



Office of
the Schools
Adjudicator

Determination

Case reference: LAN81

Applicant: The Leathersellers Federation of Schools - Prendergast Vale School

Application: Transfer of land to the governing board for Prendergast Vale School, Lewisham, which is the Federated Governing Board of The Leathersellers' Federation of Schools upon the school changing category to a foundation school without a foundation

Date: 11 June 2021

Certificate of Title and Registration of Transfer of Land

Under the powers conferred upon me by paragraph 19 of Schedule 6 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, I hereby certify that by virtue of paragraphs 1 and 2 of the said Schedule the Property specified in the next paragraph of this determination transferred to the governing board of The Leathersellers' Federation of Schools on 1 September 2011 together with any interest in or right over the Property which existed immediately prior to that date, and that this determination is to be conclusive evidence for all purposes of that fact.

The Property so specified is land registered under HM Land Registry Title Number TGL311787 subject to

- a. all matters referred to in the Property and Charges Registers of Title Number TGL311787 which were subsisting on 1 September 2011 insofar as the same affect the property and

- b. all rights easements and exceptions in over or under the Property and such local land charges subsisting on 1 September 2011 (whether or not registered before the date of this Transfer) as may affect the Property.**

The address of the Property is Prendergast Vale School, Prendergast Vale, Elmira Street London SE13 7BN.

Paragraph 18 of Schedule 6 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 requires that the transferor must execute any instrument under the Land Registration Acts 1925 to 2002, deliver any certificate under those Acts, and do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee. Accordingly therefore the Mayor and Burgesses of the London Borough of Lewisham must take all necessary steps to complete the registration of this land transfer with HM Land Registry as soon as possible and by 1 September 2021 at the latest.

The Referral

1. On the 18 March 2021 the Leathersellers' Federation of Schools, which is the federated governing board for Prendergast Vale School (the governing board) contacted the Office of the Schools Adjudicator. The school (formerly known as Lewisham Bridge Primary School) had changed category from a community school to become a foundation school without a foundation on 1 September 2011, however to date there has been no formal transfer of land from the local authority to the governing board registered at HM Land Registry. The governing board has requested that the adjudicator take such steps as are necessary to ensure that the governing board is able to prove title to the freehold.

Jurisdiction

2. Paragraph 1 of Schedule 6 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (the 2007 Regulations) provides that, where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities enjoyed or incurred by the transferor in connection with the land;

and subsisting immediately before the implementation date transfer to, and by virtue of these Regulations, vest in, that body. Paragraph 2 of Schedule 6 provides that where any proposals that a community school should become a foundation school have been approved any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in the trustees of the school to be held by them on trust for the purposes of the school; or if the school has no trustees, the governing body, to be held by that body for the relevant purposes.

3. In most instances, the transfer of land under Schedule 6 to the 2007 Regulations is confirmed by the parties entering into a transfer document which is sent to HM Land Registry. This enables the transfer of land to be registered formally so that the new owner of the land can prove title to the freehold. Upon implementation of the proposal for a school to change category to a foundation school, the land formerly held or used for the purposes of the school on the relevant date transfers and vests in either the trust or the governing body by operation of law. Whether the land vests in the trust or the governing body is determined by whether the school is a foundation school with or without a foundation. Paragraph 18 of Schedule 6 to 2007 Regulations requires that the transferor must execute any instrument under the Land Registration Acts 1925 to 2002, deliver any certificate under those Acts, and do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.
4. To date the local authority has not completed the registration of the land transfer to the governing board as it is required to do. The governing board understandably wants formal proof that the land has been transferred and for the transfer of land to be registered at HM Land Registry. In relation to any land used or held for the purposes of the school, the adjudicator has no jurisdiction to determine the ownership of that land after the implementation date of the proposal to change category. At this point in time, the ownership of any land held or used for the purposes of the school has already been determined by the 2007 Regulations. The only action the adjudicator can take in relation to such land is under paragraph 17 of the 2007 Regulations which provides for proof of title by certificate. This paragraph gives a broad power to the Adjudicator, as follows: "The adjudicator may issue a certificate stating that any property specified in the certificate, or any interest in or right over any such property as may be so specified, or

any right or liability so specified, was or was not transferred by virtue of these Regulations to any body corporate or persons so specified; and any such certificate is to be conclusive evidence for all purposes of that fact”.

5. The governing board has requested that I issue a Certificate of Title, which I do by virtue of this determination. As I will explain below, I have seen no evidence of a dispute between the parties as to the description of the land which has transferred. What appears to have caused the delay in registering the transfer with HM Land Registry is the local authority’s belief that contracts relating to the school land needed to be amended before the registration of the land transfer could take place. The local authority is required to take all necessary steps in order to complete and register the land transfer with HM Land Registry.

Procedures

6. In considering this matter I have had regard to all relevant legislation and guidance. I have considered all papers put before me including:
 - a) Copies of correspondence between the parties and their solicitors;
 - b) Draft TR1 (Land Registry Transfer form);
 - c) Copies of entries under title number TGL311787.

The Application

Background

7. The school was established as a foundation school on 13 August 2011. It was previously called Lewisham Bridge Primary School. It is now a non-selective all-through co-educational foundation school for pupils aged 4 – 16. The school is a foundation school without a foundation. The governing board is the Leathersellers’ Federation of Schools, and the school is part of a hard federation including Prendergast School (which is a voluntary aided non-selective secondary school for girls aged 11 – 18) and Prendergast Ladywell School (which is an all-through co-educational non-selective foundation school for pupils aged 4 – 16). Prendergast Ladywell School is the subject of determination LAN 82. Under the 2007 Regulations, which were the applicable regulations when Prendergast Vale School changed its status from a community school to a foundation school, the local authority is required to transfer the site to the governing

board of the Leathersellers' Federation and to complete the registration of the land transfer.

The view of the governing board

8. The governing board has been trying for many years to progress the registration of the transfer of school land to the governing board to no avail. The governing board's view is that any land used or held for the purposes of the school immediately prior to the implementation date of the school's change of category to a foundation school has already transferred and vested in the governing board by operation of law.

The view of the local authority

9. The local authority does not dispute that any land used or held for the purposes of the school immediately prior to the implementation date of the school's change of category to a foundation school has transferred and vested in the governing board by operation of law. Neither is there any dispute between the parties as to which land and buildings have transferred. What appears to have happened here is that the local authority considered that various other matters needed to be settled before it could enter into a formal land transfer. These matters relate to a Building Schools for the Future transaction entered into in 2007. The authority's view is that the transfer of the school land necessitated revisions to the contracts relating to this transaction, and that the revisions needed to be agreed with the contractor before completion of the land transfer. As I understand the position, the local authority has confirmed that it is ready to proceed with the registration of the land transfer for this school. I do not understand the reasons why this has not happened. I have asked the local authority why this transaction has not been finalised and what specific difficulties it would cause if the land transfer were completed. I have not had a response.

Consideration

10. There is little for me to consider here. As I have said above, the position is straightforward. All land held or used for the purposes of the school on 1 September 2011 and any rights and liabilities which had been enjoyed or incurred by the local authority immediately before that date have transferred to and vested in the governing board of the school by virtue of the 2007 Regulations. I have seen no evidence of a dispute between the parties as to the description of the land which has transferred.

11. I have set out above what the 2007 Regulations say about the transfer of land when a school changes category to become a foundation school. I have established from the parties that the land I have specified in this determination was being used or held for the purposes of the school immediately before the implementation date of the proposal to change category. I have considered the representations of both parties and have decided to issue a Certificate of Title to confirm the transfer of land which has transferred and vested in the governing board pursuant to the 2007 Regulations. My reasons for issuing a Certificate of Title are to enable the school to have formal confirmation of title to the land owned by the governing board. The local authority is required to execute and deliver all documentation necessary to complete and register the transfer of land with HM Land Registry.

Conclusion

12. It should not have been necessary for the Adjudicator to be involved in this matter. There is no dispute about the publicly provided land which was used for the purposes of the school immediately before it became a foundation school. The dispute has arisen because the local authority did not do as it was required by the 2007 Regulations when the school became a foundation school in 2011: that is register the transfer of the land to the governing board of the school. I have no hesitation in concluding that a Certificate of Title should be issued in this case, and that registration of the land transfer should be completed without further delay.

Certificate of Title and Registration of Transfer of Land

13. Under the powers conferred upon me by paragraph 19 of Schedule 6 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, I hereby certify that by virtue of paragraphs 1 and 2 of the said Schedule the Property specified in the next paragraph of this determination transferred to the governing board of Prendergast Vale School on 1 September 2011 together with any interest in or right over the Property which existed immediately prior to that date, and that this determination is to be conclusive evidence for all purposes of that fact.

14. The Property so specified is land registered under HM Land Registry Title Number TGL311787 subject to

- a. all matters referred to in the Property and Charges Registers of Title Number TGL311787 which were subsisting on 1 September 2011 insofar as the same affect the property and
- b. all rights easements and exceptions in over or under the Property and such local land charges subsisting on 1 September 2011 (whether or not registered before the date of this Transfer) as may affect the Property.

The address of the Property is Prendergast Vale School, Prendergast Vale, Elmira Street London SE13 7BN.

15. Paragraph 18 of Schedule 6 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 requires that the transferor must execute any instrument under the Land Registration Acts 1925 to 2002, deliver any certificate under those Acts, and do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee. Accordingly therefore the Mayor and Burgesses of the London Borough of Lewisham must take all necessary steps to complete the registration of this land transfer with HM Land Registry as soon as possible and by 1 September 2021 at the latest.

Dated: 11 June 2021

Signed:

Schools Adjudicator: Dr Marisa Vallely