter of 10 March 2016 from the Member of Parliament for Stoke-on-Trent South, the constituency in which the school is located;
- a copy of the Land Registry title plan number SF551659 and register of title for the school site; and
- further information directly from the school on 17 March and subsequent correspondence.

7. I arranged a meeting at the school on 20 April 2016 (the meeting) attended by representatives of the school and the council, and before that meeting I took the opportunity to view at first hand the disputed community centre on the school site.

8. All correspondence submitted to me has been copied to the school or to the council as appropriate, with each party able to comment on the other's submissions. I have considered the representations made to me at the meeting, and all the correspondence submitted before and afterwards

The application

9. Weston Heights Infant School converted from a community school to become a trust school on 1 January 2014. The school is part of the Acorn Learning Trust. At the time of acquiring foundation status there was, on the basis of law, a transfer of land from the council to the trust. As no final agreement has been reached about whether or not the community centre would be included in the land which would transfer to the trust, no formalisation of the transfer has taken place. The council believes that it should retain the community centre and the school believes that it should be transferred to the school. The school wishes to convert to become an academy and any disputes about land matters must be resolved before such a conversion could be completed.

Background

10. The school is a co-educational, two and a half form entry infant school with an attached nursery including provision for 31 children aged two years in "Little Acorns". At the meeting the headteacher confirmed that the school has 276 pupils aged three to seven years. The school had previously been known as Weston Coyney Infant School and changed its name when it became a trust school. On its website the school states that "*Weston Heights Infant School is at the heart of its community.*"

11. The dispute relates to the community centre which is an extension unit to a modular building on the edge of the school site. The extension unit was purchased in 2009 to rehouse the community centre. There has been a community centre on the school site since 2003 but it was moved from its original location in the modular building itself to enable the school to develop its provision for children aged two years. I note that a letter from the chair of governors on 29 September 2009 confirms he had pre-contract authorisation to accept orders placed by the council regarding the "*contract for the provision of, supply, delivery and erection of modular type building to accommodate community facility.*" The extension unit which is the community centre comprises a main room, two offices, a small reception area and toilet facilities, with access by the school through the playground and separate community access by footpath from the public highway. The school provided recent photographs of the extension unit and access points, and the sign at the entrance indicating it is "*Weston Heights Community Centre*" is clearly visible.

12. All parties agree that the school and the council (from the local ward budget) contributed financially to the purchase of the extension unit but there is a difference of opinion about the other contributors. The council said at the meeting that a local developer also contributed financially towards the purchase of the extension unit whereas the school said after the meeting that the extra funds had come, instead, from "*extended services.*" From the limited financial information available, it appears that the school may have contributed nearly half the purchase price from its devolved funding. All parties agree that the school is at the heart of the community, and as such, the use of the community centre has always been shared by the local community and the school. The school provided evidence of shared use of the community centre for the period 12 September 2012 to 19 March 2014.

13. The council said in its email of 10 March 2016 that the area around the school and the community centre had been *“in quite a rundown condition and prone to anti-social behaviour”* but is now undergoing regeneration and redevelopment. *“The community building was purchased with a view to cut down on the anti-social behaviour taking place in the area at that time by providing activities for the community to participate in. The council found that this was successful and incidences of anti-social behaviour were reduced. The reasoning for the location of the community building, i.e. upon the school site, was due to this being deemed the most feasible location and also for pupil familiarisation to encourage pupil use outside of school hours which would hopefully encourage a wider use by their families and the community as a whole.”*

14. From the evidence available, it appears that use of the community centre in the early stages was managed on a relatively informal basis by agreement between persons from the school and community who had worked together for many years. In time, as the people involved in the early stages moved away from the school and the locality, and the use of the community centre increased, a management committee was set up, and the school both chaired the meetings and took the minutes. The management committee introduced a lettings policy.

15. Members of the local community originally accessed the community centre from the public highway via a gate in the school playground, but in November 2013 safeguarding concerns were raised about the school gate being left open for community group meetings while the school was in session, putting children in the playground at risk. As a result, the school required the gate to remain locked when the school was in session, and members of the community had to report to the school reception before accessing the community centre, and to be accompanied while walking through the school and playground to the community centre. The residents' association was reported to have said that the new procedure *“had impacted on the level of use of the building as users did not wish to enter the school premises and found doing so an inconvenience.”* To address the school's safeguarding concerns, the council commissioned the construction of a new separate access between the community centre and a footpath to the public highway to ensure persons using the community centre would not need to enter the school premises at all. This separate access has been in use by the community for some time and the school confirmed at the meeting that the safeguarding issues have been fully remedied and the arrangement works well.

16. Immediately after becoming a trust school, the school appointed solicitors who wrote to the residents' association on 22 January 2014 to issue a draft lease for use of the community centre with the explanation that the school *“as part of its acquisition it intends to regularise the arrangements for your occupation of part of the external classroom areas by way of grant of lease.”* During the several months of negotiations the residents' association expressed concern about a number of matters in the draft lease including the community centre being referred to as *“external classroom areas of the school”* and the requirement that the residents' association develop a business plan to be approved by the school. The residents'

association asked the school for proof of ownership of the building and for an inventory of contents. From the correspondence provided, it appears that the relationship between the school and the residents' association deteriorated in that period.

17. Having heard concerns from his constituents and ward councillors, the local Member of Parliament wrote to the school's solicitor on 21 March 2014 to advise that he wanted to ensure that the residents' association was not *"bullied into accepting an agreement which does not reflect the terms on which their use of the building was originally granted."* The school's solicitor responded to confirm that *"the classroom ... is shared space"* and that the purpose of formalising the use of the *"classroom"* by the residents' association is *"to ensure that both parties are aware of their respective obligations to each other."*

18. The school said that *"there have been barriers constantly to block educational and recreational activities which the school tried to implement for parents and children"* in the community centre such as *"locks being changed"* on the office doors and *"chains, bars and padlocks fitted to cupboards and the refrigerator to stop the school using the facilities."* The school said it has used the community centre from the outset, and had contributed resources for shared use with the community. It was therefore inconvenient and embarrassing to find both of the offices locked and the refrigerator and crockery cupboards inaccessible during school events pre-booked into the community centre. I noticed during my visit to the community centre that both offices were locked but the refrigerator and cupboards were free of the padlocks, chains and bars which were sitting alongside. The council expressed the opinion that *"any activities that the school may have wished to run could have been carried out upon any part of the school site. The community building is not integral to the school carrying out any activities ..."* The council said it had been advised by the residents' association that the offices were locked to secure confidential information in compliance with data protection obligations, and the refrigerator and cupboards had been padlocked as its belongings had not been respected. I note that the school does not appear to have been consulted before these measures were taken.

19. The school's solicitor endeavoured to progress the transfer of land with the council. The council acknowledges that in July 2015 it erroneously proposed that the land to be transferred would include the community centre and said this was the result of misunderstandings between two different departments and misinterpretation of the title plan and the use of the community building. The council said it realised its error, advised the school in September 2015 of its mistake and confirmed that the community centre would not be included in the land transfer. The headteacher wrote to the council's solicitor on 25 September 2015 to advise that she needed *"closure on this asap as the school is funding this community facility and it can't continue as we are in no way using it. I am inclined to withdraw all facilities as we need to ensure that we are using our funds to provide for our children in the community."*

20. As the dispute over whether or not the land transfer should include the community centre had not been resolved, the school's solicitor wrote to the OSA on 22 January 2016 to request that a decision be made in the school's favour. The solicitor said that the refusal to include the community centre in the land transfer *"appears to be based upon the objection of the local residents' association."* The

school's solicitor said that *"the building has always been used by the pupils of the school. The building is located on the school site and it forms part of the school's Land Registry title."*

21. The council's solicitor responded that *"the legislation does not say that the land that transfers should be all the land comprised within the registered title."* I looked at the Land Registry documents for the school site and found that the title plan does not include the modular building or the extension unit which is now the community centre.

22. The chair of governors stated in his letter of 21 January 2016 that *"the residents' association have always refused to accept the school's involvement in the community building, although the school invested £90,000 of their devolved capital funding towards the purchase and installation of the building in 2009 and was instrumental in organising this shared facility...The school have always used the community building ...and endeavoured to maximise their usage in equally sharing the facility with the residents' association, but this has been made extremely difficult over time..."* The chair of governors said that the school *"has always been passionate about working with parents and the community in assisting their needs for improving lives for our young people and the community in which it sits... The school recognises the importance of the work carried out in the locality by the residents' association and has always supported this, however, this association fails to recognise the school as part of the community."*

23. The school's solicitor said that *"the school continues to meet the cost of running the building"* such as maintaining the community centre at its own expense and paying the utility charges without any contribution from the community or the council, and that *"the freehold ownership of the building should therefore not be separated from the rest of the school."* The school requires that the community centre be included in the land transfer *"in order to absolutely ensure that it is able to meet the educational needs of its pupils now and long into the future."*

24. The council's solicitor responded that *"it is believed the council would fund any repairs and maintenance costs but I have not been provided with any information regarding the daily running costs of the Building to date."* In addition, the council had been advised that the residents' association has been recording meter readings since the draft lease was issued, and had always been willing to contribute an appropriate amount towards the utility bills. The council does not believe that the school needs the community centre as there is sufficient classroom space within the school site for the pupil projection for the coming years and it is not envisaged that pupil numbers will significantly increase to require additional classroom space in the near future.

25. The council said in its email of 10 March 2016 that it is *"of the firm opinion that the community building is, as its name would suggest, a building for the purpose of the community. The fact it happens to be located upon a school site does not and never has meant that the building formed part of that school."* Nevertheless, the council investigated the possibility of relocating the community centre but as there was no available site in the locality which would enable easy community access, relocation was deemed infeasible. The council said *"it has a strong strategic need to*

retain the community facility in its current location and therefore retain the freehold of such land and building... to ensure and protect future community use."

26. In his letter of 10 March 2016 the Member of Parliament suggested that the headteacher and chair of governors *"have sought to give the impression that it has acted fairly ... but their actions suggest the opposite. For example, the decision by the school to employ solicitors to try and impose a lease agreement of the residents' association, knowing full well that the residents' association would be unable to do the same is tantamount to bullying in my eyes, as well as a disappointing use of money which could have been better spent on the education of children at the school. The building in question has always been intended to be a community building. All those who funded the building were in agreement on this matter... the school are essentially carrying out a "land grab" for a building that they do not require for teaching and which has never been theirs to claim."*

27. After the meeting, the council's solicitor provided on 3 May 2016 a revised draft transfer plan on which *"the land to be retained by the council is carved out"* so as to *"evidence the correct extent of the land that was intended to transfer to the school."* The plan shows that the land on which the community building is located is to be retained by the council. The school's solicitor queried the revised draft plan, saying it had always been envisaged that the extent of the land to be transferred was shown on the title plan and adding that the *"school building also used as a community facility was always intended to be a school building first and would support the community via the school primarily."* The solicitor said that *"the school led the project to create the school building and would not have put in £90k of its resources within the building if it did not own it...."*

Consideration of Case

28. In considering this transfer of land I am guided by paragraph 2 of Schedule 6 to the Regulations which relates to an approved proposal that a community school should become a foundation school. In particular, paragraph 2(2)(a) 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 the trustees of the school, to be held by them on trust for the purposes of the school."* The word "land" includes the buildings on that land.

29. 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 January 2014. My assessment therefore has to be whether the community building known as Weston Heights Community Centre was held or used for the purposes of the school immediately prior to it becoming a trust school on 1 January 2014.

30. From the evidence presented, a community centre has been on the school site for at least a decade before the school changed to trust status. The community centre was relocated from the modular building into the extension unit to facilitate the school's development of Little Acorns. The pre-contract authorisation letter indicates that the purpose of the extension unit was *"to accommodate the community facility",*

the sign on the extension unit displays the name of the community centre, and much of the documentation submitted by the council and the school refers to the community building / centre (apart from the correspondence from the school's solicitor which refers to the community centre as an external classroom area). I am persuaded that the community centre was originally located on the school site for the purposes of the community.

31. However, it is also clear that since the community centre was first located on the school site, it has been used by both the school and community groups. The school has used the community centre regularly for activities such as professional development, pupil-centred events, and meetings of staff and parents. At the meeting, the parties accepted that when the community centre was first established, the possibility that the school would be transferred from council control to become a separate foundation school with a trust was never envisaged, and shared use was managed initially on a relatively informal basis but it appears that relationships between the school and the residents' association deteriorated after attempts were made to formalise the shared use of the centre such as the lettings policy and later the draft lease. At the meeting there was agreement that irrespective of how ownership of the community centre might be decided, its shared use by the school and the community would continue, but managed impartially by a body independent of the school and the residents' association. It may be that immediately prior to the school becoming a trust school on 1 January 2014 the council believed it was holding the community centre solely for the community, but I am persuaded that, at the time, the community centre was being held and used jointly for the purposes of the school and the residents' association / community.

32. As there is joint use of the community centre by the school and the community, I have had regard to "The Transfer and Disposal of School Land in England. A General Guide for Schools, Local Authorities and The Adjudicator" (the guidance) which is still current for the purposes of transfer when a school changes category. The guidance states that "*ownership should be determined by reference to the statutory tests set out in Schedule 6 to the Regulations*" The first test in paragraph 15 of the Regulations is whether the community centre may be divided or apportioned between the trust for the school and the council on behalf of the community. From my visit to the site, it is clear that the community centre is a self-contained area with community access entirely separate from the school. In the community centre there are two offices, so the school and community would each be able to have an office, but the reception area and toilets would have to be used by anyone using the building, and subdividing the main room would not meet the needs of either the community or the school. Therefore, I consider that it would not be practical to divide the community centre between the trust and the council.

33. As it is not practical to divide the community centre, the next test is to consider which of the parties has the greater need for the security of ownership. I note that the council believes that the school has sufficient classroom space to accommodate projected pupil numbers for the coming years, and that the school has not contested this. The school has been unable to convince me of any reason why it has any immediate need for security of ownership of the community centre. Whereas, the council has shown it has a strategic need for the community centre and wishes to retain ownership of the community centre as there is no suitable

alternative site in the locality for the community to meet. Furthermore, I note that much of the school's correspondence and supporting documentation relates to its concerns about interactions with the residents' association. I recognise that these matters of concern happened for the most part after the school's change of status, and as such are not relevant to the decision I must make about the land transfer. However, this evidence leads me to conclude that relationships between the school and the residents' association may have deteriorated so much that I am not convinced that future community use of the community centre would continue if the school were to be granted its freehold ownership.

34. I am persuaded that the council has the greater need for the security of ownership to ensure that the community / residents' association will have continued use of the community centre. Accordingly, ownership of the building known as Weston Heights Community Centre should be retained by the council so that the community will have continued use of it. The community centre should therefore be excluded from the land transfer to the trust. However, as all parties agree that use of the community centre was shared between the school and the community, the legal agreement associated with the deed of transfer should provide for the school to have continued shared use of the community centre. At the meeting, all parties agreed that the shared use of the community centre must be managed impartially by a body independent of the school and the community.

Conclusion

35. I have considered all the evidence provided and all the points made to me. I conclude that for the reasons given in the paragraphs above, ownership of the community centre should remain with the council and should not transfer to the trustees of Weston Heights Infant School. The legal agreement associated with the deed of transfer should also provide for the continued shared use of the community centre by both the school and the community, and for that shared use to be managed impartially by a body independent of the school and the residents' association. The council should therefore draw up whatever legal agreement is required to formalise the shared use of the community centre by the school and the community.

Determination

36. 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 direct that the transfer of land from Stoke-on-Trent City Council to the trust of Weston Heights Infant School, consequent upon the school becoming a foundation school with a foundation, shall exclude the community building known as Weston Heights Community Centre. Ownership of the community building shall be retained by Stoke-on-Trent City Council.

37. Stoke-on-Trent City Council shall draw up, as part of the deed of transfer, whatever legal agreement is required to formalise and manage impartially the shared use of the community centre by the school and the community.

Dated: 2 June 2016

Signed:

Schools Adjudicator: Ms Cecilia Galloway