



Office of  
the Schools  
Adjudicator

## DETERMINATION

**Case reference:** LAN60

**Applicant:** Liverpool City Council

**Applications:** Transfer of land from Liverpool City Council to the South Liverpool Education Trust to be held for the purposes of Matthew Arnold Primary School to exclude that part of the site used for the purposes of the Dingle Lane Children's Centre. Transfer of land forming part of the Matthew Arnold Primary School site from the South Liverpool Education Trust to Liverpool City Council for the purposes of an Assessment Centre for children with special educational needs and provision for children in key stage one with a diagnosis of Autistic Spectrum Disorder.

**Date of direction:** 19 April 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, and**

**Sub-paragraph (7) of paragraph A23 of Schedule 22 to the School Standards and Framework Act 1998**

**I hereby direct that:**

**the transfer of land at Matthew Arnold Primary School from Liverpool City Council to the South Liverpool Education Trust consequent on the school's change of category in 2009 shall exclude rooms 26 - 31 shown in the schedule of rooms in paragraph 25 of this determination together with the part of the corridor in the single storey extension which lies on the side of the doors which bisect that corridor furthest from the reception area; and**

**I hereby make a transfer order that:**

**rooms 2, 4, 5, 6, 8, 9 – 18 and 20, shown in the schedule in paragraph 25 of this determination and the part of the playground immediately outside the Assessment Centre and fenced off for the use of Assessment Centre children shall transfer by order from the South Liverpool Education**

**Trust to Liverpool City Council for the purpose of an Assessment Centre in accordance with the application made by Liverpool City Council;**

**I hereby direct that:**

**Liverpool City Council shall draw up a written agreement to protect the interests of the South Liverpool Education Trust as specified in this determination. The agreement is to cover:**

- **agreement about the future of the part of the site which forms the Children's Centre should the Children's Centre close including that the LA would consult the trust and governing body about the possibility that this part of the site might then transfer to the trust to be used for the purposes of the school;**
- **the contribution the LA will make to the costs of caretaking, security, maintenance and repairs of the site commensurate with the proportion of the site it is to hold;**
- **arrangements for access for the purposes of caretaking, security, maintenance and repairs of the site to those parts of the site which are held by the LA for staff and contractors working for the trust or the governing body as the case may be;**
- **provision for use as necessary by pupils at the school, school staff and visitors to the school of the part of the corridor in the single storey extension on the side of the doors which bisect that corridor furthest from the reception area;**

**The South Liverpool Education Trust shall draw up a written agreement to protect the interests of Liverpool City Council as specified in this determination. The agreement is to include:**

- **arrangements for allowing access to and use of car parking on the site for staff, parents of children using the Children's Centre or Assessment Centre, visitors to and any other users of the Children's Centre and Assessment Centre;**
- **agreement on the shared use of the reception area and receptionist office in order to meet the needs of those using, attending, working at or visiting the Children's Centre and Assessment Centre;**
- **arrangements for access as necessary to the disabled toilet, boiler and laundry room, rooms containing IT and telephony services as necessary for staff working at the Assessment Centre or Children's Centre and other LA staff;**
- **arrangements for access as necessary to the disabled toilet for pupils at the Assessment Centre and their parents and children**

**and parents using the Children's Centre and other visitors to the Assessment Centre or Children's Centre;**

- **provision for access to and use of the staffroom for all staff employed to work at the Assessment Centre and Children's Centre;**
- **arrangements governing use of the corridor in the single storey extension on the side of the doors which bisect that corridor nearest to the reception area as necessary by pupils of the Assessment Centre, children and parents and carers using the Children's Centre, staff of and visitors to the Assessment Centre and Children's Centre.**

### **The applications**

1. In an email dated 20 May 2014, Liverpool City Council, the local authority (LA) for the area, referred to the adjudicator the question of the treatment of certain land and buildings which form part of the site occupied by Matthew Arnold Primary School (the school) consequent on the school's change of character in 2009 from a community primary school to a foundation school with a foundation, namely the South Liverpool Education Trust (the trust). The land and buildings concerned are those parts of the site which the LA considered were used exclusively for the Dingle Lane Children's Centre (the Children's Centre) or used partly for the purpose of the Children's Centre and partly for the purposes of the school immediately before the change of category.
2. In a letter dated 24 April 2015 the LA applied to the adjudicator to make a transfer order for part of the site to be transferred from the trust to the LA. The part of the site concerned is that used for the purposes of general assessment and provision for key stage one (KS1) pupils with Autistic Spectrum Disorder (ASD) which is known both as "Abbot's Lea at Matthew Arnold" and as the "Assessment Centre" (which is how I have referred to it in this determination). The solicitors acting for the trust said in a letter of 1 June 2015 that the trust had been unable to reach agreement with the LA on the treatment of the land which was used for the Assessment Centre and that a determination would appear to be necessary.

### **Jurisdiction**

3. Different legal provisions are relevant to different parts of the land which is the subject of this determination.
4. The Children's Centre and parts of the site held and used partly for the school and partly for the Children's Centre: Regulation 7 of, and Schedule 6 to, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (the Regulations) govern the treatment of land which is held "(a) for purposes wider than that of the school; or (b) partly for the purposes of the school and partly for other purposes" when a school changes category. Failing local agreement about the treatment of such land within a period of six

months from the implementation date, either the LA or the trust might apply to the adjudicator for a direction concerning disputed land. Since no agreement was reached within the prescribed period, and since the LA has confirmed its request 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. I am aware that The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 came into force on 28 January 2014, but by virtue of regulation 8(2) of the 2013 Regulations, as the proposal to change category was made before this date but after the date on which the 2007 Regulations came into force, the 2007 Regulations continue to apply in relation to the question of the treatment of the Children's Centre and any other part of the site partly for the purposes of the Children's Centre and partly for the purposes of the school.

5. The Assessment Centre and parts of the site used partly for the school and partly for the Assessment Centre: Paragraph A23 of Schedule 22 to the School Standards and Framework Act 1998 (the Act) provides for a LA to make an application to the adjudicator for certain publicly funded land held by the trustees of the school to be transferred to the LA. As set out in this determination, all parties accept that some parts of the site – including the parts used for the Assessment Centre and partly for the Assessment Centre and partly for the school - transferred to the trust by operation of law pursuant to the school's change of category in 2009, even though the relevant paperwork was not completed. I am accordingly satisfied that the relevant part of the site is held by the trust and I can consider the application for its transfer to the LA. I am satisfied too that the land in question is publicly funded land within the definition in paragraph A26 of Schedule 22 and that the purpose for which the LA requires the land is a qualifying purpose within the meaning of sub-paragraph (8) of paragraph A23. I am also satisfied that the LA has followed the required procedure set out in Schedule 22 in making this application to me including by giving notice to the Trust and to the Secretary of State as required by sub-paragraph (4) of paragraph A23, and that I have jurisdiction to consider it under the powers conferred on me.

## **Procedure**

6. In considering this matter I have had regard to all relevant legislation and guidance.
7. I have considered all the papers put before me including:
  - a. the email dated 20 May 2014 from the LA to the Office of the Schools Adjudicator (OSA) seeking a direction from the adjudicator on the grounds that the LA and the South Liverpool Education Trust, which is the trust for the school (the trust), had not been able to agree how parts of the school site should be treated;
  - b. the letter from the LA of 24 April 2015 from the LA to the OSA seeking a direction from the adjudicator to transfer certain land from the trust to

the LA and the LA's subsequent confirmation that it had notified the Secretary of State of its intention to seek the direction;

- c. the letter from the solicitors acting for the trust of 1 June 2015 which stated that the trust had been unable to reach agreement on the land which transferred to the school pursuant to its change of category and that "*a determination would appear to be necessary*";
  - d. plans of the building provided by the LA showing the rooms in the single storey extension which is the subject of this determination;
  - e. the adjudicator's determination STP000223 relating to the closure of Greenways Special School and the linked prescribed alteration to Matthew Arnold Primary School dated 12 March 2007;
  - f. the statutory notice dated 22 September 2011 and the notice of determination of those proposals dated 5 December 2011 relating to prescribed alterations made to Matthew Arnold Primary School and Abbot's Lea Primary School which took effect on 31 December 2011;
  - g. submissions to the OSA from the solicitors acting for the school's trust, from the trust, from the school's governing body and from the LA and the solicitors acting for the LA;
  - h. exchanges of correspondence between the different parties which were copied to me;
  - i. a copy of the Land Registry official copy of register of title for title number MS56910 which is the school site.
8. I arranged an informal visit to the school and meeting with representatives of the school's governing body, the trust and LA on Tuesday 18 November 2014. The main purposes of the visit and meeting were:
- a. for me to familiarise myself with the site and its land and buildings and their layout and facilities and to ensure that I understood fully how the site is and has been used;
  - b. for the representatives of the school's governing body, the trust and the LA to have the opportunity to make me aware of any points they wished me to take into account.
9. All correspondence submitted to me following the application has been copied to the LA, the school's governing body and the trust so that all interested parties had the opportunity to see all the information provided to me. I have considered all the points made in submission and correspondence and at the meeting.

### **Background to the applications**

10. There have over the past 15 years been a number of additions and changes to the buildings on the Matthew Arnold Primary School site and the uses to

which that site and its land and buildings have been put. These were relevant to my consideration of the applications but the initial information provided by the parties did not demonstrate an agreed view of the history. I accordingly sought to establish what changes had been made and when. What follows represents the history as now agreed by the LA, the trust and the school's governing body.

11. The school has existed on the site at Dingle Lane, Liverpool L8, for many years. On my visit to the school, I was told that it had been there since 1908. In 1999 a new building for the school was erected on the site and the old building demolished. At that time the school was a community school maintained by the LA. In 2003 or 2004 a Children's Centre was established on the site, initially using one of the school's classrooms. In 2004, the LA published and subsequently approved statutory proposals in accordance with section 31 of the Act to relocate Greenways Community Special School (the Greenways school) to the site. A substantial extension was made to the existing Matthew Arnold building. This part of the building is referred to by all parties as the "single storey extension" and that is how I have referred to it in this determination. There is also a separate building slightly apart from the main building which houses the Matthew Arnold Pre-School and Nursery which offers nursery provision and childcare for children between the ages of two and four and which has close links with the school. There is disagreement between the LA on the one hand and the school's trust and governing body on the other as to the precise use made of some parts of the single storey extension at different times. However, there is no disagreement about when it was erected. There is also agreement that from 31 August 2005 it housed the Children's Centre, Greenways school, the office of the headteacher of Matthew Arnold Primary School, a staff room (which I have been informed is used by all the staff of the schools and the Children's Centre), the reception area and main entrance for the whole building and some rooms used for storage and administration along with a boiler and laundry room, and a room housing telephony and IT services.
12. In 2006 the LA published statutory proposals to close Greenways school and to make a prescribed alteration to Matthew Arnold Primary School so that the school would become responsible for the provision until then made by Greenways school. The proposals were approved by the adjudicator on 12 March 2007. The adjudicator's determination (STP000223) notes that "*The schools already share a site and occupy new buildings which have been designed and built on the assumption that the schools would be managed as a single entity in due course*" and "*the intention [is] to maintain separate provision for the children who would otherwise have attended the special school [ie Greenways school]....*" The proposals were implemented on 31 August 2007. The effect was that the site was then occupied by Matthew Arnold Primary School and the Children's Centre as implementation of the proposals meant that Matthew Arnold Primary School now incorporated the provision which had been made by Greenways School and which from this point seems to have been known as the Assessment Centre. As the 2007 determination also noted, assessment of children's special educational needs (SEN) had been one of the principal functions of Greenways School.

13. On 31 October 2009, pursuant to proposals published on 11 May 2009, Matthew Arnold Primary School changed category from community school to become a foundation school with a foundation. The foundation (or in other words the trust) for the school was the South Liverpool Education Trust and that is the school's current trust. When set up the trust was the trust for both Matthew Arnold Primary School and a local secondary school. However, that secondary school is now an academy and part of a different trust and Matthew Arnold Primary School is the only school in membership of the South Liverpool Education Trust.
14. In 2011 the LA published and subsequently approved statutory proposals to discontinue the assessment centre provision made by Matthew Arnold Primary School and to make a prescribed alteration to the provision made by Abbot's Lea School (a community special school also maintained by the LA). The effect of the proposals was that Abbot's Lea would take over the assessment centre provision which had been previously been made by Matthew Arnold Primary School and would also make provision for KS1 children with a diagnosis of ASD. The letter of 5 December 2011 informing the Secretary of State for Education of the determination of the proposals explains that the reason for the change was so that *"assessment provision will in future be managed by a special school [Abbot's Lea] with vast experience of assessing and meeting the needs of children with special educational needs"*. The proposals did not attract any objections. Solicitors acting for the school's trust have confirmed in an email dated 16 March 2015 that no representations were made by either the school's governing body or trust during this process. These changes were implemented on 31 December 2011, so the single storey extension was then occupied by the school, the Children's Centre and Abbot's Lea. That remained the position when this case was referred to the OSA and is the position at the time of completing this determination. The school's website explains *"We host "Abbot's Lea at Matthew Arnold". This is a specialised 25 place assessment service for pupils aged 3 – 7 with complex needs together with a KS1 ASD class all under the management of Abbot's Lea Special School. Places in both provisions are allocated through the Local Authority."*
15. The LA has told me that the single storey extension cost £1,947,572 to build in 2005. This was all public money and comprised:
  - a. £1,200,000 Targeted Capital Fund from the then Department for Education and Skills, awarded specifically to move Greenways Special School to the Matthew Arnold site;
  - b. £245,704 Modernisation Fund – a funding stream provided by central Government to LAs at the time to support capital investment in maintained school buildings;
  - c. £501,868 Sure Start Capital funding from the then Department for Education and Skills.

16. In relation to the Sure Start Capital, the LA has stated: *“All Children Centre Capital Programmes funded by the DfE are subject to a 25 year claw back agreement. In the event of a proposed closure of a Children’s Centre then discussion would take place with the DfE about the risk of claw back. ..the risk of claw back can be mitigated by ensuring that the capital resource is used for the benefit of children, families and the local community”*. Guidance issued by the then Department for Children, Schools and Families (DCSF) on capital grant for Sure Start, Early Years and Childcare does indeed provide for clawback stating that *“ clawback will be enforced by the Department if a capital asset it funded fully or in part is sold or otherwise disposed of. The only exception is where a specific written consent has been obtained from the Department prior to the disposal, for the clawback to be waived or deferred.”*
17. It has been important to understand the changes – to the status of the school and to the nature of the provision made by it and by others from the site – as these inform my consideration of what should happen to the land now. It is not my business here to comment on the educational or other merits of the various changes. I think it is, however, important to offer some commentary on why this matter has come to me to decide so long after the changes which I have outlined above took place. These changes are linked to the different – and incompatible – things the LA and the school’s trust and governing body want to happen. In 2013, the school was considering converting to academy status and, as part of the academy conversion process, the status of the land needed to be clarified. I have been told by the school’s trust that the school is no longer considering becoming an academy. The solicitors for the trust mentioned the possibility of a referral to the OSA in an email exchange with the solicitors acting for the LA in July 2013 and the LA actually made the referral in May 2014.
18. I have been provided with copies of exchanges between the solicitors for the trust and the LA from 2013. From these it is apparent that the LA’s concern at that time was that it should be able to ensure that the Assessment Centre and Children’s Centre could continue to operate from the current premises. Its view was that this should be achieved through the mechanism of a 125 year lease with the school at a peppercorn rent. In its referral email to the OSA the LA says *“Matthew Arnold Primary School became a Foundation School on 1 October 2009 and, as such, the land and buildings which were held or used by the School immediately before and on the implementation date would vest in the School. The Legal Transfer document has not been completed even though it is acknowledged that the land has vested in the School. The reason for the delay in completing the legal documentation is that the Council and the School have not been able to agree the terms and consideration of the Leaseback to the Council of the Children’s Centre and the Assessment Centre.”* Notwithstanding the fact that the LA seems to have thought that the land would vest in the school’s governing body rather than its trust, the LA in effect argues that it was content to transfer the whole site on the basis of a satisfactory leaseback arrangement for the Assessment Centre and the Children’s Centre. The LA is now asking for rooms 1 – 20 on the schedule below (which are the rooms it considers comprise the Assessment Centre) and part of the playground to be transferred to it from the trust in accordance



with the provisions of Schedule 22 to the Act. It is asking that rooms 21 – 31 of the single storey extension together with the corridor which serves the extension should be excluded from transfer to the trust in accordance with the provisions of paragraph 17 of Schedule 6 to the Regulations. The LA is not asking for any part of the car parking to be excluded from the transfer but has said in that it *“would expect that all visitors, staff and parents concerned would have access to the car parking facilities going forward.”*

19. As noted above, the LA has said that it was in 2009 content for the whole site to transfer to the trust. This was – it maintains – on the basis that the Children’s Centre would continue to use the part of the site provided for its exclusive use and would also continue to have access to the parts use of which it shared with the school. In 2009, of course, the Assessment Centre was part of the school so there would have been no need to consider whether or not it should transfer – those parts of the building used solely by the Assessment Centre would fall to transfer automatically by operation of law and there would be no reason for any exclusions as there was no other user at that time.
20. The LA maintains also that its approach was based on its understanding that it would meet a share of the costs of the relevant parts of the site but that there would be no commercial (or indeed, other) rent charged. Evidence that this was the LA’s position is to hand in the form of a copy of a TR1 Land Registry form completed and sealed by Liverpool City Council in 2009 concerning the transfer to the South Liverpool Education Trust of *“the land situate on the southerly side of Dingle Mount and westerly side of Dingle Lane and known as Matthew Arnold, Primary School, Liverpool L8”*. The TR1 gives the title number of the property as MS569910. That is the title number of the whole of the school site as shown in the Land Registry Official copy of title plan which I have also seen. However, the paperwork relating to the transfer was not completed and in some respects is incorrect. In the first place a reference in the TR1 to the date specified for when the school became a foundation school with a foundation is both wrong and struck through. Second, the reference to the provision of the regulations pursuant to which the land transferred to the trust is wrong (referring to paragraph 7 of Schedule 6 rather than paragraph 2). In addition, the TR1 has not been executed as a deed by the trust. I note that there is no reference in the TR1 to the Children’s Centre; rather it refers to *“The land situate on the southerly side of the Dingle Mount and westerly side of Dingle Lane and known as Matthew Arnold, [sic] Primary School, Liverpool L8.”* In addition, I have been provided with a copy of the official copy of register of title for the site showing *“the entries on the register of title on 13 June 2014”* which shows the whole site held with title absolute by Liverpool City Council.
21. In its initial response to the referral, the school’s trust took issue with the LA’s reported understanding of past events saying: *“It is the understanding of Matthew Arnold that no request was ever made to exclude any parts of the school from the Transfer prior to the Conversion [that is, the change of category]. The first reference which was made to the possibility of excluding or indeed leasing back any parts of the School to the Local Authority arose*

*from an all parties meeting which took place in January 2013 when an external Solicitor appointed by the Council made a passing comment about the requirement for a "lease back" of the Children's Centre and Assessment Centre areas." The school's trust argued also that its charitable objects required that it charge a market rent for any part of the premises leased to another user (in this case the LA). I have not been provided with any information which indicates what length of lease the trust would find acceptable. In addition, the initial submission of June 2014 from the solicitors acting for the school's trust said that "the concept [the provision known as Abbot's Lea at Matthew Arnold] was always considered and developed to be time limited and for a short duration whilst the Local Authority reviewed its strategic needs for ASD provision or reorganising another school site to accommodate this service". A more recent communication from the trust on 20 July 2015 indicated that it actually now wishes to use the accommodation currently occupied by the Assessment Centre "for an Early Years Centre bringing together the Schools [sic] Maps nursery and School Nursery.... The additional accommodation will also release classroom space to allow for a response to the demand for many more primary places which is a local issue."* Thus the school appears to wish to expand its own provision using the Assessment Centre accommodation. At the same time, the trust is not now seeking to have the part of the building used only for the purposes of the Children's Centre transferred to it. The trust drew my attention in January 2015 to reports in local newspapers that the LA might cease to fund the Children's Centre. The LA confirmed that there was a consultation on the future of Children's Centres in the area; however, I have been informed that funding for the Children's Centre has been allocated up to and including the 2016-2017 financial year.

22. It is clear that this matter affects not just the ownership of the land but how it is to be used in the future. To put it at its simplest, the LA wants:

- a. to have ownership of the whole of the single-storey extension and the part of the playground immediately outside the Assessment Centre;
- b. the Assessment Centre to continue to be used as an Assessment Centre and provision for children in KS1 with a diagnosis of ASD under the auspices of Abbot's Lea school;
- c. the Children's Centre continue to be used as a Children's Centre;
- d. not to have to pay a commercial rent to the trust but to continue to provide funds to the school to meet the relevant costs of the parts of the building either not occupied by the school or occupied by the school and by the other users; and
- e. for users of and visitors to the Assessment Centre and Children's Centre to be able to use the carparking on the site;

23. The school's governing body and its trust want:

- a. the Children's Centre to continue to be used as a Children's Centre;
- b. to charge a commercial rent to the LA in respect of the part of the premises occupied by the Assessment Centre and in the relatively near future (though no date has been mentioned) to have use of the part of the site occupied by the Assessment Centre for its own purposes; and
- c. in relation to the parts of the building which are used by two or more of the school, the Children's Centre and the Assessment Centre, to retain these for practical reasons. This includes the reception area, staffroom, toilets, head teacher's office, the corridor serving the single storey extension, the playground and the carparking area.

## Consideration

24. In considering the treatment of this land, I work within the framework of the primary legislation and regulations. I also have regard to the guidance issued by the Secretary of State. I am concerned with the single storey extension and with the part of the playground outside the Assessment Centre which is separately fenced off for the use of the children at the Assessment Centre. There is no dispute that the rest of the school's buildings (that is the two storey part of the school building, the separate nursery building and the school's playground (other than that immediately outside the Assessment Centre) transferred to the trustees by operation of law when the school changed category. The LA is clear that it accepts this, notwithstanding the fact that the relevant paperwork has not been completed. I have referred below to a numbered schedule of rooms. I think it is helpful to describe the layout of the single storey extension. A corridor runs down the centre with rooms opening on both sides. Broadly speaking the Assessment Centre occupies the rooms furthest from the reception area; the headteacher's office and staff room are on the right hand side of the corridor leading away from the reception area and the Children's Centre accommodation is on the left hand side of the corridor leading away from the reception area. There are some rooms providing services (such as laundry and boilers and IT and telephony) which are located among the rooms furthest away the reception area. A set of doors bisects the corridor so that access to the rooms used predominantly for the Children's Centre and the Assessment Centre is on the side of the doors furthest from reception and access to the headteacher's office and staff room is on the side nearest to reception.

25. Immediately before the date on which the school became a foundation school part of the single storey extension was held and used for the purposes of Matthew Arnold Primary School (which at that date included the Assessment Centre), part was held and used for the purposes of the Children's Centre and part was held and used for both the Children's Centre and the school. It is common ground between the LA, the school's trust and the school's governing body that this was the case, although there is disagreement over the use made of some of the rooms at that time. The table below lists the rooms in the single storey extension and for each gives the views of the trust and governing body (which are the same) on the one hand and the LA on the

other as to the use which was being made of each room at the time the school became a foundation school. I have used the following abbreviations in the table:

MA - Matthew Arnold Primary School – excluding the Assessment Centre

CC - Dingle Lane Children Centre

AC - Assessment Centre delivered by MA

MAPS – Matthew Arnold Pre-School and nursery

Room	Room Use	School/trust assessment of user(s)	LA assessment of user(s)	Agreement
1	Boilers Laundry	MA/CC/AC AC	AC AC	No – school states boilers are for whole extension
2	Multi-Sensory Room	MA/MAPS/CC/ AC on timetable	AC but occasional CC use	No
3	Disabled Toilet	To be used as needed by anyone on that part of the site	AC	No
4	Meeting Room	MA/CC/AC	AC/CC	No
5	Hall	MA/CC/AC Used for MA breakfast club on school days. CC use all day Tuesday, Thursday and for Saturday Dads' Club. During school hours principally used by AC. In holidays exclusively CC.	AC but occasional CC use	No
6	Assistant Head's room	AC	AC	Yes
7	Communications Room - IT & Telephone Servers	MA/CC/AC – Telephony is for whole site. IT is for single storey extension	AC	No
8	Storage	MA breakfast club equipment, AC PE equipment, dining tables used by AC, school and CC for Dads' club days. Tables were supplied by MA	AC	No
9-18	Classrooms & Stockrooms	AC	AC	Yes
19	Storage: Outdoor site maintenance equipment	MA	AC	No
20	Soft Play Room	MA/MAPS/CC/AC on timetable	AC/CC	No
21	Staffroom	MA/CC/AC	MA/CC/AC	Yes
22	Administration Office	MA	MA/CC/AC	No - school says used for school only at change of category – although now also used by CC Admin officer
23	Receptionist office	MA/CC	MA/CC/AC	No
24	Reception Area	MA/CC/AC	MA/CC/AC	Yes
25	Head's Office	MA/CC	MA/CC	Yes
26-31	CC including meeting rooms & offices	CC	CC	Yes

26. I was also informed during my visit to the school that car parking for all users is integrated, so there is no dedicated separate car parking for different users. Finally, as noted above, part of the playground immediately outside the assessment centre is fenced off for the exclusive use of the children attending the assessment centre. I have been informed in a letter dated 1 June 2015 from the solicitors acting for the trust that this area *“was fenced off in 2005 when the accommodation was built, for the safety and wellbeing of the pupils attending the assessment centre.”*

27. I am conscious that my decisions in this case may result in different parts of this one building being held by different organisations. I am conscious – and all the parties involved have made the same points - that there are practical challenges and difficulties in splitting the building in the sense of parts of it being owned by, and the responsibility of, different organisations. The solicitors acting for the trust said in an email dated 21 November 2014 that the *“School has said that it doesn’t favour division of buildings”*. The LA for its part has said that it initially supported the transfer of the whole site if leaseback terms acceptable to it could be agreed – which they could not. In the case of this building there is a direct precedent for shared ownership. From 2005 when the single storey extension was completed until 2007 when Greenways School was closed and its provision became part of Matthew Arnold School, the single storey extension contained all of Greenways School, part of Matthew Arnold and the Children’s Centre. As I note below, it was the long term intention when the single storey extension was completed that management of the Assessment Centre should be integrated with management of Matthew Arnold Primary School. However, this did not happen immediately and might never have happened if the proposals to discontinue the Greenways School and make a prescribed alteration to Matthew Arnold School had been rejected. It may not be the simplest arrangement but it is possible for two or more organisations to share ownership and use of a building. In this case all users of the building will perform use the corridor and all will access the single storey extension and the rest of the school via the single common reception area.

The Transfer of land to the trust pursuant to the change of category in 2009 and land which is not to be transferred pursuant to the change of category

28. I deal first with the question of what land is and is not to transfer to the trust pursuant to the school’s change of category in 2009. The regulations and guidance are clear that all the land being used by a school when it changes category and acquires a trust should transfer to the trust to be held for the purposes of the school except where there is good cause for some land to be excluded from transfer. The guidance explains that “land” is defined in section 579(1) of the Education Act 1996 as *“buildings and other structures, land covered with water and any interest in land”*. The guidance gives examples of where land might be excluded from transfer: *“where an occupier which is not part of the school shares the overall site of the school”* and *“where there is joint use of the same land or buildings.”* As explained in the background

section, at the time of the change of category, the LA did not seek to have any of the school site excluded from transfer, although I note that in its referral to the OSA it states that *“The reason for the delay in completing the legal documentation [relating to the transfer] is that the Council and the School have not been able to agree the terms and conditions of the Leaseback to the council of the Children’s Centre and the Assessment Centre.”* The LA has also said that it was in 2009 content for the whole site to transfer to the trust. This was – it maintains – on the basis that the Children’s Centre would continue to use the part of the site provided for its exclusive use and would also continue to have access to the parts use of which it shared with the school.

29. In relation to the rooms used purely for the Assessment Centre (or partly for the Assessment Centre and partly for the rest of the school but not for the Children’s Centre) these were beyond doubt part of the school at that time. They were not held for the purposes of any other organisation. With the exception of any ad hoc lettings which I do not consider would amount to “joint use” in the sense used in the guidance, they were not used by any other organisation. Thus there would have been no reason or justification to exclude any part of the land used for the Assessment Centre (or for the Assessment Centre and the rest of the school) from transferring to the trust at that time. I consider that, notwithstanding the fact that the relevant paperwork was not completed, the part of the school site used solely for the Assessment Centre and for the Assessment Centre and the rest of the school but excluding any part of the site used also for the purposes of the Children’s Centre transferred to the trust by operation of law pursuant to the change of category in 2009. All parties agree that rooms 6 and 9 – 18, in the table above fall into the category of rooms used only for the purposes of the Assessment Centre. In relation to rooms 8 and 19, the LA argues these rooms were used exclusively by the Assessment Centre and the trustees and governing body that they were used by the wider Matthew Arnold school. As the assessment centre was part of the school at the time, these rooms also transferred by operation of law to the trust. There are a number of other rooms where there are differences of opinion as to whether they were held and used for the purposes of the Children’s Centre as well as for the purposes of the school. These are rooms 1, 2, 3, 4, 5, 7 and 20. The LA has not, however, argued that these rooms should be excluded from transfer to the trust. Rather, it has argued that they should be included in the part of the land and buildings to be transferred from the trust to the LA in accordance with paragraph A23 of Schedule 22. Thus, I consider that the LA accepts that these rooms all transferred to the trust when the school changed category and I treat them accordingly. This group of rooms includes some specialist provision (the multi-sensory room and soft play room) which I would consider essential for the Assessment Centre provision and useful but not essential for the Children’s Centre. Similarly, I have been told that the nursery children make use of some of the soft play and multi-sensory rooms and I consider that while this is no doubt a good and welcome aspect of the nursery’s provision, it is not essential to a nursery. In order to put the matter beyond doubt, I consider that – even if the LA had not implicitly accepted that these rooms transferred to the trust - application of the tests in the Regulations and guidance to the situation at the time the school

changed category (that is when the Assessment Centre was part of the school) would support their transfer.

30. I deal next with the part of the building which all parties agree was used by the Children's Centre alone. All parties now agree that the Children's Centre was not part of the school's provision when it changed category. The LA has pointed out that has always been responsible for the provision made by the Children's Centre and that it was built as bespoke Children's Centre provision using public money made available for this purpose. Since the Children's Centre was established, the LA has given a grant to the school to deliver the Children's Centre services on the LA's behalf. The trust's position in relation to the Children's Centre has been set in somewhat different terms at different times. The solicitors acting for the trust stated in an email dated 16 March 2015 "*We [the trust] thought that all of the children's centre accommodation transfer their trust as it was, to all intents and purposes, a part of the School and its services. With regard in the way in which the rooms were used, we always made them available for meetings or class activities if it was needed. We agree that the meeting rooms and offices are children's centre rooms and should be seen as that*". The solicitors go on to say: "*We would, of course, make the point which we trust was clear when we met with the Adjudicator, that we do accept that the children's centre was not a function of the Matthew Arnold Primary School on the effective date of conversion from community to trust school status.*" In a further letter dated 2 June 2015, the headteacher, writing on behalf of the trust, states that "*the trustees agree that the accommodation used for the sole purpose of the Children [sic] Centre did not form part of the core purpose of the school [at the point it became a foundation school] and do not qualify for transfer to the Trust. These are rooms 26 – 31 on the schedule of rooms.*" Similarly, the solicitors acting for the trust said in an email of 12 May 2015: "*We confirm that the trust has always accepted that the land occupied by the children's centre has always belonged to the Council.*"
31. So far as rooms 26 – 31 are concerned, therefore, it appears now to be common ground between the parties that these are and have been consistently since immediately before the implementation date used exclusively for the Children's Centre. The Children's Centre thus falls within the section of the DfE guidance which deals with "*an occupier which is not part of the school [which] shares the overall site of the school.*" The guidance says. "*In these cases, the school might not want the responsibility for managing and maintaining the buildings, particularly where they are used solely by another user or have complex needs, and would be content for the transfer or to retain the freehold of the facility provided the school's rights to use the facility are fully protected. In these cases, the preferred route would be, where possible, to divide the freehold and exclude from transfer the part of the site which is occupied by the other facility. It may be necessary to guarantee rights of access over one or both parts of the land.*" The Children's Centre is not a discrete building. The LA itself has said that its original preference was to transfer the entire site to the trust on the basis of a 125 year lease at a peppercorn rent in recognition of the practical difficulties of splitting the site. The LA's position is well summarised in its email of 23

March 2015 which says: *“The LA has always been amenable to transferring the entire site to the trust on the provision that the trust would agree to appropriate leaseback agreements (at a peppercorn rent) with the LA in respect of the areas that were occupied by the Children’s Centre and the Assessment Centre in 2009... Given the practicalities associated with sharing the day to day running costs of the building then this is the LA’s preferred solution.”* In an email of 21 November 2014 to the solicitors acting for the Trust, the LA said *“The Council would require 125 year leases at a peppercorn rent. The standard DfE Academy lease could be used as a base model but obviously there would need to be amendments regarding maintenance/repair, insurance and termination. There would be no forfeiture provisions and there would need to be a Tenant only break if the service were no longer required by the Council. The lease would not be excluded from the protection of the Landlord and Tenant Act 1954. To protect the School we could also include a Permitted Use to the effect that the Council would use the Property as a Children’s Centre/Assessment Centre, or such other educational use compatible with the school’s objectives – this needs to be agreed. A maintenance/service charge would be payable.”*

32. The trust has made clear that it cannot agree to this in the light of its objects and that it is not willing to change its objects. The solicitors acting for the trust have also drawn my attention to the fact that the LA may not continue to fund the Children’s Centre in the longer term: *“The latest decision by the City Council is that the children’s centres will continue to function for a further two years [until 2017]. This is on the basis that core grant is severely cut and accommodation costs will be borne by the School. If the rooms are not transferred to the School, as is the proposal for other children’s centre sites, there would be a question as to the use of the School funds for accommodation which is not ours. The trust, governors and School are committed to the provision of children’s centre services and have been looking for alternative ways to continue with the level of service if the closure had gone ahead as planned. The granting of a lease is not something we oppose if the terms are realistic considering the very uncertain future of children’s centre services”.*
33. I can see that the long term future of the Children’s Centre is not clear. However, I am concerned with its use at the time the school became a foundation school, its use since that time and its use in the immediate future. The first test in paragraph 15 of the Regulations is whether the land can be divided or apportioned between the trust and the LA. Neither party has argued for shared ownership. It is also apparent to me that dividing the rooms would not afford the LA all the rooms it needs to operate the Children’s Centre and would not give the trust ownership of the whole of the single storey extension. It is clear to me that the LA needs to have the security of the use of this part of the site so that it can continue to make the Children’s Centre provision and in the light of the clawback provisions which apply to this part of the building. I consider that the LA’s need is greater than any need the trust has for the security of the rooms as these rooms have never been part of the school. I can see no justification for the charging of a commercial – or indeed, any other than a peppercorn - rent in relation to premises provided by the LA



using public money for the LA's purposes. The trust maintains that it cannot and will not provide a lease at a peppercorn rent and it also now states that it considers that rooms 26 – 31 did not transfer to the trust by operation of law. I accordingly determine that the rooms 26 – 31 shall be excluded from transfer to the trust. So far as the longer term is concerned, the trust and the governing body have a legitimate concern that the site should be used for a purpose which is suitable for part of a building which is shared with a primary school. The written agreement must accordingly provide that if this part of the building ceases to be used as a Children's Centre, the LA will consult with the trust and the governing body about future use including the possibility that it should at that time be transferred to the trust to be held and used for the purposes of the school.

34. I deal now with the other parts of the single storey extension which the LA has asked to have excluded from transfer to the trust; namely rooms 21 – 25 and the corridor. The LA argues that these rooms were held and used partly for the purposes of the Children's Centre and partly for the purposes of the school (including the Assessment Centre as this was part of the school at the time it became a foundation school). The LA has not provided any further arguments as to why it rather than the trust should have the ownership of this part of the building.

35. I note that there are some differences of opinion about the precise balance and mix of use of some of these rooms. With the exception of room 22, there is agreement that they were held and used for the purposes of both the Children's Centre and the school when the school became a foundation school. The relevant section of the guidance says:

*“ownership should be determined by reference to the statutory tests set out in Schedule 6 to the Regulations... The first of these tests is to see whether it is possible to divide the land. ....If it is not, the second test is whether it is possible to determine which party has greatest need for the security afforded by owning the land. Here the term “security” applies not only to the physical security of pupils and the school site, but also to the security required by a school to continue to provide, for instance a proper PE/sport curriculum or to improve its buildings to meet modern standards and curriculum needs. If it does not prove possible to determine which party's need for security is greater, the final test is to determine which will be the major user of the land. Whichever party is afforded ownership of the land will need to make arrangements to protect the interests of the other party by means of a lease, license or any other contractual arrangement. These arrangements will also be recorded in the transfer agreement.”*

36. It is not possible to divide the land in the sense set out in the guidance – the reception area in particular simply needs to be used by all who enter the building. I have accordingly applied the tests set out in the Regulations and guidance above by considering first which of the parties has the greater need for the security of ownership. The trust argued in its email of 16 March 2015 that: *“With regard to shared areas, they should be part of the transfer to the trust as to try and separate them from the school would make functions of the*

*School impossible to carry out – reception area, staffroom, toilets, head teacher’s office.”* The Chair of Governors made similar points in a letter of 2 June 2015. I accept this argument as far as rooms 25 (the head teacher’s office), 21 (the staffroom) 23 (receptionist office) and 24 (the reception area) are concerned. The headteacher’s office is clearly essential for the proper running of the school. It was used for the purposes of the Children’s Centre only so far as the headteacher has some oversight of the day to day running of the Children’s Centre. So far as the staffroom, receptionist office and reception area are concerned, the school is the biggest single user of site and responsible for the upkeep of the biggest part. I consider therefore that the school has the greatest need of the security of the interest in the land and I consider it proper that these rooms accordingly transfer to the trust to be held and used for the purposes of the school in accordance with the statutory test relating to the greater need for security as set out in the Regulations and the guidance. As I have decided that the school has the greater need for security, I have not gone on to consider in detail the third test – namely, who would make the greater use of the rooms, although it is clear that the school would make the greatest such use. As noted above, all users of the site need to use room 24 (the reception area) and possibly room 23 (the receptionist office). There will therefore need to be a written agreement between the parties so that the Children’s Centre staff, clients and visitors can continue to use these facilities. I have given close attention to the question of the staff room – room 21. This is used by the staff of the school, the Children’s Centre and the Assessment Centre. I have quoted below from a letter from the solicitors acting from the Trust which sets out concerns of the school about the effects of use by the Assessment Centre staff of this room. It was also made clear to me on my visit to the school that the school’s senior leaders would much prefer not to have to share this room with the staff of the Assessment Centre. However, my view is this room was provided for use of all the staff based on the site. The organisational changes which have taken place do not affect this. I therefore determine that room 21 transfer to the trust but the written agreement must provide for Children’s Centre and Assessment Centre staff to be able to use the room.

37. So far as the corridor is concerned, I consider that I can only deal with this sensibly in the light of what I determine should happen as a result of the application from the LA for the transfer from the trust to the LA of the Assessment Centre accommodation which transferred to the trust (that is rooms 1 – 20). If this accommodation were to remain with the trust then the school would be the major occupier of the single storey extension. It would in my view then make the greatest use and have the greatest need of these rooms and the corridor in accordance with the statutory tests set out in the Regulations and explained further in the guidance. If, on the other hand, this accommodation were to be transferred to the LA, then the LA would by virtue of the application of the same tests have the greater need for and make the greater use of these rooms and the part of the corridor furthest from the reception area. As explained below and for the reasons given below I have determined that these rooms should transfer to the LA. I therefore determine that the corridor in the single storey extension beyond the doors which bisect the corridor should be excluded from the transfer to the trust and should

remain with the LA. Again, there will need to be a written agreement to provide for the school to be able to use this part of the corridor as necessary. There will also need to be a written agreement to provide for the LA to use the other part of the corridor for the purposes of the Children's Centre and the Assessment Centre.

38. There remains room 22 which is an office which is located between the headteacher's office and the reception office. The trust and governing body maintain that when the school became a foundation school it was held and used by Matthew Arnold Primary School only with the school stating that: "*.. the Children Centre Admin Officer was located in room 29 on the plan. Shortly after she was moved to the main Admin Office (Room 22 on the plan) in order to create space in Room 29 for a further member of the team.*" .. The LA maintains that it was a shared office used by the school including the Assessment Centre and by the Children's Centre. I have no way of investigating the situation at the point the school became a foundation school. Given the location of this room and applying the tests set out in the Regulations and guidance, I consider that the school will make the greatest use of this room and I therefore determine that it should transfer to the trust to be held and used for the purposes of the school.
39. The site comprises not just the buildings but the car parking areas and playground. So far as the playground is concerned this was held and used for the purposes of the school and transferred to the trust by operation of statute when the school changed category in 2009. I note that the LA has not argued to the contrary. The section of the playground fenced off for use by children at the Assessment Centre is dealt with in the context of the application for the transfer of land from the trust to the LA below. In a letter of 1 June 2015 the solicitors acting for the trust argue that carpark transferred by operation of statute. The LA has said that it does not consider that any part of the car parking areas should be excluded from transfer to the trust. Nor has the LA asked for any part of the car parking areas to be transferred to it from the trust. The LA has said that it would expect that all visitors, staff and parents (and I infer that it includes visitors, staff and parents connected with the Children's Centre and Assessment Centre as well as with the school here) to have continued access to car parking facilities on the site. I therefore determine that no part of the car parking should be excluded from transfer to the trust. I determine, however, that there shall be a written agreement to ensure that the needs and rights of all users of the site to access and use the car parking facilities shall be protected. This will, in particular, need to include the needs of pupils attending the Assessment Centre and children attending the Children's Centre.

#### Transfer of land from trust to LA

40. As made clear above, the land held and used for the Assessment Centre and land held partly for the Assessment Centre and partly for the rest of the school transferred by operation of statute to the school's trust in 2009. The LA has made an application for the land held for the purposes of the Assessment Centre to be transferred to it in accordance with the provisions of paragraph

A23 of Schedule 22 to the Act. The LA has said that the precise land it is seeking to have covered in this transfer is rooms 1 – 20 of the single storey extension together with the part of the playground adjacent to the Assessment Centre and currently used by the children attending the Assessment Centre. This is the part of the playground which was fenced off for this use in 2005.

41. The relevant section of the guidance says:

*“A local authority may request that a school transfer surplus land to it for the use of a new or transferred school, or for the delivery of other educational and certain children’s service [sic]. Where there is no local agreement, the Adjudicator can be requested to determine.”*

42. As explained above, the LA followed the specified statutory process when the changes were made which led to the setting up of “Abbot’s Lea at Matthew Arnold”. There is a profound difference of opinion between the parties as to the long term intention at that time. The school maintains that it understood that this was always intended to be a temporary arrangement. In a submission dated 20 June 2014, the solicitors acting for the trust set out the trust’s understanding in relation to the changes to the school and Abbot’s Lea School which took place in 2011. The submission says:

*“Following the formal conversion to Foundation status, a review of the Assessment Centre Service was conducted by the school in 2011. It became clear to Matthew Arnold that the Local Authority had insufficient provision for Children with ASD indicators within the Liverpool area and Matthew Arnold also noted that there was pressure on the service being provided by Abbot’s Lea at its other site. Matthew Arnold saw that there was a mutual benefit to enhancing the Assessment Centre Service at the school if Abbot’s Lea led this service. Matthew Arnold approached the Local Authority and Abbot’s Lea to action this proposal and also offered the use of a classroom within the School that was not being fully utilised at the time. As the initiative progressed it became clear that Matthew Arnold could develop a new Special Needs Model for a special school running a provision in a mainstream school. The intention was a mutually beneficial service which was called “Abbot’s Lea at Matthew Arnold”. The concept was always considered and developed to be time limited and for a short duration while the Local Authority reviewed its strategic needs for ASD children and potentially building a more specific ASD provision or reorganising another school site to accommodate this service [my underlining].”*

43. The LA made clear in its submission of 10 October 2014 that it did not consider that the changes made in 2011 (that is the prescribed alterations to Matthew Arnold and Abbot’s Lea described above) were intended to be temporary. Its view thus differs from those of the trust and the school’s governing body. There is no reference in the statutory notice or the full statutory proposals to the changes being intended to be temporary. The Explanatory Note to the Statutory Notice says that *“Although it will be managed by Abbot’s Lea School, assessment provision will continue to be delivered on the Matthew Arnold Primary School site.”* I have established that

no comments were made by the school's trust or its governing body at the time the proposals were published, so no representations were made by either of them about the land or about how long they expected the Abbot's Lea at Matthew Arnold provision to endure. There is no mention in the statutory proposals of any need to make any particular provision about the land. I have also been provided with minutes of various consultation meetings. The minutes of a meeting held on 29 June 2011 with representatives of the LA and one governor and the headteacher of the school record the headteacher saying "*As a trust we can decide how to lease rooms and facilities. There won't be any legal issues.*" There are also references to the governing body of the school supporting the proposed changes.

44. I have not found in the documentation I have been provided with any reference to any intention that the arrangement for the Assessment Centre to be run by Abbot's Lea on the Matthew Arnold site was to be a temporary one. It follows that I have not found any evidence of any intention that at any point the Assessment Centre accommodation should be made available for use by Matthew Arnold Primary School for the purposes of the school. I am confident that the LA's intention when it published and subsequently approved the statutory proposals of 2001 that it expected both the new arrangements for Abbot's Lea at Matthew Arnold to be longterm and, more widely, that the Assessment Centre part of the building should continue for the foreseeable future to be used for that purpose. The school's trust and governing body emphasise that their understanding was different. However, I have seen no evidence that either body expressed this understanding to the LA during the statutory process. I have established that neither made use of their right to comment on or object to the proposals. In any case, there is certainly now a fundamental difference of opinion between the parties about how the Assessment Centre accommodation should be used as well as about who should hold it and on what basis and I set these out below.
45. The solicitors acting for the trust and the school's governing body have both set out their reasons for wanting the land and buildings currently occupied by the Assessment Centre to be part of the school. At the meeting, the headteacher explained that subsequent to the closure of Greenways School and the incorporation of the Assessment Centre into Matthew Arnold Primary School, the needs of the children being placed in the Assessment Centre had changed. The headteacher and the trust have both told me that children with more severe needs were being placed in the Assessment Centre. The headteacher explained that it was because children with more severe needs were being placed there that the school had decided that the Assessment Centre children would have lunch in the small hall in the single story extension rather than in the main school dining hall as had previously been the case. The fact that children with more severe needs were being placed in the Assessment Centre is consistent with the rationale in the statutory proposals for placing the provision under the management of a special school with relevant expertise and experience. The solicitors acting for the trust told me in a letter dated 20 July 2015 that:

*“The school also has issues with the extra transport difficulties caused by Year 1 ASD classes. This contributes to significant congestion in the entrance drive to the school. The constant low level issues with escorts on the bus and arrival times of buses is also an issue. A significant number of staff due to the different ratios of staff to pupils over and above that required for an ordinary assessment centre. The nature off the needs for the children is different to the original agreement for the assessment centre. There is no inclusion between mainstream and assessment children due to the complex needs which they present which is contrary to the original practice when the assessment centre opened in 2005... The Governors are challenged with constant health and safety issues which arise time and time again and have led to formal letters being sent to the Abbot’s Lea school. There are many other low level issues which inevitably create significant problems for the Governors and the school staff such as refreshments for the staff in the staff room where the school provides them free for its staff, but Abbot’s Lea expect their staff to provide their own and inevitably the school staff facilities and resources are used. The Staff Room is constantly left in a mess and there are complaints from the cleaners to the extent that some of the school staff are refusing to use the Staff Room, a similar problem arises in respect of a meeting room and a mini bus left on site overnight. There have been repeated requests that the mini bus is not left on site overnight so as not to be a magnet [sic] to vandalism. The Governors make the point that although these issue [sic] in isolation may seem insignificant, collectively they cause considerable friction on a day to day basis.”*

46. In the same letter the solicitors told me that the governing body required the land currently used by the Assessment Centre *“in order to enable them to proceed with plans “for an Early Years Centre bringing together the Schools Maps Nursery and School Nursery. These plans have been put in place to address the demand for child care places as a result of rising birth rates in the Riverside and surrounding districts. The additional accommodation will also release classroom space to allow for a response to the demand for many more primary school places which is a local issue which reflects the national situation.”* In short, the trust and the governing body are unhappy with the current use of this part of the building and have an alternative use to which they wish to put the rooms.

47. The trust also argues that its purpose is to provide facilities for a “qualifying school”. Qualifying school is defined in the trust’s articles as a *“foundation school within the meaning of Section 21(1)(a) of School Standards and Framework Act 1998.”* The trust argues in an email of 5 December 2014 from its solicitors to the solicitors acting for the LA that *“Our understanding is that a qualifying school is not a community school. Abbot’s Lea Assessment Centre is a community special school and, as such, appears to be outside the range of beneficiaries eligible to receive charitable bounty under the objects of this charity. .... We have attempted to explain to you [the solicitor acting for the LA] why we believe full recovery would be appropriate in these circumstances, although we accept that full recovery, in the given circumstances, is likely to be a fairly low rent. The trust has not said what period of lease it would consider reasonable but has said that it would not accept a period of 125*

years. It is open to charities to change their objects and so to expand the range of those eligible to benefit from “charitable bounty”. However, the trust has confirmed in an email from its solicitors dated 16 March 2015 that it “has no intention at present to change the objects of the trust”.

48. I now turn to the LA’s arguments. The LA in making its application to have rooms 1 – 20 and the relevant section of the playground transferred to in accordance with paragraph A23 of Schedule 22 has said that the land was acquired at public expense and the building completed at public expense. It has confirmed that rooms 1 – 20 were “purpose built for Assessment Centre provision and this part of the site is still required as Assessment Centre provision”. The LA has confirmed that making Assessment Centre and KS1 ASD provision from this site under the management of Abbot’s Lea School is part of its strategic plan for the delivery of SEN provision across the city, that the requirement to use this part of the buildings in this way is immediate and ongoing and that there is no suitable alternative site available. In its original submission the LA also said that the assessment centre “was designed as an entirely separate area of the building with an integrated reception area.”

49. The statutory guidance to the adjudicator on applications under paragraph A23 says:

*“The adjudicator must be satisfied that that land is surplus to the reasonable needs of the school and that the local authority’s proposed use for the land is for a permitted use ... is strategic, reasonably immediate, for the benefit of the local community and cannot be provided from another site. He may also consider whether the school has alternative proposals for the land. In considering these factors, he may take into consideration:*

- a. whether the authority’s strategic use is in the public domain and has been agreed, for instance in a local plan;*
- b. whether the authority has consulted on its proposals, and what the evidence of the consultation has been;*
- c. whether there are likely to be planning considerations which could thwart proposals;*
- d. evidence on the availability of alternative sites for proposals;*
- e. that the use of the land is appropriate for land which borders a school. This can include taking into consideration the ethos of the school and of any organisation directly connected with it, as well as considerations for the health, security and well-being of the children;*
- f. where the school proposes alternative use, whether funding is likely to be available and the benefits the proposed use will bring.”*

50. I have accordingly considered the application against the legislation and this guidance and set out my analysis here. I deal initially with rooms 6 and 9 – 18 which are agreed by all parties to be used by the Assessment Centre only. First, there is the question of whether the land is surplus to the reasonable needs of the school. I have considered with this the matter of whether the school has alternative proposals for the land and the benefits this would bring. The school has set out plans to make use of this part of the site. I am sure

that the school would be able to make good use of this accommodation. In order to realise part of its plans – namely to expand its provision for primary aged pupils – it might need to publish statutory proposals and secure the necessary approval of these proposals. However, the fact that the school has plans for the accommodation does not rule out a conclusion that the accommodation is required to meet the school's reasonable needs. As things stand, the school is not using the part of the site occupied by the Assessment Centre. The school has modern purpose built accommodation which is entirely suitable and adequate for a one form entry primary school which is what it is. The MAPs nursery is not, of course, actually part of the school although there are close links between it and the school and the school's own nursery class. The Assessment Centre accommodation was, of course, designed and built for this purpose and not for the wider purposes of Matthew Arnold Primary School. Since the Assessment Centre ceased to be part of Matthew Arnold Primary School, I consider that the Assessment Centre accommodation is surplus to the reasonable needs of the school.

51. I turn next to the LA's plans for this part of the building; namely that it should continue to be used for the Assessment Centre under the management of Abbot's Lea School. The first test in the Schedule and the guidance is that the land is "*required by the authority for the stated purpose*" and that the stated purpose is a "*qualifying purpose*". The stated purpose in this case is to use the land for the purposes of an assessment centre managed by Abbot's Lea Special School and this is a qualifying purpose; namely, that it is "*required for the purposes of [a] school ...which is ...maintained by the authority*". The guidance suggests that I take into account whether the proposed use is strategic and reasonably immediate and whether this strategic use is in the public domain and has been agreed and whether the LA has consulted on its proposals and the evidence of such consultations. The use is certainly in the public domain – both in the sense that this is how the land is currently being used and as the LA consulted on and published formal proposals. I have already noted that there were no objections to those proposals and that the trust and the governing body made no comment at the time. I consider that use of this part of the site for the purposes of an assessment centre falls within the meaning of "*for the benefit of the local community*". I asked the LA whether the assessment centre could be provided from another site and it said that there was no suitable alternative site. The LA has also emphasised that this accommodation was purpose built and equipped as an assessment centre only ten years ago. There would be a significant cost to establishing the provision elsewhere which is avoided if the current site continues to be used for the Assessment Centre.

52. I now come to the question of whether the use of the land is appropriate for land which borders a school, taking into account the guidance which says that "*This can include taking into consideration the ethos of the school and of any organisation directly connected with it, as well as considerations for the health, security and well-being of the children*". In relation to the school's arguments about lack of inclusion of children attending the Assessment Centre into the life of Matthew Arnold Primary School, I have looked at what was said in determination STP/000223. This contains references to



integration where this was in the best interests of individual children but also to maintaining separate provision for the children who would otherwise have attended Greenways School and to the expectation that *“For most of the children currently attending Greenways the daily experience may not be significantly different. It is not proposed that children currently attending Greenways will be move into mainstream classes except in individual cases where this is considered beneficial”*. There may have been less inclusion than some might have hoped for but that is no reason why the Assessment Centre should not continue to operate adjacent to the school. The school governors’ letter of 2 June states that *“the use as an assessment centre for ASD pupils and pupils with ASD traits was not the purpose for which the accommodation was originally intended.”* It is the case that there is no reference in the relevant statutory notice and in Determination STP/000223 to ASD. However, the determination does refer to children with *“severe and complex needs”* which is a wider description but one that will certainly cover KS1 children on the ASD spectrum with the most significant needs.

53. I observe that some of the concerns expressed by the school’s trust and governing body are not linked to the particular needs of the children attending the Assessment Centre but to concerns about the levels of staffing required and the behaviour of the staff of the Assessment Centre and to the use of and congestion in the car parking area. I do not intend to comment on the behaviour of staff but do note that this not in any way related to the question of whether it is appropriate to have children with particular needs attending provision which is joined to a primary school. In this case, the children attending the Assessment Centre are no older than those at Matthew Arnold Primary School. Their behaviour may be challenging compared to that of their peers who do not have special needs but I have not been provided with any evidence that it is unmanageable and it would be surprising if it were so. So far as the concerns about traffic are concerned, it is the case that where a school site is catering for children with more severe needs, it is likely both that they will be drawn from a wider geographical area and they will arrive by car or specialised transport or mini bus. This can create challenges for schools, but I do not consider the challenge in this case to be of such magnitude that the land should not be used for an Assessment Centre for children with SEN and for provision for children in KS1 with a diagnosis of ASD. Similarly, such provision will require enhanced staffing levels compared with provision for children who do not have special needs. I am not persuaded, however, that there is insufficient space in the grounds of the site to allow safe and sensible management of the arrival and departure of the number of children who attend the school, Children’s Centre and Assessment Centre combined. Nor do I consider that the site cannot cope with the number of staff required. The school’s own alternative plans for the use of land – especially any proposal to expand the numbers of children attending the school – would be likely themselves to generate more traffic and require more staff. I have taken into account the question of the ethos of the school and whether this affects its suitability for part of the site to be used for the purposes of an Assessment Centre. The school’s website under a heading of SEN (special educational needs) says that the school is an inclusive school. I have applied the statutory tests in paragraph A23 and had regard to the guidance. I consider

that the conditions in the tests are met for the reasons I have given above. I must then decide whether rooms 6 and 9 – 18 should transfer to the LA or remain with the trust. I have taken full account of the arguments made by the LA and by the trust. I determine that the LA has the greater need for rooms 6 and 9 – 18 in order that the provision currently made by the assessment centre can continue to be met from the existing premises. I accordingly determine that these rooms should transfer to the LA.

54. I come now to those rooms about which there is not agreement about use at October 2009. In determining whether these rooms should be transferred to the LA or remain with the trust I have applied the tests in the legislation and guidance which I have set out above and have considered the arguments put by the parties. I have split the rooms into three groups. The first group comprises rooms 2, 4, 5 and 20. With the exception of room 4 which is an administration room used for meetings, all of these rooms are educational. All parties agree that the rooms were and are used for the Assessment Centre and, in the cases of rooms 2, 5 and 20, were also used by the Children's Centre; the disagreement is about the extent to which they were intended to be used for the wider Matthew Arnold Primary School. The two-storey part of Matthew Arnold was designed to provide sufficient teaching accommodation for a one form entry school. Had it not been for the decision to establish the Children's Centre and Greenways Special School on the site, Matthew Arnold Primary School would have continued to operate from its then new buildings completed in 1999. I consider that these rooms are surplus to the reasonable requirements of the school and that they should be transferred to the LA for the purposes of the Assessment Centre as they are essential for the purposes of the Assessment Centre. In making this decision, I am conscious that Matthew Arnold Primary School currently uses room 5 for its breakfast club. It may well be possible for this arrangement to continue when the room is transferred to the Assessment Centre. However, if it is not, then it will be for the school to make alternative arrangements. I do not consider that the fact that the school has made some use of this room prevents my finding that it is surplus to the school's reasonable requirements and that it should be transferred to the LA for the purposes of the Assessment Centre. The Assessment Centre clearly does need a hall, not least to provide dining facilities for its pupils and that is a key purpose of this room.

55. I turn now to rooms 1, 3 and 7. The governing body and trust argue that in October 2009 these rooms were shared areas used by the school, including but not solely the Assessment Centre, and by the Children's Centre. The LA states that these rooms were exclusively for the purpose of the Assessment Centre. Room 1 houses boilers which I have been told service the whole of the single storey extension and laundry facilities which are used only by the assessment centre. Room 3 is a toilet for those with disabilities, which the governing body and trustees argue was for all disabled users of the single storey extension and not just for the Assessment Centre. I am informed that it is not the only such facility on the site and that the two storey block contains further toilets for disabled users Room 7 houses telephony and IT services for the single storey extension and the whole site respectively. I have also been told that the children's centre has a service level agreement with LDL [part of

Liverpool Council] to provide all telephony and IT and that the school uses a different provider. It is clear to me that all users of the single-storey extension (and of the whole site in the case of room 7) need to have access to these rooms. I have to decide whether ownership should transfer to the LA or remain with the trust on the basis of the statutory tests in Schedule 22 and taking account of the guidance. I consider that the rooms are not surplus to the requirements of the school and should accordingly not transfer to the LA. There will need to be a written agreement to ensure that the Assessment Centre and Children's Centre can have access to and make use of these rooms as necessary. This leaves rooms 8 and 19, which are essentially storage rooms. Room 19 is used for outdoor equipment for the whole site and this is not surplus to the reasonable requirements of the school, which has the responsibility for maintaining the site. This room should accordingly not transfer to the LA. Room 8, on the other hand, is currently used for storage by the school and the Children's Centre and the Assessment Centre. The school uses the room for storing equipment for its breakfast club, which is run from room 5 and which I have dealt with above – concluding that room 5 shall transfer to the LA for the purposes of the Assessment Centre. I conclude that room 8 is surplus to the school's reasonable requirements and that it should transfer to the LA for the purposes of the Assessment Centre.

56. In summary, and for the reasons given above, rooms 2, 4 – 6, 8, 9 – 18, 20 should transfer to the LA. Rooms 1, 3, 7 and 19 should not transfer and should remain in the ownership of the trust.
57. The Act states at sub-paragraph (12) of paragraph A23 of Schedule 22 that “*Where a transfer order is made, the authority must use the land to which it relates for the stated purpose.*” The LA must accordingly use this part of the building for an Assessment Centre. As sub-paragraph (13) explains, the transfer order can be varied or revoked by a further order made by the adjudicator if the LA or, in this case, the school's trust, make an application for its variation or revocation.

### Payment of Consideration

58. Sub-paragraph (2) of paragraph A23 states that a transfer order such as the one with which this determination is concerned can provide for “*the payment by the authority of such sum by way of consideration (if any) as to the adjudicator determines to be appropriate*”. I have therefore considered this matter. I do not consider that any payment of consideration should be made. It is the case that the trust has maintained that it should receive a commercial rent from the LA in respect of the Assessment Centre's use of parts of the single storey extension. Indeed, it has maintained that this is required by virtue of its objects which it does not wish to change. As noted in this determination, the part of the building concerned was provided with public money. I have provided that the LA is to contribute to the costs of the site so that there will be no “subsidy” to the Assessment Centre from the budget of Matthew Arnold Primary School. I see no reason why the LA should pay any further money to the school or its trust so that the Assessment Centre can be used for the purpose for which it was built and intended.

## Maintenance, caretaking and security of the building and site

59. As a result of this determination, the trust will hold part of the single storey extension and the rest of the school buildings and the greater part of the site. All of the site will need, of course, to be kept clean, secure and maintained and there will need to be co-operation between the parties, especially in relation to the single-storey extension and to the playground given that the LA will hold part of this. The trust's submissions emphasise that the school has consistently had overall responsibility for the maintenance, caretaking and security of the site, with Abbot's Lea contributing towards costs in relation to the parts of the building used for the Assessment Centre and the grant from the LA covering costs in relation to the Children's Centre. I have been told that the school has been responsible for the provision of all utilities since the building was opened. Up until the school changed category, I am informed that it paid all the invoices "*for services, cleaning, security, telephony, IT, health and safety annual checks, etc and then charged a proportion to each unit. After the change of category cleaning and telephony was invoiced separately to each. We continue to pay security, health and safety checks, maintenance, services, etc and then invoice each unit a proportion of the costs*". The school remains the largest single user of the site as its trust holds one wing of the main building, the common reception area and some parts of the single storey extension. It also holds the car parking and the playground with the exception of the area outside the Assessment Centre. I would in these circumstances expect the school to continue to take responsibility for the overall maintenance and security of the building and site. The parties will need to agree between themselves how the whole site will be looked after and this will need to be set out in written agreements between the parties. I have specified that there should be two written agreements. This is because the LA will need to take responsibility for drawing up the written agreement governing access to and use by the school of the part of the site it will hold and the trust will need to take responsibility for access to and use by the LA of the part of the site it will hold.

## **Conclusion**

60. I conclude that for the reasons stated in paragraphs 28 – 39 of this determination the transfer of land from Liverpool City Council to the South Liverpool Education Trust pursuant to the school's change of category from community to foundation with a foundation in 2009 should exclude the part of the single storey extension comprising the corridor on the side of the doors which bisect the corridor furthest from the reception area and rooms 26 – 31. In accordance with the provisions of paragraph A23 of Schedule 22 to the Act and for the reasons stated in paragraphs 40 – 57 of this determination, I transfer rooms 2, 4 – 6, 8 – 18 and 20 together with the part of the playground immediately outside the Assessment Centre and fenced off for the use of the Assessment Centre pupils from the South Liverpool Education Trust to Liverpool City Council for the purposes of an Assessment Centre. I have made clear that arrangements will need to be made:

- a. for access to parts of the building held by the LA by staff, pupils and parents of pupils of and visitors and to the school;
- b. for access to parts of the building held by the Trust by staff, pupils, users of and visitors to the Assessment Centre and Children's Centre.

## **Direction**

61. 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, and

Sub-paragraph (7) of paragraph A23 of Schedule 22 to the School Standards and Framework Act 1998

I hereby direct that:

the transfer of land at Matthew Arnold Primary School from Liverpool City Council to the South Liverpool Education Trust consequent on the school's change of category in 2009 shall exclude rooms 26 - 31 shown in the schedule of rooms in paragraph 25 of this determination together with the part of the corridor in the single storey extension which lies on the side of the doors which bisect that corridor furthest from the reception area; and

I hereby make a transfer order that:

rooms 2, 4, 5, 6, 8, 9 – 18 and 20, shown in the schedule in paragraph 25 of this determination and the part of the playground immediately outside the Assessment Centre and fenced off for the use of Assessment Centre children shall transfer by order from the South Liverpool Education Trust to Liverpool City Council for the purpose of an Assessment Centre in accordance with the application made by Liverpool City Council;

I hereby direct that:

Liverpool City Council shall draw up a written agreement to protect the interests of the South Liverpool Education Trust as specified in this determination. The agreement is to cover:

- agreement about the future of the part of the site which forms the Children's Centre should the Children's Centre close, including that the LA would consult the trust and governing body about the possibility that this part of the site might then transfer to the trust to be used for the purposes of the school;
- the contribution the LA will make to the costs of caretaking, security, maintenance and repairs of the site commensurate with the proportion of the site it is to hold;

- arrangements for access for the purposes of caretaking, security, maintenance and repairs of the site to those parts of the site which are held by the LA for staff and contractors working for the trust or the governing body as the case may be;
- provision for use as necessary by pupils at the school, school staff and visitors to the school of the part of the corridor in the single storey extension on the side of the doors which bisect that corridor furthest from the reception area;

The South Liverpool Education Trust shall draw up a written agreement to protect the interests of Liverpool City Council as specified in this determination. The agreement is to include:

- arrangements for allowing access to and use of car parking on the site for staff, parents of children using the Children's Centre or Assessment Centre, visitors to and any other users of the Children's Centre and Assessment Centre;
- agreement on the shared use of the reception area and receptionist office in order to meet the needs of those using, attending, working at or visiting the Children's Centre and Assessment Centre;
- arrangements for access as necessary to the disabled toilet, boiler and laundry room, rooms containing IT and telephony services as necessary for staff working at the Assessment Centre or Children's Centre and other LA staff;
- arrangements for access as necessary to the disabled toilet for pupils at the Assessment Centre and their parents and children and parents using the Children's Centre and other visitors to the Assessment Centre or Children's Centre;
- provision for access to and use of the staffroom for all staff employed to work at the Assessment Centre and Children's Centre;
- arrangements governing use of the corridor in the single storey extension on the side of the doors which bisect that corridor nearest to the reception area as necessary by pupils of the Assessment Centre, children and parents and carers using the Children's Centre, staff of and visitors to the Assessment Centre and Children's Centre.

Dated: 19 April 2016

Signed:

Schools Adjudicator: Shan Scott