



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: LAN83**

**Applicant: The Governing Board of Hugh Gaitskell Primary School,  
Beeston, Leeds**

**Application: Transfer of land to the governing board of Hugh Gaitskell  
Primary School upon removal of the school's foundation**

**Date of direction: 1 August 2022**

## Certificate of Title and Registration of Transfer of Land

- 1. 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 this paragraph transferred to the Learning Trust (South Leeds) on 1 July 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 WYK893111 with the exception of the Multi Use Games Area, car park and changing rooms identified and marked as such on the attached Plan.**

**The address of the Property is Hugh Gaitskell Primary School St Anthony's Drive, Beeston, Leeds, West Yorkshire, LS11 8AB, and the transfer is subject to**

- a. all matters referred to in the Property and Charges Registers of Title Number WYK89311 which were subsisting on 1 July 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.**

- 2. Under regulation 6(2) of the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 I hereby determine that The Property specified in paragraph 1 transferred to the Governing Board of Hugh Gaitskell Primary School on 1 June 2021 and, by virtue of regulation 17(1) of the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, vested in the governing board on that date.**

**This determination is to serve as a Certificate of Title to the effect that under paragraph 5 of Schedule 3 to the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 the land specified in paragraph 1 was transferred by virtue of these Regulations to the Governing Board of Hugh Gaitskell Primary School and is conclusive evidence for all purposes of that fact.**

- 3. The Transferor (Leeds City Council) has agreed with the Transferee (the Governing Board of Hugh Gaitskell Primary School) that, in addition to the Property specified in paragraph 1, the Multi Use Games Area and car park identified and marked as such on the attached Plan will transfer to the Transferee subject to the Transferee permitting the continued use of the car park and rights of access to the changing rooms and car park by users of the sports pitches located to the south of the property.**
- 4. The Transferor has also agreed with the Transferee to enter into a licence permitting the Transferee to use the changing rooms identified and marked as such on the attached Plan.**
- 5. Therefore the Mayor and Burgesses of the Leeds City Council must**
  - a. take all necessary steps to complete the registration of the transfer of land to the governing board of Hugh Gaitskell Primary School with HM Land Registry and**
  - b. take all necessary steps to prepare and execute a licence agreement permitting the Transferee to use the changing rooms identified and marked as such on the attached Plan.**

**These steps must be completed as soon as practicable and by 31 October 2022 at the latest.**

## The Referral

1. On 5 May 2022 solicitors acting on behalf of the governing board of Hugh Gaitskell Primary School, Leeds (the school) referred a dispute to the Office of the Schools Adjudicator. The dispute concerns the failure by the local authority to transfer land to the governing board upon the removal of the school's foundation, and the extent of the land which must be transferred. The area of land in dispute is changing rooms which are situated within the curtilage of the property registered under HM Land Registry Title Number WKY893111 but not adjacent to the main school buildings.

## Jurisdiction

2. The governing board's solicitors have made a referral to the schools adjudicator under regulation 6(2) of the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 (the Foundation Schools Regulations). Regulation 6(2) requires that where the governing board has not reached agreement with the trustees and the local authority within the prescribed period concerning the land to be transferred under regulation 17, such matters must be referred to the adjudicator for determination.
3. On 1 June 2021, when the school became a foundation school without a foundation no agreement had been reached between Leeds City Council (the local authority) and the governing board of the school concerning the transfer of land within three months of the decision by the governing board to remove the school's foundation, therefore I am satisfied that this matter has been lawfully referred to me and is within my jurisdiction. The referral should have been made before completion of the removal of the school's foundation. The governing board was of the impression that the extent of the land transfer had been agreed prior to the removal of the school's foundation, which is why the referral was not made earlier. I accept that the governing board had valid reasons for believing as it did.

## Procedures

4. In considering this matter I have had regard to all relevant legislation and guidance. I have considered all papers put before me including:
  - a) the letter from the school's solicitors dated 5 May 2022, the attachments to that letter, further representations and responses to my subsequent enquiries;
  - b) an email dated 17 May 2022 from the governing board confirming that the solicitors were acting for it on this matter;
  - c) a letter from the local authority dated 13 May 2022, the attachments to that letter, responses to my subsequent enquiries and further documentation provided;

- d) submissions by the lawyers for the local authority and the governing board; and
- e) an inspection of the school site and information submitted by the parties at a meeting in the school on 12 July 2022.

## The Application

- 5. The application is that the adjudicator determine the land to be transferred to the governing board upon removal of its foundation, which was the Learning Trust (South Leeds), and to require the local authority to 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 would be required to execute, deliver or do in the case of a transfer by agreement between the local authority and the governing board to enable the land and buildings specified by the adjudicator to be transferred by the local authority to the governing board.

## Background

- 6. The governing board's solicitors have told me that, on 1 July 2011 (the Implementation Date), the school became a foundation school with a foundation, and that the foundation was The Learning Trust (South Leeds) (the trust). The solicitors say that under the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (the 2007 Regulations), which were the relevant Regulations in force at that time, all land which immediately before the Implementation Date was held or used for the purposes of the School transferred to and vested in the trust by operation of law. The local authority did not register the transfer of land to the trust as it was required to do.
- 7. On 14 July 2020 the then governing board of the school took a decision that it would publish proposals to remove the school's foundation under regulation 4 of the Foundation Schools Regulations. On 1 June 2021, the school became a foundation school without a foundation. The trust itself intends to dissolve, and all its directors have resigned. The dissolution of the trust has been suspended by Companies House at the request of the governing board to allow for the transfer of land to the school's governing board. The solicitors consider that, if the trust is dissolved, the land and buildings may become bona vacantia, and that this will add unnecessary costs and complications to the transfer of the school land to the governing board.
- 8. Prior to the removal of the school's foundation, the then governing board of the school had understood that the local authority was agreeable to the transfer of all land and buildings within the curtilage of the school to the governing board. This would have included a Multi-Use Games Area, car park and changing rooms.

9. In 2003 the local authority was awarded grant funding from the Big Lottery Fund, the project summary being: "Leeds City Council will create a new floodlight Multi Use Games Area (56m x 37m) and changing facilities, together with a redeveloped and extended playground space to deliver a step change in the provision of sporting facilities in the area. The facility will deliver tennis, netball, basketball and football for 1,451 including 501 from Hugh Gaitskell, St Anthony's and Beeston primary schools and 950 community users." The changing rooms, Multi Use Games Area (MUGA) and car park were constructed by the local authority with this the lottery grant funding. They are shown and identified on the attached plan as part of Title Number WYK893111. It is clear that the MUGA, car park and changing rooms were not created for the school's exclusive use. They were intended to be a facility for more than one school and for use by the local community.
10. The bid for National Lottery funding included an application for the development of the sports pitches situated to the south of where the MUGA is now located. Unfortunately, there were not enough funds to deliver the entire project and therefore the pitch developments were not carried out at that time. When planning permission was granted in 2003 for the construction of the MUGA, car park and changing rooms it was stipulated that there must be access to the sports pitches, changing rooms and that their associated car parking made available to members of the public in order to ensure that the development benefits the local community.
11. A further project was undertaken in 2007/2008 to develop the playing pitches which was funded jointly by the Football Foundation, Beeston St Anthony's AFC (the football club) and Leeds County Council Area Committee Wellbeing Fund. The development of the pitches and use of the changing rooms and car park enabled the football club to relocate from their existing unsuitable home ground and continue to develop and expand as a club with appropriate quality grass pitches and access to changing facilities as required as part of the Regional NLS Feeder League Minimum Requirements for season 2021/22. The football club uses the car park. However, as the school also uses the car park during the day, it has been agreed by the local authority that the car park should transfer to the school with the proviso that the car park can continue to be used by users of the changing rooms when required. The local authority wishes to preserve community use of the car park.
12. The local authority says that on 30 June 2011 (immediately prior to the Implementation Date) the changing rooms were being held by the authority in accordance with the terms of the Lottery Fund grant agreement. The football club was using the changing rooms and has done so since 2009, when the playing field to the south of the changing rooms (known as Kings Field) was developed. The local authority has submitted a copy of the bid it made for the National Lottery grant funding and also a letter from the football club which details its history of using the changing rooms. The letter says that the football club has been the sole user of the changing rooms since 2009 and that the school, to their knowledge, has never used them.

13. The MUGA is no longer used by other schools or the general public, and the local authority will agree to transfer the MUGA to the school along with the car park. The area in dispute between the parties is the changing rooms which are used by the football club. The local authority wishes to protect the use of the changing rooms for the benefit of the community, principally the football club. Alternatively, if the changing rooms are transferred to the governing board, the local authority would wish this to be on the basis that the authority would be assured that community use of the changing rooms is protected.
14. There is a hire agreement between the local authority and the football club, the terms of which creates a strong impression that the changing rooms are managed and treated by the local authority as school premises, with the governing board having control of their use. The local authority maintains that the hire agreement arrangement, which provides for governing body control, was simply set up because the required utilities for the changing rooms were being supplied from the school. When developing schemes such as the operation of changing rooms for community use, the local authority is obliged to consider the most cost-effective way of delivering within a limited budget. Often nearby council buildings such as a maintained school will be utilised to support essential elements like the utility connection. This is said to reduce the need to commission dedicated services which are often costly and unduly burden limited budgets.
15. Payments under the hire agreement by the football club are made to the school. The local authority claims that the sole reason why the school receives income from the hire of the changing rooms is to off-set the utility costs. The changing rooms and MUGA are not, and never have been, school premises according to the authority. This is notwithstanding the fact that the changing rooms have always clearly been managed as they would be managed if they were school premises, with the school's having control of the use of the changing rooms and able to terminate the football club's use upon giving four weeks' notice under the local authority's standard terms and conditions.
16. When the changing rooms were built, the school was a community school and there was no indication in 2003 that the school would be anything other than a community school, allowing the local authority some level of control over matters such as this. There was never an intention on the part of the local authority that the changing rooms would become part of the wider school site, hence public access being maintained via St Anthony's Road for community use. The location of the changing rooms, MUGA and car park is said by the local authority to have been on historic scrub land adjacent to the school. Access to the changing rooms has always been available from the adjoining highway and so the changing rooms have always been separate from the school site. The school also uses Kings Field, and an arrangement is currently in place between the school and the club notifying each other of matters such as when the field is being treated.

17. The head teacher, however, told me at a meeting convened by me at the school on 12 July 2022 (the meeting), that ‘there was an understanding’ that the school land extended as far as Kings Field to the south and would therefore include the areas where the MUGA and the changing rooms are located. The school opened in 1992. According to the head teacher, the site was different then. The areas which are now the MUGA and the changing rooms were “bell pits<sup>1</sup>”. In order to access the changing rooms from the school, it is necessary to leave the secured area of the school. The MUGA and the changing rooms are both padlocked areas. School staff and the caretaker have keys. The football club has keys to the changing rooms and uses them on Saturdays when there are home games and sometimes on Wednesdays. To the right of the MUGA and the changing rooms is a building and car park which I am told is owned by DePuy Synthesis.
18. At the meeting I was also told by the head teacher that the school is the only organisation using the MUGA, and that the changing rooms are used by both the football club and the school, although the school has not actually used the changing rooms since the onset of the Covid pandemic. Both parties confirmed that their intention is to preserve the status quo. However, the school maintains that the changing rooms are school premises, and it wishes to have control of which organisations can use them and when. The local authority is dubious that the school will continue to allow the football club to use the changing rooms in the longer term. There have been some issues in dispute between the school and the football club about failures to comply with the terms and conditions of the hire agreement, for example items such as alcohol being left in the changing rooms, and the school’s failure to fix a broken boiler. Also, the local authority has apparently seen governing board minutes which indicate that the school is intending to change the use of the changing rooms in the longer term.
19. The local authority feels the need to protect the interests of the football club. The school claims there to be a misunderstanding, and that the school is pleased to have the football club use the changing rooms.
20. There should be no difficulty with both the school and the football club each using the changing rooms as they use them at different times. However, despite each party claiming to want the same continued use for the changing rooms, the parties have been unable to agree a way forward. The local authority wishes to accede to the football club’s request for a formal licence to use the changing rooms and would also grant the school licence to use them. The local authority has said that any future intended change of use for the changing rooms would be subject to planning

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<sup>1</sup> Bell pit mining was one of the early methods of underground mining. The name comes from the shape that the mine forms. A long narrow shaft is dug down until it reaches the coal seam.

approval, it is relevant therefore that, even if the school were to own the land, its use would remain subject to a degree of control by the local authority.

21. A letter submitted by the football club says that the club plays a key part in the local community and has done so for nearly 100 years; that it provides benefits to its players in terms of health and wellbeing; that these players are local children; that the club is well supported by the local community, and that matches are enjoyed by many local spectators on Saturday afternoon. The club has said that it needs the changing rooms in order to participate in the football league it plays in; it has invested money over the years in developing the pitch and surrounds, and wishes to be secure in ensuring long-term use of changing rooms which are next to the pitch.
22. The local authority is not aware of any other users of the changing rooms, other than the football club and this includes the school. The local authority's School and Communities lettings service team have no record of any other group applying to use the changing rooms (although records are only retained for seven years). The local authority considers that this could be because people using the MUGA would be unlikely to need to use the changing rooms. It would be users of the Kings Field for playing football who would need to use them.
23. The local authority has sent in an ariel photo of the local authority land prior to the development of the MUGA, changing rooms and car park. The impression this gives is consistent with my impression from the site inspection, which is that the land upon which the MUGA, car park and changing rooms are located is adjacent to but separate from the premises of the school.

## The view of the school

The view of the governing board is that all of the land and buildings comprised in Title Number WYK893111 transferred to the trust on 1 July 2011, and must now transfer to the governing board under regulation 17 of the Foundation School Regulations. The school's solicitors say that, prior to the removal of the school's foundation, the local authority had not disputed the governing board's entitlement to have the MUGA and the changing rooms (along with access to them) transferred to the governing board. By email of 5 November 2020 the local authority's solicitor sent a plan to the governing board for approval, which included the changing rooms and the MUGA. The plan is said to have been approved by email of 18 November 2020. By email of 27 January 2021, the local authority's solicitor sent a form TP1 to the school's solicitors, which accepted and incorporated the governing board's amendments, and which has been signed on behalf of the governing board.

24. However, by email exchange between 20 and 26 May 2021, the local authority's solicitor confirmed that, whilst the authority was not "looking to review the extent of the land transferred", the transfer could not be completed whilst the parties were in discussions about the changing rooms. By emails of 3 and 18 March 2021, the local



authority's solicitor provided a copy of the lettings agreement and Terms and Conditions between the local authority and the football club in respect of the changing rooms. I have been referred to clauses 15 and 16 of Section 3 which say inter-alia:

“Making changes to an existing letting (Amendments)” of the T&Cs below:

15. If you hire the premises over a period of time, either you or we / the school can end the agreement by giving 4 weeks written notice to the other. This does not apply if we need the premises for educational use.

16. The premises are first and foremost a school and all educational use and provision takes priority, this may result in short notice changes and cancellations. It is for this reason that schools may not be an entirely suitable venue to run a business from.”

25. The school's solicitors tell me that it is clear from the above terms that the changing rooms are first and foremost for the school and for educational use. The position of the governing board is that, following the transfer of the changing rooms to the governing board, the hire agreement for the changing rooms “should remain on substantially similar terms as it is presently and, subject to either party's right to end the agreement by giving 4 weeks written notice, should continue and be renewed in the usual way”. The solicitors' view is that the terms of the hire agreement for the changing rooms can and should be addressed after the transfer of the land to the governing board. This issue should not be used to delay the transfer of the land to the governing board.
26. The hire agreement with St Anthony's AFC is said by the school's solicitors to be a licence under the school's letting policy. The Terms and Conditions of which state on page 3: “Leeds City Council has an established central team, The School Lettings Service, which is part of the Business Administration Service. The School Lettings Service administers the letting of premises on behalf of the school, academy...It is therefore wholly a school's decision to accept or refuse an application for a letting and to set any fees associated with that letting. The hirer enters into contract with the school, academy...not the School Lettings Service / Leeds City Council.” The governing board is said therefore to be the proper party to the hire agreement and to have acted consistently with that position. The governing board has set the fees associated with the hire of the changing rooms and has always had the contractual right to terminate the licence by giving 4 weeks' written notice.
27. The solicitors say that, despite repeated attempts to resolve this matter without the intervention of the Adjudicator, the local authority has continued to delay the process and is failing to take steps to effect the transfer of the land and buildings as required. By email of 13 December 2021 the local authority confirmed that the matter is “put on hold for now whilst [the local authority] is considering the position regarding the changing rooms”. The local authority has provided no indication of when it will be in a position to progress the matter, which is now said to be pressing as the land needs to be transferred before the trust is dissolved. The governing board has needed to

make several applications to Companies House to delay the dissolution of the trust in order to complete the transfer of the school land to the governing board.

28. The solicitors have told me that the profile of PESSPA (Physical Education, School Sport and Physical Activity) has been raised across the school as a tool for whole school improvement. The school is now recognised as a 'sports hub' school within the local area. Removing the changing room facilities it is said "would significantly hamper this endeavour". The school's leaders recognise that, in the wake of the pandemic, children's physical health and wellbeing has never been more important. As such, the school has prioritised physical education on both its School Development Plan (SDP) and School Evaluation Form (SEF). Ofsted inspectors also expect to see schools offering children a broad, balanced education, including opportunities to be active during the school day and through extra-curricular sporting activities. As the changing rooms play a vital role in providing higher quality PE lessons and better sport opportunities, the school has no plans to change the use of the changing rooms at this time.
29. Although it is not a legislative requirement that primary schools have changing rooms, in February 2022 the NSPCC released the briefing, "Safeguarding considerations for getting changed at school" with the following summary: "Schools have a duty to protect the children and young people in their care. This should include putting measures in place to make sure children and young people feel comfortable and are safe when getting changed for physical education (PE), drama and other activities." In respect of changing areas/facilities/rooms, the briefing outlined, inter alia, that:
- Schools need to treat everyone fairly and with respect for their privacy and dignity.
  - Schools should make adequate and sensitive arrangements for changing which take into account the needs of all children.  
This should include those... from different religions, beliefs and cultural backgrounds.
30. At the school, an increasing number of Black African girls are entering into precocious puberty meaning that, by the age of ten, these students are often fully developed. Understandably, these young people are also more likely to require a shower following physical activity and particularly when PE lessons take place in the morning. As such, changing in classrooms or school toilets does not facilitate "respect for their privacy or dignity", nor does it take into account the needs of children from different cultural backgrounds. The solicitors say that the Department for Education's School Sport and Activity Action Plan explains that: "Programmes like the Youth Sport Trust's Girls Active (funded by Sport England) aim to increase girls' engagement in physical activity by helping schools understand what motivates girls to take part, and empowering them to make changes to their sport and physical activity provision. The solicitors maintain that, having adequate changing facilities is particularly important for adolescent girls, many of whom report negative experiences

of sport at a young age which can leave them reluctant to take part in exercise later in life.

31. The school's PE curriculum is said to ensure that all children are able to succeed in physical activities, cooperate and collaborate with others and embed life-long values such as fairness and respect. The school aims to develop its children's enjoyment of physical activity and strive to improve their overall health and well-being, in line with its whole school curriculum statement of "I am powerful and I am strong". As part of this, the school is said to have used the changing rooms since 2011 (as well as historically) and for a variety of purposes. The solicitors have provided a list of sports events currently being held at the school. The solicitors do not mention that, due to Covid, there have been restrictions on the use of shared spaces such as changing rooms. Government guidance restricting their use was lifted in July 2021; however it appears that the school is still not choosing to use the changing rooms, possibly for understandable reasons as the number of Covid cases remains high.
32. The solicitors say that many schools hire out parts of the school premises outside of school hours. Their view is that this would not preclude those parts of the premises from being land used or held exclusively for the purposes of the school. On this basis their view is that paragraph 2(2) of Schedule 6 to the 2007 Regulations applied at the time of the category change and the changing rooms transferred to the trust on 1 July 2011.
33. Alternatively (they argue) the changing rooms and the MUGA have transferred to the trust under paragraph 15(3)(a) of Schedule 5 to the 2007 Regulations, which applies in a case where property not used exclusively for the purposes of the school does not permit its division or apportionment and therefore must be transferred or retained according to whether on the transfer date the transferor or the transferee appears to be in greater need of the security afforded by that estate or interest or, where neither of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent. Although the solicitors argue that the changing rooms transferred under paragraph 15(3)(a) of Schedule 5 to the 2007 Regulations, clearly there has been no determination to this effect. The majority of the school's arguments about greater need and security focus upon what is said to be the current use, as opposed to the use on the Implementation Date.
34. According to the solicitors, the changing rooms have only been used by the school and the football club in recent years, and it is therefore only relevant for the adjudicator to consider the needs of security and intended future use of the land by these two bodies (as opposed to considering any need for the security of wider future community use). The school has a greater need of security for the reasons set out above as it wants to protect and promote opportunities for its own pupils above all else. Physical Education has a significant impact on pupils' wider personal development and their opportunities to grow as healthy, active and engaged citizens.

However, the school understands the importance of, and welcomes, community use of the facilities. Wider use by anyone other than the football club is said to have been made very difficult in recent times due to the club's use of the facilities, which has frequently been in breach of the hire agreement. The cost of the upkeep of the changing rooms is said to have been met from the school's delegated budget.

35. The local authority's submission that it has a greater need of security as the football club must have access to changing facilities due to the level it is playing at in the West Yorkshire Association Football League is said to be overstated. "The Football Club has always accepted and been aware of the fact that educational use takes priority and that it may have to find an alternative site... The hire agreement makes clear that the premises are first and foremost a school and all educational use and provision takes priority, this may result in short notice changes and cancellations. It is for this reason that schools may not be an entirely suitable venue to run a business from." The solicitors say there has been no evidence to support the local authority's claim that the football club can only be based at the specific site in dispute.
36. The solicitors say that the school will make greater use of the changing rooms as the football club only uses the changing rooms on Saturdays from 13.30-16.30. When use on Saturdays is cancelled due to fixture arrangements or the weather, the Football Club uses the changing rooms on Mondays or Wednesdays from 17.45-20.30. The total number of matches played across the season must not exceed 38 and there is no suggestion it will increase. That is set against the school's proposals to use the changing rooms for the vast majority of days each week. The trust and the school are said to have made clear that at present the football club can continue to hire the changing rooms in accordance with the standard form terms and conditions.
37. The local authority has proposed that the changing rooms could be transferred to the governing board but with a lease granted in the authority's favour to enable the authority to continue to hire out the changing rooms to the football club and third parties. The solicitors say that this does not appear to be a form of apportionment. If the local authority operates the changing rooms by way of a lease, the school will not have meaningful benefit or control of the changing rooms. The authority has said that "Ward Members" want the changing rooms to be used for football clubs, local schools and the general public. This statement is said to be lacking detail. The authority has failed to explain why it suddenly wants other parties to be able to use the changing rooms. "The obvious inference is that this is merely being argued to inflate and support LCC's position".
38. Even if the local authority has genuine plans for the changing rooms to be used by other schools, that is not a reason to prevent the transfer of the changing rooms to the school. Although the priority of the governing board is said to be the welfare of the children of the school, the governing board has never indicated that the school's use would prevent wider community use. Such use would simply be in accordance

with the lettings policy that is in place across all Leeds City Council maintained schools.

39. The solicitors note that, according to the local authority, the governing board purportedly requires planning permission to change the use of the changing rooms, which would involve Sport England as a statutory consultee, and Children and Families Asset Management Board approval for the change of use of the changing rooms to exclusive educational use. The solicitors say there are no plans to change the use of the changing rooms at this time.

## The view of the local authority

40. The local authority's view is that the MUGA and the changing rooms were not land which was used or held for the purposes of the school immediately prior to the Implementation Date, therefore these areas did not transfer to the trust on that date. The local authority will agree to transfer the MUGA; however, it wishes to protect the football club's long-term continued use of the changing rooms. The governing board is said to be unwilling to enter into any meaningful discussions with the local authority regarding third party use of the changing rooms.
41. The local authority has said that the changing rooms have never been used in connection with the MUGA use. They have been used by Beeston St Anthony's AFC since they were constructed in approximately 2003. The authority says that the club plays at a high level in amateur football and is in the Premier division of the West Yorkshire Association Football League. As mentioned above, there is a requirement of the league that all clubs competing must provide changing rooms located on site and close to the football pitch. There is also a referee room in the changing room as required by the West Yorkshire League. Without these changing room facilities the football club would not be able to continue to play football at Premier division level. The changing rooms are close to the team's pitch which the club has invested in through maintenance of the grass pitch and fence surrounds.
42. The local authority says that there is no caretaker presence at the changing rooms. The football club maintains, repairs and cleans the changing rooms, and pays approximately £2000 per season to the school. Allowing the school to retain the hire costs has always been simply to enable the school to off-set any additional utility costs to the school. The local authority is not aware of whether the school uses the changing rooms. There is a suggestion that the headteacher has said at one point that this is not the case. The government guidance in Building Bulletin 103: Area Guidelines for Mainstream Schools does not require that primary aged children have access to changing facilities.
43. According to the local authority, on Monday 9 May 2022 the football club were training and wanted to use the changing rooms; however, the school had removed all of the football club's equipment, taken down their signage and moved them to the entrance foyer. The school's reasoning for doing this was said to be because they

wanted to do a deep clean – which they did. However, the school has since put its own signs up. The school did not enter into any discussions with the football club before it took this action. The boiler has been broken for some time; the school has not fixed it; and has refused to allow the football club to fix it. The club players are unable to have hot showers.

44. The local authority's view is that the changing rooms were constructed for a purpose wider than exclusive use by just the school. The use of the land and buildings is no longer subject to the conditions of the National Lottery grant, which means that they can be disposed of or used for purposes other than those specified in the grant. However, the local authority wishes the changing rooms to continue to be used as changing rooms for the benefit of other schools, not just Hugh Gaitskell, and for the benefit of the general public.

45. The local authority is claiming retention of the changing rooms on the basis that they are excluded land which did not transfer to the trust on the Implementation Date. The local authority claims it has the greater need of security because it has the need to protect the current use by the football club and to ensure that local schools, the general public any other club wishing to use the changing rooms is able to do so. Users of the two playing fields to the south of the changing rooms might need to use of the changing rooms and the use of the changing rooms is necessary for Beeston St Anthony's AFC.

46. The local authority maintains that the changing rooms were not held or used by Council for the purposes of the school immediately prior to the Implementation Date. They were held by the local authority and used under the terms of the grant funding agreement with the National Lottery. The school did not have sole use of the building. The local authority queries whether the school did use the changing rooms at all prior to the Implementation Date, or indeed after that date. It is alleged that conversations which took place between the headteacher and a representative from Children's Services in April 2021 indicated that the school was not using the changing rooms but was planning to do so.

47. The local authority refers to a letter sent to the authority by the head teacher of the school which says that

"The School and the Governing Board reserves its position unequivocally to revoke said licence as per the terms of the agreement, as and when the School is in a position to convert the building for exclusive school use. Given that we have made our position clear above, and we are not aware of any other legal basis upon which the Football Team can occupy the changing rooms, and furthermore, in light of the unnecessary delays that have been incurred to date, we trust that the matter of the transfer of the land to the Governing Body of Hugh Gaitskell Primary School will now be completed as a matter of urgency".

48. The local authority acknowledges that the changing rooms have been managed as school premises and that the hire agreement between the local authority and the football club allows the school to terminate the hire agreement. The authority says

that ownership of the changing rooms and control of their use are two separate things. Should the school purport to terminate the football club's use of the changing rooms under the hire agreement, the local authority would take steps to secure the football club's continued use by entering into an agreement with the club that would afford a greater level of security.

49. The fact that the use of the changing rooms has been managed through an agreement for the use of school premises does not mean that the local authority regards the changing rooms as such. Neither does it signify any implication that the local authority is not the owner of the land or is not able to control its use. This is notwithstanding the fact that the hire agreement says: "... if the venue is entered into without the completion and return of this hire agreement, you are automatically bound by the requirements laid out in the Terms and Conditions document". This wording suggests that the hire agreement was made under the provisions referred to by the school's solicitors (managed as school premises), although it is something of an understatement that the agreement is fundamentally unclear in its terms.
50. The local authority maintains that the changing rooms are currently a Leeds City Council owned asset. They were initially built, and are still required, to support community sporting facilities. Accordingly, any change of use to sole use by the school for educational purposes is unlikely to be agreed by either the Children and Families Asset Management Board or the Council's Corporate Estate Management Board. It is considered likely that Sport England would object to the loss of the sporting facility as this effectively would mean that there is a net loss of sporting provision across the city at a time when sports clubs and team growth is at the highest rate since the first Playing Pitch Strategy was developed in 2003. The influence which an objection by Sport England an application for planning permission for change of use cannot be understated and would be a key element for consideration in whether to grant permission for change of use. The permission granted in 2003, and still in place, requires that access to the sports pitches, changing rooms and their associated car parking shall be made available to members of the public to ensure that the development benefits the local community. If what is said is correct (and I believe it is), the terms of the hire agreement are something of a nonsense in stating that the changing rooms are first and foremost for educational use.
51. The football club uses the car park which was originally intended for users of the MUGA. However, as the school uses the car park during the day, it was decided by the local authority that the car park should transfer to the school with the proviso that it can be used by users of the changing rooms when required. The local authority would require that the users of the changing rooms would still be able to use the car park.
52. If the changing rooms are excluded from the transfer the local authority would not continue with the hire agreement. The authority's legal advice is that the correct way

to deal with this is by way of a licence. The local authority intends to grant the football club a licence to use the changing rooms. The football club will have a licence for the use King Field and will have a licence for the continued use of the changing rooms. The local authority could also grant the school a licence of the changing rooms. The utilities would need to be separately metered from the school, and the local authority would deal with this at no cost to the school.

## Consideration

53. I have considered all of the information provided to me. I have met the parties and viewed the land in question. There are three areas of land which are not being (and never have been) used exclusively by the school since their construction in 2003. These are the MUGA, car park and changing rooms. The MUGA appears now to be being used solely for the purposes of the school and not for any other purpose. The car park is being used by the school and by the football club. The changing rooms are used by the football club on a regular basis, which has been the case for many years. The school says that it uses the changing rooms and wishes to continue to use the building as changing rooms, although they have not been used by the school as such since before March 2020. The local authority has agreed to transfer the MUGA and car park to the school. Transfer of the car park is agreed subject to the condition that it remains accessible to the football club. The changing rooms have been managed as school premises and the school has controlled and remained in control of their use. The local authority maintains that such control is enabled by its permission. The school wants all of the land registered under Title Number WKY893111. The local authority will not agree to the transfer of the changing rooms, but will agree to grant the school a licence to use them.
54. The legal position has been made significantly more difficult by the local authority's failure to register the transfer of the legal interest in the land following the school's change of category from a community school to a foundation school with a foundation in July 2011, and by the authority's ambivalence in, at one point, sending a Form TP1 to the school's solicitors, including a plan of the land to be transferred to the school's governing board which incorporated the MUGA and the changing rooms and then subsequently changing its view in relation to the transfer of the changing rooms prior to completing the transfer process. The local authority should have registered the transfer of school land to the trust in 2011. The school has been put to an enormous amount of expense and stress in regularising the transfer of land. I note that the school is not the only Leeds school which has been placed in this position.
55. What complicates the matter is that the school land was not transferred before the trust was removed. The 2007 Regulations regulate any change of land ownership arising when a community school becomes a foundation school. Whether the land is vested in the trust or the governing board depends upon whether the school



becomes a foundation school with or without a foundation. In this case, the school became a foundation school with a foundation.

56. The Foundation Regulations regulate any change of land ownership arising when a foundation school removes its foundation. These Regulations apply only to the transfer of land held by a foundation immediately prior to the trust being removed. They do not govern transfers of land between local authorities and governing bodies. It follows that it is only possible for me to make a determination under the Foundation Regulations in relation to land which was vested in the trust.
57. The matter is straightforward as regards the land and buildings other than the MUGA, car park and changing rooms. Paragraph 1 of Schedule 6 to 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.
58. 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. 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.
59. 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 former community school on the relevant date transferred and vested in the trust by operation of law. 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. As aforementioned, the local authority has remained in breach of this obligation for 11 years. There is no dispute between the parties that the land and buildings comprised in the attached plan with the exception of the MUGA, car park and the changing rooms transferred and vested in the trust on the implementation date (1 July 2011).
60. Paragraph 15 of Schedule 6 to the 2007 Regulations provides that

15.—(1) Any property, rights and liabilities of a transferor held or used or subsisting—

- (a) for purposes wider than that of the school; or
- (b) partly for the purposes of the school and partly for other purposes where the nature of the property, right or liability permits, is to be divided or apportioned between the transferor and the transferee, in such proportions as may be appropriate.

(2) Where any estate or interest in land falls to be divided in accordance with sub-paragraph (1)—

- (a) any rent payable under a lease in respect of that estate or interest; and
  - (b) any rent charged on that estate or interest
- must be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.

(3) Any such property, right or liability as is mentioned in sub-paragraph (1) the nature of which does not permit its division or apportionment as so mentioned must be transferred to the transferee or retained by the transferor according to—

- (a) in the case of an estate or interest in land, whether on the transfer date the transferor or the transferee appears to be in greater need of the security afforded by that estate or interest or, where neither of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent; or
- (b) in the case of any other right or liability, which of them appears on the transfer date to be likely to be affected by the right or liability to the greater extent subject (in either case) to such arrangements for the protection of the other person concerned as may be agreed between the transferor and the transferee or determined by the adjudicator under paragraph 17.

61. This determination will serve as a Certificate of Title to the effect that the land and buildings comprised in Title Number WKY893111 save for the Multi Use Games Area, car park and changing rooms were vested in the trust on 1 July 2011.

62. The school's solicitors argue that the MUGA, car park and the changing rooms are "first and foremost for the school and for educational use". The argument seems to be that, because these areas of land have been managed as school premises, this is what they are. The school has always maintained control of their use. I disagree with this argument. The Education Act 2002 (the 2002 Act) provides that the governing bodies of schools can have control of the use of school premises; however, my view is that ownership and control are two different things. The ownership of land is not

determined by the 2002 Act. It is determined in this case by regulations made under the Education and Inspections Act 2006 (namely the 2007 Regulations).

63. Based upon the evidence, it is clear that the MUGA, car park and the changing rooms were land which was used for purposes wider than the school, and so did not transfer to the trust on the implementation date under paragraph 2 of Schedule 6 to the 2007 Regulations. The changing rooms were not built for intended educational use or for the sole benefit of the school. They have always been intended for wider community use and used by the wider community (by this I mean other local schools and the football club). Paragraph 15 of Schedule 6 is the legal provision which was applicable to these areas of land as at the Implementation Date. The right of ownership of these areas is not capable of being divided or apportioned, and therefore could only have been transferred to the trust by determination of the adjudicator in accordance with paragraph 15(3)(a). No such determination was made, therefore the MUGA, car park and the changing rooms did not transfer to the trust on the Implementation Date.
64. Although the trust did not acquire ownership of the MUGA, car park and the changing rooms under the 2007 Regulations, the school maintains that the changing rooms continued to be used by the school as well as for other purposes. The question then is whether I am able to make a determination at this point in time as to whether the MUGA, car park and the changing rooms transferred to the trust on the Implementation Date or on any subsequent date. I requested legal submissions from the parties as to whether the meaning of 'transfer date' under the 2007 Regulations could be capable of having different meanings for different purposes. The 'transfer date' under paragraph 2 of Schedule 6 would clearly be the Implementation Date, which in this case was 1 July 2011; the applicable transfer date under paragraph 15 of Schedule 6 could potentially be construed as the date upon which any division or apportionment is determined by the adjudicator. The school's solicitors agreed that this was a plausible interpretation. The local authority's lawyers did not express a view.
65. At this point in time, the legal and beneficial interest in the land comprising the MUGA, changing rooms and car park remains vested in the local authority. On 1 June 2021 when the school removed its foundation trust, the MUGA, car park and the changing rooms were not land held by the trust by virtue of having been transferred under the 2007 Regulations. At this point in time, the land cannot, therefore, be transferred to the governing board under the Foundation Regulations because the trust does not own this land. The question, therefore, is whether I have jurisdiction under paragraph 15 (3)(a) of Schedule 6 to the 2007 Regulations to determine that the land transferred retrospectively to the trust before the trust was removed as the foundation.

66. If the adjudicator had been requested to make a determination prior to the removal of the trust, there is an argument that this might still have been possible under paragraph 15(3)(a) of Schedule 6 to the 2007 Regulations with the transfer date being construed as the date of the adjudicator's determination. This argument would be based upon the fact that ownership of these areas had not been resolved and was still capable of being resolved under the 2007 Regulations because the land interests of the local authority and the trust had not been determined. I have serious concerns about whether I have jurisdiction to do this, not least because it would involve making a retrospective decision under Regulations which are no longer in force and which were not in force immediately prior to the trust's removal.
67. I considered whether I would have jurisdiction to make a determination under the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the 2013 Regulations), which were the Regulations in force immediately prior to 1 June 2021 which governed the transfer of land where a school changes category. This would involve making a determination under the 2013 Regulations (again retrospectively) and constructing a transfer date immediately prior to the removal of the school's foundation. I cannot see that the 2013 Regulations can be so applied to effect a transfer of land on 30 May 2021 since they apply to a change of category from a community school to a foundation school. The school did not change category from a community to school to a foundation school on 1 June 2021. It changed category from a community school to a foundation school on 1 July 2011 under the application of the 2007 Regulations, as opposed to the 2013 Regulations. The subsequent change from a foundation school with a foundation to a foundation school without a foundation is not governed by the 2013 Regulations.
68. If I am wrong on the jurisdiction point, and I do have jurisdiction to make a determination under either paragraph 15(3)(a) of Schedule 6 to the 2007 Regulations or paragraph 13(3) of the 2013 Regulations this would make no difference to the outcome in this case. The local authority has agreed to transfer the MUGA and car park to the school. I do not need to make a determination in relation to these areas of land. Based upon the facts presented to me, my view is that the body which has most used, and will continue to use, the changing rooms is the football club. In order to protect the interests of the club and wider community interests promoted by the club, the local authority is the party with greater need of the security afforded by ownership of the land. The school says that it would propose to continue to allow the football club to use the changing rooms, but this would be under the terms and conditions currently being applied. These offer no security at all for the club, and my view is that the local authority's concerns about whether the school would allow the football club to use the changing rooms in the longer term are justified based upon the evidence of tension between the football club and the school, and doubts about the school's future intentions for use of the building.

69. The school says that it wishes to use the changing rooms for its pupils during school hours, and the local authority has agreed to grant the school a licence to enable it to do so, therefore the school's stated current use of the changing rooms will be secured without the need for ownership of the land. The school's solicitors have asked that, if I determine that the changing rooms should not transfer to the school, I make a direction to protect the school's current use. This I would be happy to do, if it would be considered helpful to the school but I cannot see that I have any powers to make such a direction.
70. Subparagraph 15(3)(b) of Schedule 6 to the 2007 Regulations would have allowed me to determine arrangements for the protection of the trust had I made a determination under paragraph 15 that the changing rooms should transfer to the local authority; however, for the reasons I have explained, I do not see how I can apply the provisions of these Regulations retrospectively at this point in time. In any event, they apply for the purposes of protecting the interests of the trust as opposed to the interests of the governing board, and the equivalent provision in paragraph 2(3) of the Removal of Foundation Regulations applies for the purposes of protecting the interests of the trust in circumstances where land is transferred to a governing board.
71. I see no reason to doubt that the local authority is willing and prepared to grant the school a licence to protect its current use of the changing rooms. However, given the evidence of laxity upon the part of the local authority, I will incorporate the granting of the licence to the governing board within the required timeframe for the registration of the land transfer and the completion of this process.

## Conclusion

72. 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 this paragraph transferred to the Learning Trust (South Leeds) on 1 July 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 WYK893111 with the exception of the Multi Use Games Area, car park and changing rooms identified and marked as such on the attached Plan.

The address of the Property is Hugh Gaitskell Primary School St Anthony's Drive, Beeston, Leeds, West Yorkshire, LS11 8AB, and the transfer is subject to

- a. all matters referred to in the Property and Charges Registers of Title Number WYK89311 which were subsisting on 1 July 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.

73. Under regulation 6(2) of the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 I hereby determine that The Property specified in paragraph 1 transferred to the Governing Board of Hugh Gaitskell Primary School on 1 June 2021 and, by virtue of regulation 17(1) of the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, vested in the governing board on that date.

74. This determination is to serve as a Certificate of Title to the effect that under paragraph 5 of Schedule 3 to the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 the land specified in paragraph 1 was transferred by virtue of these Regulations to the Governing Board of Hugh Gaitskell Primary School and is conclusive evidence for all purposes of that fact.

75. The Transferor (Leeds City Council) has agreed with the Transferee (the Governing Board of Hugh Gaitskell Primary School) that, in addition to the Property specified in paragraph 1, the Multi Use Games Area and car park identified and marked as such on the attached Plan will transfer to the Transferee subject to the Transferee permitting the continued use of the car park and rights of access to the changing rooms and car park by users of the sports pitches located to the south of the property.

76. The Transferor has also agreed with the Transferee to enter into a licence permitting the Transferee to use the changing rooms identified and marked as such on the attached Plan.

77. Therefore the Mayor and Burgesses of the Leeds City Council must
- a. take all necessary steps to complete the registration of the transfer of land to the governing board of Hugh Gaitskell Primary School with HM Land Registry; and
  - b. take all necessary steps to prepare and execute a licence agreement permitting the Transferee to use the changing rooms identified and marked as such on the attached Plan.

These steps must be completed as soon as practicable and by 31 October 2022 at the latest.

Dated: 1 August 2022

Signed:

Schools Adjudicator: Dr Marisa Vallely