



Office of
the Schools
Adjudicator

Determination

Case reference: LAN82

Applicant: The Leathersellers Federation of Schools - Prendergast Ladywell School

Application: Transfer of land to the governing board of Prendergast Ladywell School Lewisham, namely the 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 Land Transfer

Under the powers conferred on me by paragraph 17 of Schedule 5 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 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 2014 together with any interest in or right over the Property, and that this determination is to be conclusive evidence for all purposes of that fact.

The Property so specified is land to the east of Manwood Road Playing Fields registered under HM Land Registry Title Number SGL5408 and identified on the title plan for Title Number SGL5408 and shown edged red but excluding the land shown coloured blue on the attached plan and subject to

- a. all matters referred to in the Property and Charges Registers of Title Number SGL5408 which were subsisting on 1 September 2014 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 2014 (whether or not registered before the date of this Transfer) as may affect the Property.

The address of the Property is Prendergast Ladywell School Manwood Road London SE4 1SA.

Paragraph 16 of Schedule 5 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 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 Ladywell School (the governing board) contacted the Office of the Schools Adjudicator. The school (formerly known as Ladywell Fields College) had changed category from a community school to become a foundation school without a foundation on 1 September 2014, 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 steps to ensure that the governing board is able to prove title to the freehold.

Jurisdiction

2. Schedule 5 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the 2013 Regulations) applies in relation to the transfer of land where a school changes category or acquires a foundation. Paragraph 1 of Schedule 5 to the Regulations provides that, where any land is transferred to and vests in any body in accordance with the Schedule, any rights or liabilities enjoyed or incurred by the transferor in connection with the land and subsisting immediately before the implementation date, also transfer to, and by virtue of these Regulations, vest in, that body. Paragraph 2 of Schedule 5 applies where any proposals that a community school should become a foundation school have been approved. In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school or community special school must on that date transfer to, and by virtue of that 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 5 to the 2013 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 16 of Schedule 5 to 2013 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 Regulations. The only action the adjudicator can take in relation to such land is under paragraph 17 of Schedule 5 to the 2013 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 process of renegotiating other agreements which had been entered into in connection with the school land, particularly the PFI (Private Finance Initiative) agreement. The local authority was of the understanding that the registration of the land transfer should not be completed until revisions to other agreements had been put in place. The local authority is required to register the transfer of land without further delay.

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 TP1 (Land Registry form used for transfer of part of a piece of registered land);
 - c) Copies of entries under title number SGL5408.

The Application

Background

7. The school was established as a foundation school on 1 September 2014. It was previously called Prendergast Ladywell Fields College and was a non-selective co-educational community secondary 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 Vale School (which is an all-through co-educational non-selective foundation school for pupils aged 4 – 16).
8. The local authority is required to transfer the site to the governing board under Schedule 5 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.

The view of the governing board

9. 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

10. 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 already 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 considers that various other matters need to be settled before it can enter into a formal land transfer. These matters relate mostly to a PFI project agreement and governing body agreement affecting the land. The local authority has informed me that Prendergast Ladywell School was part of the Lewisham Grouped Schools PFI contract

entered into in August 2006 for the provision of school facilities and subsequent operation and maintenance at a number of schools in Lewisham. The Grouped Schools PFI contractor is By Education (Lewisham) Ltd (“Project Co”).

11. I have been shown a document entitled ‘Implications of the Land Transfers’ which sets out the work which was considered to be needed before the transfer of land could be registered. There is a reference in the documentation to the effect that the local authority had been “advised” that the land transfers could not go ahead before amendments had been made to the PFI agreement and governing body agreement. The local authority’s intention appeared to be that it would “pass through the relevant rights and obligation under the PA to the Federation to the extent that there is an interface with the Federation / the School”. It is then said that “... it is relatively unusual for a freeholder other than a local authority to become a party to a PFI PA. Accordingly, it is not proposed to put the Federation in as a party to the PA, particularly as this would require substantive discussions with Project Co and the funders as it would affect the risk profile of the original transaction. Accordingly, it is intended to proceed on the basis that the current structure will continue with the Council remaining a party to the PA and the Federation a party to the GBA. Risks and benefits will pass through to the Federation under the GBA, not under the PA. Further, note that there is a single PA which covers other schools as well (Forest Hill and Greenvale); it is only the GBA which is specific to Prendergast Ladywell Fields College. So we do not propose to add the Federation as a party to the PA, however, there will be some amendments to the PA as a result of the transfer”. [I have taken “PA” and “PFI PA” to be a reference to the contract between the PFI provider and the local authority and “GBA” to mean the agreement between the local authority and the governing boards of the schools which are the subject of the PFI contract which is ancillary to the PFI contract].

12. I make no comment upon the legal merits of this as a way forward except to observe that it appears to be a pragmatic method of ensuring that any contractual rights and liabilities incurred by the local authority under the PFI Agreement were in essence passed on to the governing body, however I am bound to say that if this was considered to be the most straightforward method of doing passing on the relevant obligations, it very difficult to understand why there have been so many years of delay in registering the transfer of this school land. I asked the local authority on what basis these agreements need to be renegotiated given that any rights and liabilities under them

have already transferred. The local authority has not responded to this question. I also informed the local authority that I was proposing to issue a Certificate of Title in respect of the land formerly used or held for the purposes of the school and asked exactly what problems this would cause. Again, I have received no response to this question. I have received assurances from the local authority that it intends to proceed with registering the transfer of land, however the governing board has been waiting for this for nearly seven years, therefore I have no confidence that without my intervention the transfer will be registered by the local authority within any reasonable timescale. I see no reason why the governing board should wait any longer for confirmation of a transfer of land which already happened such a long time ago.

Consideration

13. 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 and any rights and liabilities relating to the land which had been enjoyed or incurred by the local authority immediately before 1 September 2014 have transferred to and vested in the governing board of the school by virtue of the 2013 Regulations. 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 entering into a formal transfer and registering this with HM Land Registry is that the local authority had not finalised amendments to other relevant agreements.

14. I have set out above what the 2013 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 that the specified land has transferred to, and vested in, the governing board pursuant to the 2013 Regulations. My reasons for issuing a Certificate of Title are to enable the governing board to have formal confirmation of title to the freehold land and buildings now 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

15. 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 what was required by the 2013 Regulations at the point when the school became a foundation school in 2014: that is register the transfer of the land to the governing board. 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 effected without further delay.

Certificate of Title and Registration of Land Transfer

16. Under the powers conferred on me by paragraph 17 of Schedule 5 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 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 2014 together with any interest in or right over the Property, and that this determination is to be conclusive evidence for all purposes of that fact.

17. The Property so specified is land to the east of Manwood Road Playing Fields registered under HM Land Registry Title Number SGL5408 and identified on the title plan for Title Number SGL5408 and shown edged red but excluding the land shown coloured blue on the attached plan and subject to

- a. all matters referred to in the Property and Charges Registers of Title Number SGL5408 which were subsisting on 1 September 2014 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 2014 (whether or not registered before the date of this Transfer) as may affect the Property.

The address of the Property is Prendergast Ladywell School Manwood Road London SE4 1SA.

18. Paragraph 16 of Schedule 5 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 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