



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: LAN/0057

Applicant: Canford Heath School, Poole, Dorset

Application: For the transfer of the property 10 Learoyd Road, known as the caretaker's house, from Borough of Poole Council to Canford Heath Junior School following the school's conversion to foundation status.

Date of direction: 13 December 2013

Direction

Under the powers conferred on me by regulation 7 of, and schedule 6 to, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, I hereby direct that the transfer of land at Canford Heath Junior school consequent upon it becoming a foundation school shall exclude the property at 10 Learoyd Road, Canford Heath, referred to as the caretaker's house. This will remain the property of the Borough of Poole Council.

The Referral

1. Solicitors acting on behalf of the governors of Canford Heath Junior School (the school) wrote to the Office of The schools Adjudicator (OSA) on 4 September 2013 seeking a determination in the matter of dispute between the school and Borough of Poole Council, the local education authority (the council), concerning the extent of land transferring to the foundation of the school, the Education Alliance of Canford Heath (the trust)), following the change of status of the school on 1 March 2013 from a community to a foundation school. At the time of conversion to foundation status and until 3 September 2013 the school was Canford Heath Middle School. On 3 September 2013 it became a junior school.

Jurisdiction

2. Under the terms of regulation 7 of, and Schedule 6 to, The School Organisation (Prescribed Alterations to Maintained schools) (England) Regulations 2007 (the regulations) the land of Canford Heath Middle School transferred to the trust when it became a foundation school on 1 March 2013. Failing local agreement within a period of six months from the implementation date, either the council or governing body might apply to the Adjudicator for a direction. Since no agreement was reached within the prescribed period and the school, which has

since changed its age range and become Canford Heath Junior School within the same trust, has confirmed its request, first made before the expiry of the six months for reaching an agreement, 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

3. In considering this matter I have had regard to all relevant legislation and guidance. I have considered all papers put before me including:

- the referral letter from the school of 4 September 2013, supporting documents and subsequent correspondence in addition to minutes of meetings; and
- the response of council dated 4 October 2013, supporting documents and communications, and subsequent correspondence.

4. I visited the school on 12 November 2013 in order to see at first hand the disputed property and its location. I also viewed the school accommodation and held a meeting which took place at the school with representatives of the council and of the school.

The application

5. On 1 March 2013 Canford Heath Middle School acquired foundation status, transferring from the council to membership of the Educational Alliance of Canford Heath. It subsequently became a junior school on 3 September 2013 in line with the council's major reorganisation of its education system. The adjacent Canford Heath First School became an infant school at this time and is also a member of the Educational Alliance of Canford Heath.

6. At the time of acquiring foundation status there was, on the basis of law, a transfer of the land of the school and its buildings from the council to the school. This has yet to be formalised and the transfer completed. At issue is the dispute between the council and the school as to where ownership should now rest of the house previously occupied by the school's caretaker. The school and council both claim the right to ownership.

7. The only disputed area upon which determination is sought is that of the house at 10 Learoyd Road. Outside the school there is a small public road. Between this and the road outside 10 Learoyd Road lies an area of parking which is owned by the school. Therefore the house is outside the school's boundary and is only reached by crossing a public road.

Background

8. The school is located in an area of mixed development including other educational provision, community playing fields and residential housing. One of these houses, at 10 Learoyd Road, served as the middle school caretaker's house from the 1970s until October 2012. Since then, including at the time of conversion

on 1 March 2013, the house has been empty and unused for any educational purpose.

9. The school is very close to, but physically separate from, the infant school although it is possible to enter one from the other without going outside the schools' perimeter fences. The junior school has the benefit of more than adequate external space and generous accommodation. It retains excellent specialist facilities and has been modified to accommodate year 3 pupils in the recent change to junior school

The view of the school

10. The school cites Regulation 7, of the regulations which requires that when a community school converts to a foundation school any land, which immediately before the implementation date, was held or used by the local authority for the purposes of the foundation school must transfer to the trustees of the school, to be held on trust for the purposes of the school. It argues that 10 Learoyd Road should therefore be transferred to the school.

11. The school asserts that the house is not surplus to its requirements. In its referral to the OSA the school claims that in its discussions with the council it was led to believe that ownership of 10 Learoyd Road, the caretaker's house, would transfer to the trust when the school became a foundation school in March 2013. The school pointed out that although the house has been vacant since October 2012 it is used by the school for storage and car parking.

12. The school argues that its use of the house both as a caretaker's residence and for storage were both for the purposes of the school. It states that it needs resolution of the ownership of the house in order to ensure absolutely that it is able to meet the educational needs of its pupils both now and long into the future.

13. The school reports that it has plans to use the house for educational purposes, either by itself or in conjunction with other educational providers. Minutes of the school's finance committee of 11 October 2012 show that the head teacher proposed that the caretaker's house be kept for future educational use by the school. The governors agreed that they did not wish to return the house to the local authority. At a senior leaders' meeting of the school on 4 February 2013 ideas for the future use of the house were proposed by those attending. The diverse responses included using for life skills; for parenting courses; for use by another school; to provide a unit for high functioning autistic pupils; for reading workshop/library; as an information room; for lunchtime sanctuary; homework club; PC locations and for training.

14. In June and July 2013 communications also took place with Quay School, a pupil referral unit in Poole, of which the head teacher of Canford Heath Junior School is a governor. The school proposed that Quay School might want to make use of the empty caretaker's house. The head teacher also wrote on 9 July 2013 to the council to put the case for Quay's use of the house.

15. In asserting their views regarding future ownership of the house, the school feels that it was misled by officers of the council, particularly in communications with the council's Asset Management and Sustainability officer. There is

disagreement as to whether an officer visited the caretaker's house in October 2012 and that conversation took place with the head teacher at this time about the house. The school believes that an email of 18 September 2012 from the officer gives the school reasonable expectation that it is able to decide about the future use of the house. A linked communication from the council explores whether to make the post of a new caretaker residential and includes reference to change of use matters and to the house reverting to the council's portfolio. There is also disagreement as to whether conversation between the school and council representative included any reference to a financial payment to the school upon return of the house to the council. In claiming that this offer was made the school inferred that the decision on whether to hand back the house was its to make. The council is, however, firmly of the view that no such exchange took place and that there would have been no basis for such a discourse.

16. The school has retained the keys to the property following the advice of its solicitor, believing that returning the keys would be seen as effectively agreeing to give up any rights to the property. The school has incurred costs in changing the locks when the caretaker departed and in maintaining the house thereafter. The school wished to pay the council tax for the empty house but were refused the opportunity by the council.

The view of the council

17. In the 1970s Dorset County Council built the first and middle schools and the two houses 10 and 11 Learoyd Road. The houses were for occupancy by school premises staff on service tenancy agreements. These were transferred to Borough of Poole Council when it became a unitary authority in 1997. The tenancy of number 11 was subsequently terminated and the premises declared surplus to the council's on-going requirements and the house sold. It continues to be a private residence. Number 10 continued to be used as residential accommodation for the middle school's caretaker until October 2012.

18. The council is clearly of the view that the property has always been owned by it and that it delegated management responsibility for the premises to the school which received a licence fee to enable it to manage and maintain the residential accommodation. This did not confer ownership. Any use of the house other than residential would be a change of use for which there is no permission and for which the council is clear that planning permission would be required. The council would be unlikely to grant this as its stated priority is to ensure a sufficiency of affordable housing. In its written submission the council indicates that this is the purpose to which it will put the caretaker's house. Correspondence of 13 February 2013 and 25 March 2013 from the council to the school advised that the council would be retaining the property for housing use and clearly indicated that the house at 10 Learoyd Road would not form part of the land and property to be transferred to the foundation school. The council reports that it also advised the school of the council's ownership of the school on 18 September 2012 but this correspondence continues to be a matter of disagreement between the council and the school.

19. The last occupant of the caretaker's house signed a contract in July 1999 with the council to have licence to occupy 10 Learoyd Road. This ended with his

resignation and departure in October 2012. The licence was between the council and the caretaker and not between him and the school.

20. The council refutes the school's assertion that an officer of the council suggested to the school that they may be able to obtain money from the council in return for the house. The council argues that it would not have offered money for the return of property that is already theirs.

21. The school has argued its expenditure on the maintenance of the house in support of its claim to ownership. The council refutes this saying that the benefit of the house was with the school, as was the income and the responsibility and that the school did not approach the council on this issue. When the house was vacated the council had liability for the payment of council tax upon the property and this has been paid by it as required.

22. The council notes that the school's plans for the house are vague. The council is clear that storage is not a permitted use of the house. It further submits that the house is beyond the curtilage of the school and that the Canford Heath "campus" is a busy site and that the school would have been unlikely to obtain planning support for change of use of the house.

23. The council is of the view that the school is occupying the house unlawfully. The council seeks to make a link between this and the regulations cited above. The council asserts that reference in the regulations to use immediately before conversion to foundation status, relating to land held by the local authority for the purposes of the school, supports the council's contention that the caretaker's house is not required to be transferred as it was not being lawfully used by the school immediately prior to conversion. The council does not accept the school's argument that it needs further accommodation.

24. In the meeting I convened with both parties the council's representative volunteered that there had been "miscommunication" and both parties stated their wish to return to the previously good relations between the school and council.

Consideration

25. In considering the transfer of the caretaker's house I am guided by the regulations. I note that paragraph 2(2) of Schedule 6 to the regulations specifies that the land and buildings which transfer to the governing body are those which before the implementation date of conversion were "held or used by a local authority for the purposes of the community school".

26. The council has admitted that issues became tangled and that communications were not as they should have been. I must, however, focus on the essence of the regulations. The school clearly feels that it was led to believe that it had the option of the transfer of the empty house to it when it became a foundation school. This is not my view given a preceding, linked communication from the head teacher to a council officer exploring whether to make the new caretaker's post residential. The contents of the officer's letter link clearly with matters pertaining to the benefits or otherwise of having a residential caretaker. The written communications from the council on this matter would have benefited from greater clarity and precision but they were, nevertheless, not misleading with

regard to the council's ownership of the house. The communications did not amount to agreement by the council to transfer ownership of the house to the school. The council has a priority of ensuring sufficient affordable residential housing and their wish to keep the house in the housing stock of the borough is understandable.

27. The council contends that the fact that the house was unused or used for non-residential purposes at the time of the school's change to foundation status means that the criterion of being used by the local authority for the purposes of the school immediately before the change of status was not met in relation to the regulations. The school has not persuaded me that the house was being used by the local authority for the purposes of the school. The school was not using the house any longer as a caretaker's house and the need for such use had ended in the previous year, preceding change to foundation status.

28. The school was not using 10 Learoyd Road for educational purposes at the time of its change to foundation status. It subsequently searched for educational uses for the vacant house by inviting ideas from its senior leaders and by offering its use to Quay School, but this does not change the fact that the house was not being used for educational purposes of the school at the time of conversion. The school does not have a clear and persuasive educational need for the use of the house.

Conclusion

29. I conclude that for the reasons given above, 10 Learoyd Road, known as the caretaker's house, should not form part of the land and assets transferred from the council to the school. The use as a caretaker's residence for the middle school had ceased in the year prior to the change in status of the school. The house does not have planning permission for any purpose other than residential use so to have used it for educational purposes would have been in contravention of planning regulations.

30. Given that the authorised use of the property has only ever been as a residence for the caretaker and that this use ceased in the year before conversion, it is my view that the house has not been used by the local authority for the purposes of the school in providing education. The subsequent search for educational uses of the house by the school does not change this fact. Therefore, according to the regulations cited above, the school has no legitimate claim on the property.

Direction

31. Under the powers conferred on me by regulation 7 of, and schedule 6 to, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, I hereby direct that the transfer of land at Canford Heath Junior school consequent upon it becoming a foundation school shall exclude the property at 10 Learoyd Road, Canford Heath, referred to as the caretaker's house. This will remain the property of the Borough of Poole Council.

Dated 13 December 2013

Signed

Schools Adjudicator: Dr Oona Stannard