

DETERMINATION

Case reference: LAN/000027

Applicant: The London Borough of Ealing Council

Application: Regarding land at Norwood Hall, Ealing

Date of direction: 21 February 2012

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 Villiers School, Ealing, consequent upon it becoming a foundation school, exclude all the land at Norwood Hall, Ealing, but that the school's access to that land be as set out in a written agreement of 2 February 2012 between the school, The London Borough of Ealing Council and Ealing, Hammersmith and West London College.

The application

1. The London Borough of Ealing Council (the council), wrote to the Office of the Schools Adjudicator on 28 October 2010 to request that the transfer of land from itself to the Governing Body of the Villiers School (the school) that was to take place on the school becoming a foundation school on 1 November 2010 be determined to exclude that land shown in the attached plan, known as "the Playing Fields", situated at Norwood Hall, Ealing.

Jurisdiction

2. 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 on 1 November 2010. Failing local agreement within a period of six months from the implementation date, either the council or the governing body might apply to the Adjudicator for a direction. Since no agreement was reached within the prescribed period, and since the council has confirmed its request that a determination be made by the Adjudicator after the end of this period, 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:

- correspondence from the school and its legal advisers, consisting in its greater part of material submitted prior to the meeting on 3 February 2011;
- correspondence from the council, prior to, in response to information requested at , and subsequent to the meeting held on 3 February 2011; and
- a plan of the disputed site.

4. Correspondence submitted to me following the application has been copied to the council or the school, as appropriate, who have had the opportunity to comment.

5. I have also visited the school, in order to view at first hand the school site and the geography of the locality. I arranged an informal meeting on 3 February 2011 attended by representatives of the school, of the council, of the Khalsa School and of Ealing, Hammersmith and West London College. I have considered the representations made to me at that meeting, as well as the further information provided to me by the council, by Khalsa School and by the college as a result of requests I made of them there. I have consulted the main parties on the proposed content of this Direction.

Background to the application

7. Although the school became a foundation school on 1 November 2010, when a land transfer took place on the basis of law, no agreement had been reached about whether or not the playing fields at Norwood Hall should be included in the transfer and therefore in the formalisation of the transfer nor was such agreement reached in the following six months. The school has insisted that the playing fields should be included, but the council has resisted that view.

8. Prior to 1997, the land which is the subject of this determination, and which is situated remotely from the buildings of the school and its immediate outdoor facilities, was owned solely by The London Borough of Ealing Council. In September of that year the council transferred its ownership to a joint ownership with the further education corporation which was at that time responsible for the conduct of Ealing Tertiary College, the successor body to which is the current Ealing, Hammersmith and West London College (the college).

9. In 2006 a proposal to establish a new voluntary aided school (the Khalsa School) was made, and this was followed by the granting of planning permission in 2007 for the creation of an associated multi-use games area on an identified part of the playing fields. This is shown in the attached plan.

Although the Khalsa School opened on 1 September 2008, this area of land had become the subject of a disagreement between the council and the Villiers School, with the effect that the creation of the games area was delayed. The council and the further education council did not grant the promoter of the Khalsa School a licence to occupy part of the playing fields for the purpose of the games area until August 2010. Later that month the Villiers School published proposals to change status from community to foundation.

The view of the School

10. Prior to the meeting held on 3 February 2011, the school's position was that the interest in the playing fields had been held by the council for the purposes of the school, and that although the agreement under which ownership was transferred in 1997 stated that the council could at its discretion nominate other schools to be beneficiaries of the use of the playing fields, this merely recognised a possibility, not an actuality.

11. It maintained that the council's interest in the land should therefore pass to the school, with the continued use by the Khalsa School of the area on which the multi-use games area had been created being protected by a continuation of its licence.

The view of the Council

12. By contrast, the council's argument in making the application was that it held its interest in the playing fields for general educational purposes (other than that part on which the multi-use games area had been built, which it said it held predominantly for the purposes of the Khalsa School). It stated that it needed the security of the rest of the land because of the potential future demand for new schools as a result of rapidly increasing birth rates.

13. It maintained that none of the land should transfer, and that any rights which the school had should be protected in a direction by the Schools Adjudicator, in line with paragraph 15(3) of Schedule 6 of the Regulations.

Consideration

14. At the meeting held on 3 February 2011, I had asked each of the parties to supply me with specified information which I needed before making any determination. However, in replying to me, the council also informed me that it intended to meet the various parties again in order to continue negotiations. An e-mail from the school dated 8 March 2011 and a letter from the council on 15 March 2011 then asked that Adjudicator should not proceed with the determination unless either party requested this. I was happy to agree to this and offered to assist in finding agreement between them.

15. Contact has been maintained with both parties in the intervening period, during which time both have expressed themselves satisfied that progress towards an agreement between them as to the ownership of the playing fields was being made.

16. On 11 November 2011 the council wrote to me and enclosed a document entitled "Management Agreement for the use of Norwood Hall Playing Fields". The council's view of this document was that it provided for the land to remain in its ownership. However, on examining the Agreement I did not share that opinion, and wrote on 23 November 2011 to the council and the school to explain why. The Agreement dealt only with the use of the playing fields, and not their ownership, and in particular it contained a clause which stated that it constituted an agreement whose duration was limited to 20 years, something inimical in my view to an agreement concerning ownership. It would therefore in my opinion have left unaltered the position that, in the absence of an agreement to the contrary, the land used by the local authority for the purposes of the school would vest in the school as a result of its change in status. I explained that this position was that established under paragraph 2 of Schedule 6 of the Regulations.

17. The school's legal advisers replied that they shared this opinion but that they had received no fresh instructions from the school. Having received no further response from either party, I again wrote to both on 19 December 2011 saying that I was mindful that the school had acquired foundation status over 12 months previously, and that the relevant guidance anticipated resolution of matters such as this within six months of that event (although the Adjudicator may not make a determination in cases where there is more than one existing user of the land (as here) until after that time has elapsed). My view was that since the parties had not in practice made an agreement concerning the ownership of the land during a considerably longer period than six months, I may now issue a determination. I reminded the parties that the council had not withdrawn its original referral, and that an agreement of the sort envisaged in Paragraph 16 of the Regulations (or a determination by the Adjudicator) to that effect would be required to achieve the outcome of the land remaining in the (joint) ownership of the council, something upon which it appeared the parties were now agreed.

18. The council replied to me on 10 January 2012. They enclosed a revision of the Agreement referred to above which made explicit the matter of ownership of the playing fields (that this remained with the council and the college jointly), and removing the limitation of 20 years duration of the agreement. A further letter from the council dated 23 January 2012 stated that a slightly revised version of the agreement but containing these same provisions had been agreed with both the school and the college. This letter also invited the Adjudicator to issue a determination endorsing the Agreement as the basis for the ownership of the playing fields "for the avoidance of doubt in the future". The school's legal advisers confirmed their acquiescence to this position on 23 January 2012.

19. I therefore wrote to the council and the school on 24 January 2012 asking both to confirm my understanding

(i) that the ownership of the land at Norwood Hall remain in the joint ownership of the council and Ealing, Hammersmith and West London College, and be therefore excluded from the land transferred to the school consequent to it acquiring foundation status, and

(ii) that the school's access and use of the land be as set out in a Management Agreement which is agreed between the parties from time to time, the initial version of which is as supplied to the Adjudicator by the council on 23 January 2012.

20. Both parties have agreed that these statements represent their wishes. The council has however supplied a copy of the Management Agreement which now helpfully includes a plan of the playing fields and which it states has been agreed by the school and the college. They prefer the substitution of the word "final" for "initial" and the use of the date 2 February 2012 (the date of this last version of the Agreement) in paragraph (ii) above.

Conclusion

21. I have examined very carefully the Management Agreement dated 2 February 2012, which is the most recent version of this document. I have received confirmation that this Agreement has the approval of all parties.

22. The Agreement contains a clear and unequivocal statement that the ownership of the playing fields shall remain as a joint ownership between the council and the college. It contains a clear statement that existing agreements or licences are not affected, which is protection for the position of the Khalsa School in its occupation of the land on which the games area has been constructed. It also sets out the access which the school and other parties (the Khalsa School, the college and "the community") shall have to the playing fields, the school's responsibilities concerning their maintenance, and arrangements for the oversight of this usage through a Partnership Board. In other words, it is in my view an agreement between the transferor and the transferee of the sort envisaged by paragraph 16 of Schedule 6 of the School Organisation Regulations.

23. The school and the council have confirmed their agreed intentions in making this Agreement, as set out in paragraph 19 above. The council has asked that the document referred to in this determination should be that dated 2 February, and I agree. Its request that it not be referred to as an "initial" version is helpful in emphasising the intention of the parties that it, and therefore the agreed ownership of the land, continue in perpetuity until terminated by mutual agreement of the parties. However, since the Agreement sets this out clearly itself, I think it most helpful that the Agreement be referred to in this determination simply by its date.

Direction

24. 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 Villiers School, Ealing, consequent upon it becoming a foundation school, exclude all the land at Norwood Hall, Ealing, but that the school's access to that land be as set out in a written agreement of 2 February 2012 between the school, The London Borough of Ealing Council and Ealing, Hammersmith and West London College.

Dated: 21 February 2012

Signed:

Schools Adjudicator: Dr Bryan Slater

ANNEX - Site Plan

