



## DETERMINATION

**Case reference:** LAN73

**Applicant:** Western Springs Primary School

**Application:** Transfer of land from the Chase Co-operative Learning Trust to the Governing Body of Western Springs Primary School on removal of the trust

**Date of direction:** 11 October 2017

### **Direction**

**Under the power conferred on me by regulation 6 of The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, I direct that the land which was transferred from Staffordshire County Council to the Chase Co-operative Learning Trust when Western Springs Primary School became a foundation school with a foundation, shall be transferred to the Governing Body of Western Springs Primary School consequent upon removal of the trust.**

### **The application**

1. Western Springs Primary School (the school) is a foundation school with a foundation (commonly known as a trust), and is part of the Chase Co-operative Learning Trust, (the trust).
2. The headteacher and chair of governors of the school wrote to the Office of the Schools Adjudicator, (OSA), on 29 March 2017 to request the transfer of land from the trust to the governing body of Western Springs Primary School (the governing body) on removal of the trust. The school hopes to join a local proposed multi academy trust, (proposed MAT). The school confirmed that it had followed the procedure outlined in "Making 'prescribed alterations' to maintained schools: Statutory guidance for proposers and decision-makers", (the statutory guidance), published by the Department for Education in April 2016 regarding the removal of a trust. As the land issues at Stage 2 of the procedure for removing a trust specified in the statutory guidance (Stage 2) had not been resolved within three months, the school referred the matter for the adjudicator to determine.

### **Jurisdiction**

3. Section 25 of The Education and Inspections Act 2006 (the Act) provides for the governing body of a foundation school with a foundation to publish proposals to

remove the foundation (trust). Section 26 of the Act sets out the procedure to be followed and provides for regulations to be made to refer land matters to the adjudicator for decision.

4. The relevant regulations are The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 (the 2007 Regulations).

5. In accordance with the procedure set out in regulation 4(a) of the 2007 Regulations the governing body took the initial decision to publish proposals to remove the school's foundation at its meeting on 3 November 2015. The minutes of the governing body's meeting of 22 September 2016 confirm that the governing body voted again by a majority of governors to publish proposals to remove the school's foundation and to join the proposed MAT.

6. Regulation 6(1) of the 2007 Regulations requires that before publishing proposals to remove the school's foundation, the governing body must agree with the trustees and the council "*all matters relating to—*

*(a) the land to be transferred under regulation 17, including, where appropriate, the terms of any transfer agreement to be made for the purposes of regulation 17(3), and*

*(b) any payment to be made under regulation 18(1) or (2), which would arise as a result of the governing body's approval of the proposals (with or without modification)."*

7. Regulation 6(2) of the 2007 Regulations states that where the governing body has not reached agreement with the trustees and the council "*as to any of the matters set out in paragraph (1) within 3 months of—*

*(a) the initial decision to publish proposals under regulation 4, or*

*(b) receipt of notice by the clerk under regulation 5(2),*

*such matters must be referred to the adjudicator for ... determination."*

8. As no agreement had reached been reached with the trustees within the prescribed period of three months of the initial decision to publish the proposals to remove the school's foundation, (the prescribed period), the headteacher and chair of governors requested on 29 March 2017 that a determination be made by the adjudicator.

9. I am satisfied that the proposed transfer of land has been properly referred to me and that I have jurisdiction to consider this matter under the power conferred on me under regulation 6(2) of the 2007 Regulations.

## **Procedure**

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

11. I have considered all the documents put before me including:

- the application letter dated 29 March 2017, subsequent correspondence

from the school and supporting documentation;

- a response from Staffordshire County Council (the council) of 18 April 2017 and subsequent correspondence;
- responses from the secretary to the trust on 18 April 2017, from the chair of the trust on 12 May 2017, and subsequent correspondence;
- copies of letters from the school's solicitor dated 23 June and 21 July 2017;
- a copy of the Land Registry title plan number SF551988 and register of title for the school site dated 10 August 2016;
- a copy of the Land Registry TR1 form dated 13 September 2016; and
- the statutory guidance.

12. I arranged a meeting at the school on 7 July 2017 (the meeting) attended by representatives of the school, the trust, and the proposed MAT (invited by the school). Before that meeting I took the opportunity to view at first hand the land and buildings of the school, accompanied by representatives of the school, the trust, and the proposed MAT

13. The council was also invited to the meeting but decided not to attend. The council confirmed in its email of 26 June 2017 that as *"the freehold transfer to the Chase Co-operative Trust was completed in accordance with the Education and Inspections Act 2006 the dispute about the land transfer from the trust to the school's governing body is a matter for the trust and the Governing Body to resolve."*

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

## **Background**

15. Western Springs Primary School is a small school for children aged 4 to 11 years, and there is nursery provision on site. The school converted from a community school to become a foundation school with a foundation (commonly known as a trust) on 1 April 2012, and by operation of law, ownership of the school's land transferred from the council to the trust on that date. Section 579 of the Education Act 1996 makes clear that the term "land" *"includes buildings and other structures, land covered with water, and any interest in the land."*

## **Consideration of Case**

16. During the meeting at the school on 7 July 2017, and in correspondence, the school and the trust had the opportunity to explain the key factors contributing to the long-standing dispute between the school and the trust, which I have summarised in the paragraphs below.

17. The school said that during the summer of 2015, it was recognised from budget projections related to a reduction in pupil numbers and increased pupil mobility, that staffing costs would need to be reduced. The school sought assistance

from other schools within the trust in order to re-organise staffing and reduce leadership costs.

18. From the evidence available, it appears that the trust suggested appropriate support might be, for example, sharing key staff between several trust schools such as a business manager or executive headteacher arrangement, a review of leadership salary levels and teaching commitments, and a possible federation.

19. As the level of support from the trust was not considered appropriate by the school, the governing body considered withdrawing from the trust and began looking at other local options. After several months, the governors discussed a number of options at the governing body's meeting on 3 November 2015, which was quorate. The seven governors in attendance voted unanimously to *"give notice to come out of the trust"* but four governors were not present at this meeting. As the vote at this meeting was taken by a majority of the governing body the vote met the requirement of Stage 1 of the procedure for removing a trust specified in the statutory guidance (Stage 1) that *"a majority of governors considers publishing a proposal to remove the trust."*

20. The trust, however, asserted that the statutory process had not been followed correctly and that the formalities related to the transfer of land from the council to the trust had not been completed. The formalities of the land transfer from the council to the trust were eventually completed on 13 September 2016, as confirmed in the Land Registry TR1 form of that date. I consider that the delay in the formalities does not affect the fact that the land had transferred by operation of law from the council to the trust, on 1 April 2012, when the school became a foundation school with a foundation.

21. A majority of the school's governing body wished to remove its trust in order to become part of a proposed local MAT. The governing body voted to initiate the process for removing the trust on 3 November 2015. The 2007 Regulations require that the decision to publish proposals to remove a trust must be confirmed at a meeting held not less than 28 days after the first meeting. The governing body discussed the matter at a second meeting on 7 September 2016, and the minutes of the governing body's meeting on 22 September 2016 confirm that *"the governing body met on 7 September 2016 and passed a resolution that they wished to proceed with removing themselves from the Co-operative Trust and forming a partnership"* with the proposed MAT.

22. The school said that a public consultation process on its proposals to leave the trust and to join the proposed MAT had been conducted in the period 19 October to 1 December 2016. I note the trust's concern that the school had conducted several public consultations already, which was Stage 3 of the procedure for removing a trust, before the land transfer issues at Stage 2 had been resolved.

23. I have no role in relation to the removal of the trust. There is no provision for the adjudicator to play any part in the decision to publish proposals to remove a trust or, for that matter, in the decision to go ahead and remove the trust or not once such proposals are published. These are matters for the governing body in accordance with sections 25 to 27 of the Act and regulation 6 of the 2007 Regulations. Once satisfied that Stage 1, the decision to initiate the removal of the trust had been

completed, my role was to decide what happens to the land in such circumstances. Any public consultations which may have been conducted already by the school were outside the scope of my jurisdiction.

24. In the meeting it was confirmed that the land which was transferred to the trust when the school became a foundation school with a foundation remains unchanged, and that there has been no addition to, or disposal of, the land.

25. I note that the school's chair of governors wrote a letter to the trust on 17 November 2016 requesting permission for the school to leave the trust. The school's solicitor suggested in a letter dated 23 June 2017 that *"it is still open to the Trust to provide the consent that is required for Western Springs to join the MAT. This would make the process easier for all involved and would allow the Trust to focus on its role in relation to its remaining schools. If the trust wants to continue to withhold consent, Western Springs will continue down the statutory process for the removal of a Trust. Either way the end result is the same... If the Trust do not wish to consent to the transfer of Western Springs to the MAT, following a decision by the Schools Adjudicator, Western Springs will continue on the process to remove the Trust and will ensure that the statutory process is completed as soon as possible"*

26. The trust argued that from the minutes of the governing body's meeting of 3 November 2015, *"under any other business"*, the governing body voted to seek to leave the trust, but did not agree to join the proposed MAT. The trust considered that the proposal to remove the trust should have been clearly set out in the agenda *"circulated at least a week in advance with full supporting documentation - and definitely not 'sneaked' on as AOB."*

27. The school's solicitor argued in his letter of 21 July 2017 that *"there is nothing to stop decisions being taken under any other business. The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 covers the procedures at maintained school governing body meetings. It is correct to say that generally matters for discussion at a governing body meeting should be on the agenda and circulated seven days before the meeting. However, regulation 13(7) allows the chair, irrespective of whether the matter was on the agenda or not, to allow discussion of other matters and for a decision to be taken."*

28. The trust responded that *"as public bodies, governing bodies are strongly advised not to put AOB on their agendas. As for raising them under Chair's discretion, this is normally only as an emergency or at the least an urgent matter, where not to act would result in detriment to the school. Any such reason should be minuted. It clearly either wasn't given or has not been minuted."*

29. The trust also noted that the minutes of the governing body's meeting of 3 November 2015 did not make clear which option the governing body wished to pursue after leaving the trust. The school's solicitor responded that *"there is no requirement in the Regulations or the Statutory Guidance on the Removal of a Trust that requires the governing body to determine their future arrangements at the same time as deciding to remove a trust. It is clear from the minutes of the meeting on 3 November 2015 ... that the majority of the school's governing body did decide to remove the trust. This decision by the governing body was reaffirmed ... the*

*governing body then consulted on the proposal to remove the trust between 19 October and 1 December 2016.”*

30. The trust explained it has a duty to protect the trust’s finances as well as to protect its charitable educational objectives, ethos and values which was why it had conducted an ongoing due diligence exercise and had been careful to ensure that the statutory process had been followed. The trust said it was not trying to force the school to remain within the trust; it was simply trying to ensure that the trust would have no future financial or contractual liabilities once the school left the trust. The trust was particularly concerned that a building on the school’s site may be part of a private finance initiative (a PFI scheme), typically associated with a long-term lease commitment of, perhaps, 25 years. The trust wanted to be sure that it would not be liable for any long-term lease, repayment of grant funding, or any other contractual obligations in the future relating to the land held for the school.

31. The school confirmed in the meeting that several years ago, the council had built a temporary building on the school’s site to house a children’s centre until such time as it could be accommodated permanently in the health centre nearby. An email from the development officer who had been involved with the council’s initiative regarding the children’s centre confirms that the temporary building was not a PFI project, and that the trust would have no future liabilities related to the temporary building were the land to transfer back to the school’s governing body on removal of the trust. The school provided a copy of the relevant email after the meeting.

32. On 11 July 2017, after the meeting, the school also provided redacted copies of historical email correspondence with the council’s legal services which confirm that the temporary building on the school’s land was a short-term measure to house a children’s centre. When the children’s centre was relocated permanently to the nearby health centre, the temporary building was dismantled and removed from the school site before the land and assets were transferred to the trust. The emails also confirm that the funding agreement associated with this temporary measure did not require novation as the agreement was extinguished when the building was dismantled.

33. Throughout the last two years, it seems to me that the governing body has made clear its intentions to remove the trust, and the trust has sought to ensure that procedures have been followed so that the trust would not be liable for any future financial commitments. It is unfortunate that since the governing body first voted to remove the trust, the process since that time has been protracted.

34. After the governing body’s first vote on 3 November 2015 to remove the trust, concerns about lack of compliance with statutory procedures were raised by the trust. From the extensive evidence presented by the school and the trust, and from the discussions at the meeting, it seems to me that since the first vote to remove the trust at the governing body’s meeting on 3 November 2015, a significant part of the dispute between the school and the trust has focused on the legitimacy or otherwise of the school’s consultation processes on its proposals to remove the trust and to join the proposed MAT. However, the matter of consultation is beyond the scope of this determination.

35. I am satisfied that Stage 1 of the procedure for removing a trust specified in the statutory guidance has been completed.

36. Stage 2 of the procedure for removing a trust specified in the statutory guidance relates to land issues. As the dispute between the school and the trust about the land had not been resolved within the prescribed period of three months of the initial decision to publish the proposals to remove the school's foundation, I must decide what is to happen to the land in the event that the governing body proceeds to publish proposals to remove the trust and subsequently approves any such proposals. In making the decision about what is to happen to the land, I am bound by the 2007 Regulations.

37. Regulation 17(1) states that *“any publicly provided land which, immediately before the implementation date, was held by the trustees for the purposes of the school transfers on that date to, and by virtue of this regulation vests in, the governing body.”*

38. Regulation 17(3) requires that *“any other land which, immediately before the implementation date, was held by the trustees for the purposes of the school transfers to and vests in the governing body in accordance with a transfer agreement.”*

39. Regulation 18(1) requires that *“where the trustees have incurred capital expenditure in relation to*

*a) land transferred under regulation 17(1) or (3), (the transferred land), or*

*b) other land, the proceeds of the disposal of which were used to acquire or enhance the value of the excluded land,*

*the governing body must pay to the trustees such sum representing the value of the transferred land as may be agreed between them or determined by the adjudicator under regulation 6.”*

40. Regulation 18(2) contains a similar provision requiring the trustees to compensate the governing body or the council (as the case may be) by a sum agreed by them or as determined by the adjudicator *“for incurred capital expenditure in relation to*

*a) any land held by the trustees for the purposes of the school which is not transferred land, (the excluded land), or*

*b) other land, the proceeds of the disposal of which were used to acquire or enhance the value of the excluded land.”*

41. The formalities regarding the land transfer to the trust which had occurred in law when the school became a foundation school with a foundation were completed retrospectively on 13 September 2016. I have considered the land against the provisions of the 2007 Regulations set out above. Evidence has been made available to me which demonstrates that all the land falls within the scope of paragraph 17(2) of the 2007 Regulations and the school possesses no land which falls within paragraph 17(3). The trust has not incurred any capital expenditure with respect to the land within the scope of paragraph 18(1) of the 2007 Regulations. There will be no future liabilities on transfer of the land. The land has remained intact

and unchanged since it was transferred to the trust; no land has been added and none has been sold off. I am satisfied that no compensation payment is due to the trust relating to the land to be transferred. There is no need for a transfer order.

42. The council has confirmed that the land transfer from the trust to the school's governing body *"is a matter for the trust and the Governing Body to resolve."* The council therefore has no issues to be resolved regarding the transfer of land. The council's legal services and former development officer confirmed that no grants or fees were payable, and no capital investment required to be refunded. I find that no compensation, therefore, is required to be paid to the council.

43. I conclude that the land which was originally transferred from the council to the trust when the school became a foundation school with a foundation, is to be transferred to the governing body of the school on removal of the trust.

### **Summary**

44. I have considered all the evidence provided and all the points made to me. I acknowledge that much time has been spent discussing whether statutory procedures have been followed correctly. However, my role in this matter is to decide that should happen to the land in the event the governing body decides to remove the trust having published the necessary proposals.

45. I determine that for the reasons given in the paragraphs above, the land which transferred from Staffordshire County Council to the Chase Co-operative Learning Trust when Western Springs Primary School becoming a foundation school with a foundation, should be transferred in its entirety to the school's governing body on removal of the trust.

### **Determination**

46. Under the power conferred on me by regulation 6 of The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, I direct that the land which was transferred from Staffordshire County Council to the Chase Co-operative Learning Trust when Western Springs Primary School became a foundation school with a foundation, shall be transferred to the Governing Body of Western Springs Primary School consequent upon removal of the trust.

Dated: 11 October 2017

Signed:

Schools Adjudicator: Ms Cecilia Galloway