

DETERMINATION

Case reference: LAN/0055

Applicant: Fir Ends School, Smithfield, Carlisle

Application: Transfer of land from Cumbria County Council to Fir Ends School, Smithfield, Carlisle

Date of direction: 18 September 2013

Direction

Under the powers conferred on me by regulation 7 of, and paragraph 17 of Schedule 6 to, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, I hereby direct that the transfer of land at Firs End School from Cumbria County Council to the governing body of the school consequent upon the school becoming a foundation school, shall include the land edged in green on the attached plan and the buildings thereon. However, the transfer shall not include the path coloured orange as ownership of this land has not yet been established.

The application

1. Solicitors for Fir Ends School (the school) wrote to the Office of the Schools Adjudicator on 18 July 2013 to request the transfer of land occupied by the school from Cumbria County Council (the council) to the governing body of the school, prior to the school seeking academy status.

Jurisdiction

2. The school is seeking to rectify the omission of land that should have been included in the transfer agreement of 10 May 1995 when the school became grant maintained. When grant maintained status was abolished under the School Standards and Framework Act 1998 (the Act), the school then gained foundation status. Under the terms of regulation 7 of, and Schedule 6 to, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (the regulations), the prescribed land transferred to the governing body of the school, pursuant to the school becoming a foundation school. As the mistake in the original transfer documentation had not come to light, the section of land omitted in error from the 1995 transfer was never formally transferred from the council at that time. As the party who drew up the 1995 deed of transfer is no longer in existence, the school has applied to the Adjudicator for a direction. I am satisfied that the transfer has been appropriately referred to me and that I have jurisdiction to consider this matter under the powers conferred on me.

Procedures

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

I have considered all the papers put before me including:

- the referral letter from the school's solicitor dated 18 July 2013 with a plan of the land (attached as plan A);
- the transfer deed dated 10 May 1995 (the 1995 deed) between the council, the school and the Education Assets Board including the schedule and plan B6329 indicating in red outline the land to be transferred (attached as plan B);
- a letter from the school's solicitor to the council, dated 11 January 2012, and follow-up letter dated 13 February 2013, identifying the discrepancy between the plan attached to the 1995 deed and the schedule, and related correspondence;
- the council's email response of 25 March 2013 and further correspondence;
- an email from the council to the Office of the Schools Adjudicator, dated 7 August 2013; and
- copies of the relevant conveyances and searches associated with the land occupied by the school sent on 12 August 2013.

Background to the application

4. Fir Ends School is a small, rural foundation primary school with a nursery, for boys and girls aged 3 to 11 years of age. It is situated to the north east of Carlisle.

5. The school became grant maintained in 1995, and at this time the school premises should have transferred from Cumbria County Council to the governing body of Fir Ends School. The 1995 deed transferring the school premises to the governing body (the 1995 deed) was executed on behalf of the governing body by the Education Assets Board on 10 May 1995. When grant maintained status was abolished under the Act, the school gained foundation status.

6. The school now seeks to become an academy school, and as part of the preliminary procedures, discovered that the schedule to the 1995 deed is incorrect in that it does not describe the full extent of the school premises. As a result, only part of the school premises is vested in the governing body, with the remainder still being held by the council. The school's solicitor had been liaising with the council to execute a deed of rectification, but this proved problematic as one of the parties to the 1995 deed, the Education Assets

Board, was disbanded under section 136 of the Act, and renamed the Education Transfer Council. Then the Education Transfer Council was wound upon 31 October 2000, from which time the Secretary of State oversaw transfers and determined disputes. Under the provisions of the Education and Inspections Act 2006, the responsibility for determining disputes over the exclusion of land from transfers passed from the Secretary of State to the Office of the Schools Adjudicator with effect from 25 May 2007. Accordingly the solicitors for the school applied to the Adjudicator for a direction.

7. In a letter to the council dated 11 January 2012, and in the follow-up letter dated 13 February 2013, the solicitors for the school identified the discrepancy between the plan attached to the 1995 deed and the schedule. The schedule refers only to a conveyance to the council dated 10 December 1951 (after subsequent sales off) of the land edged in blue on the attached plan A. The schedule omitted the land on which the school is built (shown edged in green) by a second conveyance dated 16 February 1967. The schedule also omitted the path (coloured orange) from the road (Red House) to the school but this path does not appear to have passed to council ownership through the 1967 conveyance. The school's solicitors refer to the lack of information regarding ownership of the path coloured orange, and asked whether the council would confirm that it would also transfer whatever estate, right, title or interest it had in the path.

8. In an email response dated 25 March 2013, the council explained there is no evidence of title regarding the path coloured orange and that it does not appear to be a public right of way. The council suggested that, subject to the appropriate enquiries, the school might apply for adverse possession. As the path was included in the land outlined in red on the plan attached to the 1995 deed (attached as plan B), it was included in the land identified for transfer and must therefore have been considered as part of the school's land for some time.

9. The council, in an email dated 7 August 2013, confirmed it is satisfied that the land edged in blue on plan A (seemingly the playing field) transferred to the governing body of the school at the time of the original transfer in 1995. However, the council points out that the schedule to the 1995 deed suggests that only part of the area intended for transfer has been listed because the 1951 conveyance has been listed at part (a) but part (b) is missing. The council states that *'it would seem unlikely that it was the intention to transfer the playing field to the school but not to transfer the land upon which the school itself was built. Therefore the council is satisfied that the green land ought to have transferred'*.

10. However, with no evidence of the council's ownership of the land coloured orange (the path), the council confirmed, in the email of 7 August 2013, that it would be unable to transfer this land with any form of title guarantee and suggested that the school may wish to attempt registration by way of a claim for adverse possession.

Consideration

11. It seems clear to me that the schedule to the 1995 deed should not just have referred at part (a) to the conveyance to the council dated 10 December 1951 (the land edged in blue on the attached plan A) but should also have included at part (b) the second conveyance dated 16 February 1967 (edged in green) which is the land on which the school is built. Accordingly, the land edged in blue on the plan transferred to the governing body of the school in May 1995, but the land edged in green did not, and since 1995 has been held in trust by the council for the purposes of the school.

12. In considering the transfer of the land edged in green which was omitted from the schedule to the 1995 deed, I am guided by the regulations. I note that paragraph 2(2) of Schedule 6 to the regulations specifies that the land and buildings to transfer to the governing body is the land which before the implementation date was *'held or used by a local authority for the purposes of the community school'*. Accordingly, it is clear that the land *'held ... for the purposes of the community school'* must transfer to the governing body on the date that the change of status takes effect, which in this case would have been 10 May 1995.

13. It is very clear that the land edged in green has been held for the purposes of the school, and that the school continued to have exclusive use of this land and the buildings built thereon since the 1995 deed, when the land transfer should have taken place. The regulations are clear that the land and buildings held for the school transfers to the governing body (unless there is good reason why it should not). The council have agreed that this land edged in green and the buildings should transfer to the governing body of the school.

14. However, the schedule to the 1995 deed also omitted the path (coloured orange) but this path does not appear to have passed into council ownership through either the 1951 or the 1967 conveyance. The land was included in the red line plan attached to the 1995 deed (attached as plan B) as the land to be transferred, but this was for information purposes only and cannot be regarded as evidence that the council owned this land at the time.

Conclusion

15. I conclude that for the reasons stated above, the transfer of land from the council to the governing body of the school should include the buildings and the area of land edged in green on the attached plan A, in addition to the land edged in blue which is already vested in the governing body as a result of the 1995 deed.

16. As there is no evidence available that the council has ownership of the path coloured orange on the attached plan A, it is not possible to include this land in the transfer. The solicitors for the school may wish to pursue their own enquiries with the Land Registry to determine whether or not the school can obtain title to this path, as this matter is beyond my jurisdiction.

Direction

17. Under the powers conferred on me by regulation 7 of, and paragraph 17 of Schedule 6 to, The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, I hereby direct that the transfer of land at Firs End School from Cumbria County Council to the governing body of the school consequent upon the school becoming a foundation school, shall include the land edged in green on the attached plan A and the buildings thereon. However, the transfer shall not include the path coloured orange as ownership of this land has not yet been established.

Dated: 18 September 2013

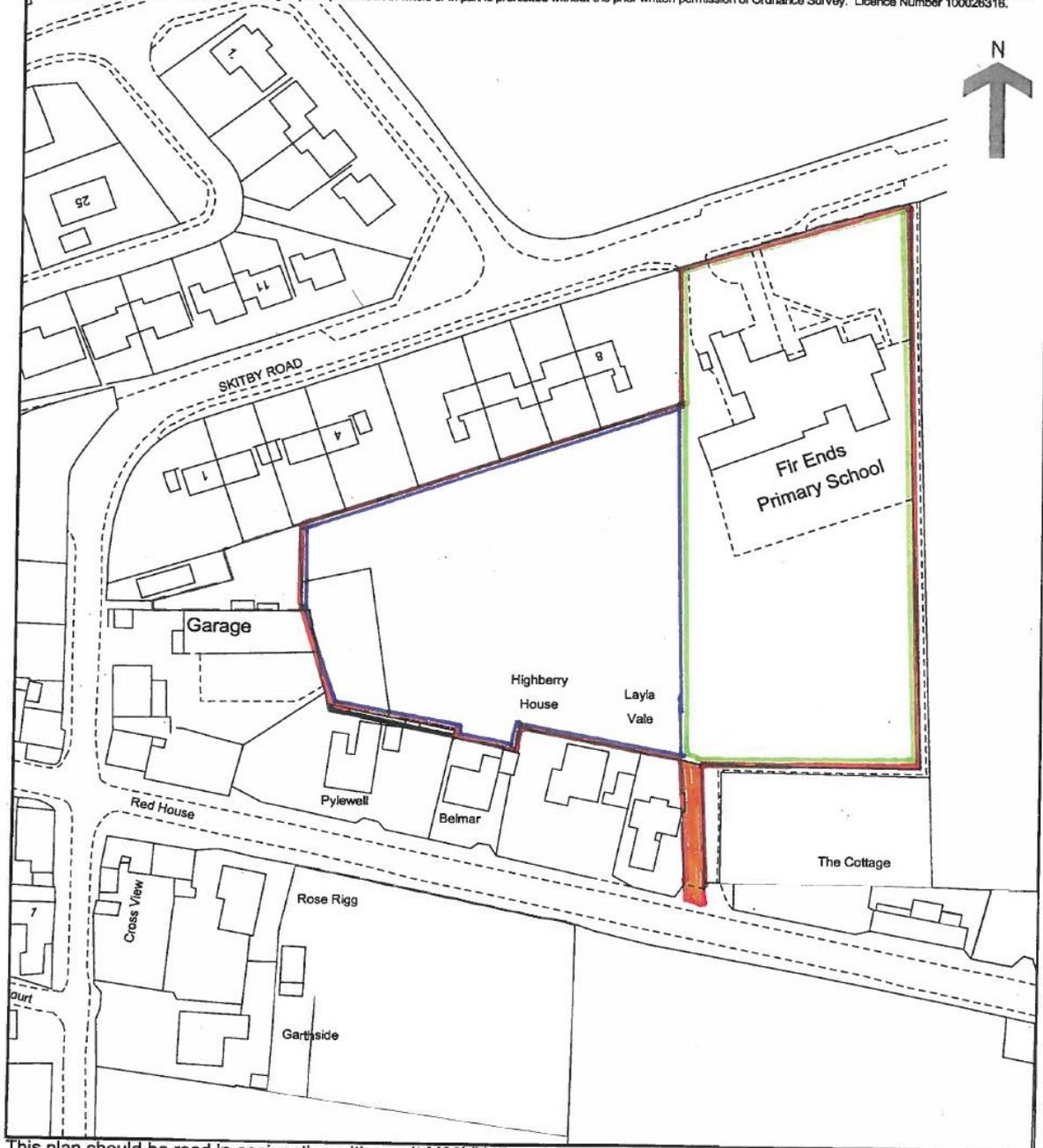
Signed:

Schools Adjudicator: Cecilia Galloway

PLAN A



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This plan should be read in conjunction with result M88VUJB.

This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.

