

DETERMINATION

Case reference: LAN/000045

Applicant: The London Borough of Havering

Application: Regarding the Youth Centre and associated car park and walkways at Marshalls Park School and Performing Arts College

Date of direction: 31 October 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 The Marshalls Park School and Performing Arts College from the London Borough of Havering to the governing body of the school consequent upon the School becoming a foundation school, shall include the youth centre and its associated car park and walkways.

The referral

1. The London Borough of Havering (the council) wrote to the Office of the School's Adjudicator (OSA) on 6 March 2012 applying for land at Marshalls Park School and Performing Arts College (the school) previously used as a youth centre and its associated car park and walkways to be excluded from the land transferred from the London Borough of Havering to the governing body of Marshalls Park School (the governors) when the school became a foundation school on 1 September 2011.

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 its becoming a foundation school in September 2011. Failing local agreement within six months of the school becoming a foundation school, either the council or the governing body might apply to the Adjudicator for a direction. Since no agreement was reached within the prescribed period on the land in dispute, and since the council has confirmed its request that a determination be made by the adjudicator and with the agreement of the school, I am satisfied 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.
4. I have considered all the papers put before me including:
 - a. correspondence from the school and its legal advisers;
 - b. correspondence from the council with supporting documents; and
 - c. plans of the site and buildings of the school.
5. Correspondence submitted to me following the application has been seen by the council or the school, as appropriate, and there has been the opportunity to comment on this correspondence.
6. I visited the school in order to view first-hand the school site and the geography of the locality and met with representatives of the council and the school at a meeting I arranged on 26 April 2012. I have considered the representations made to me at the meeting and in subsequent correspondence.

Background

7. On 1 September 2011 the school changed its category to foundation status. The council did not raise any objections to this change and in preparation for the school becoming a foundation school, representatives from the council and the school met to discuss the transfer of the freehold to the school. On the school's site there is a youth centre and associated car park and walk ways.
8. Despite meetings between the school and various representatives of the council no agreement has been reached over the transfer of land to the school following its change of status to a foundation school. At the meeting held on 26 April 2012, the council with the agreement of the school requested time to continue to see if agreement could be reached and a deadline of 31 May 2012 was agreed. A meeting between the parties took place which was followed by requests to extend the deadline to the end of June, then to the end of August. These discussions were not about the ownership of the land but about possible shared use agreements based on the council's assumption of retained ownership, however, the school disputed the underlying assumption of ownership of the land by the council. In September when I received a request to extend the deadline to 31 October 2012, I suggested to the school and the council that no progress had been made towards a resolution of their disagreement about who should have the ownership of the land and building and that rather than agree to a further extension of the agreed deadline, I should reach a determination once both parties had had a further opportunity to comment upon the issues upon which they disagreed. Once the ownership of the land had been determined, then the

two parties would be able to reappraise whether or not they wanted to enter into any lease agreements for shared usage of the site and facilities.

The application

9. The school became a foundation school on 1 September 2011, when a land transfer took place on the basis of law. The council has supplied a map of the site (attached at annex A), and its application to the OSA refers to the Youth Centre outlined in blue on the map, the car park coloured pink and the walkways shaded green. The council requests that this land and building be excluded from the transfer to the school.
10. The school says that it considers that the disputed land and building form part of the school site and should be transferred. The school recognises that the building has in the past been used as a youth centre and has expressed a willingness to discuss future use of the facilities as a youth centre on the basis of appropriate usage agreements.

The view of the council

11. The council, in its referral and then in its letter dated 17 April 2012 set out its case for retention of the youth centre and associated car park. It acknowledges that the youth centre building is within the school grounds and as a result there is a need for the creation of secure access onto the school site. In its referral the council sets out plans to fence the site and to adapt the access arrangements to the youth centre building.
12. The council's view is that the building was a statutory youth club until the early 1990's and at that time as part of the council's saving plan the youth centre staff were made redundant. The ex-warden of the youth club decided to volunteer and took over the costs of running building apart from the rates which the council continued to pay. This arrangement continued until 2008 when the youth leader retired and gave up the use of the building. The council did not use the building from that point apart from a short period when a council manager had an office there. The council states that it has undertaken some capital works to ensure acceptable health and safety standards.
13. The council states that it has allowed the school to make daytime use of the building for many years, but this has been regarded by the council as by way of a gesture of co-operation rather than any formal school rights. The council has decided that it no longer intends to deliver youth services from this building and as a result the budget has been removed and it intends to transfer the building to its strategic property service department for a decision of future use.
14. The council is amenable to having an arrangement with the school under which the school could make some use of the building on a basis to be agreed, but the council is clear that this does not alter its fundamental position that the building should be owned by the council and not the school. The council acknowledges that because the building is within the school grounds, it makes it more difficult to use independently, but it has

stated that it is committed to working with the school to ensure suitable uses could be found if they were necessary in the event of the school no longer wishing to use the premises under an agreement agreed with the council.

The view of the school

15. The school states that at the time of transfer to foundation status, the youth centre building was not being used by the council and had not been used for some time with the exception of the use for a short period of an office for a member of the council's staff. This arrangement was ended when it was found that the member of staff had not been properly checked under child protection procedures and had unrestricted access to the school site. The school argues that all use of the building and site since 2009 has been solely for the benefit of the students at the school. The school uses the building for the delivery of the school curriculum. It currently has timetabled lessons in dance and learning to learn taking place in the building. It also houses the school's internal exclusion room that is used on a daily basis.
16. The school does not consider that there has been any dual use of the building since 2009 and does not see why it should need to lease the facility from the council as it is clearly part of the school site. It has set out the clear safeguarding and operational issues aligned to the council retaining both the land and building that is land locked within the school site.

Consideration of Factors

17. The parties in this matter are broadly in agreement that this building was used as a youth centre up until 2008 but that the school has had use of the building during school hours for curriculum purposes for many years. Since the voluntary youth club closed in 2008, the school has been the main user of the facilities. However, the council would argue that paragraph 2 (2) of Schedule 2 of the Regulations does not apply because this land was not held by the local authority for the purposes of the community school.
18. The council has not expressed a clear plan for future use and appears content that the school should enter into a lease agreement for continued use of the facilities while it retains the ownership of the land and building. This weakens that argument that the land is not held for the use of the school since there is no alternative use being suggested.
19. The building and its car park and walkways are within the school site and present a security challenge for the school if access is not controlled in some way. The school argues that it should have the ownership of the site so that it can effectively manage its use and in this way reduce any risks posed to its pupils.
20. The school has the keys to the building, and it is the school caretaking

service that has dealt with any security matters in recent years. The council states that it has spent money on the building, but the school also claims to have undertaken repairs. The fact that the school has unrestricted use and access to the building is clear evidence of current use. The council stated that this has been regarded by the council as by way of a gesture of co-operation rather than any formal school rights.

21. This matter has been referred under Paragraph 17 of Schedule 6 to the Regulations as a matter where parties cannot agree and adjudication is sought. Paragraph 15 (1) for this schedule makes provision for property held “for purposes wider than that of the school or partly for the purposes of the school and partly for other purposes” to be apportioned and Paragraph 15 (3) states that where the property does not permit its division or apportionment it must transferred as a whole according to “whether on the transfer date the transferer 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 a greater extent.”
22. I do not consider that this property could be apportioned so the judgement required is which party appears “in greater need of the security afforded by the estate or which will make use of the land to a greater extent”. Both the council and the school agree that there are security issues to be resolved if a third party was to be have the use of the youth centre. The council considers that security measures could be put in place to manage this, but the school remains unconvinced. On these grounds it would appear that the school is in greater need of the security afforded by ownership of the youth centre than the council. This appears to tip the balance of ownership in favour of the school over the council. On use of the land, the school is currently using the land and building and wishes to continue using it for curriculum purposes, the council is not using the land and building and has no firm plans as to future use. Thus the issue of who would make use of the land to a greater extent is clear; it is the school.
23. The school has stated its willingness to enter into negotiations for an out of school hour’s usage agreement with the council should the council wish to re-establish youth service provision on the site in the future.

Conclusion

24. I have considered the balance of the arguments carefully. Although the council had not initially provided the youth centre for the use of the school, since the closure of the youth club in 2008 the school has become the major and more recently the sole user of the facility. The Regulations and relevant schedule referred to above provide the criteria against which to judge who should own the land and building in the current circumstances. It is my view that the school needs to have the security of control over the use of the car park and building for the benefit of its pupils and that on the evidence provided it will make greater use of the facility than would the council. For these reasons I conclude that the ownership of the land and building should be transferred to the school.

25. The fact that the school has expressed a willingness to discuss out of hours usage with the council is important and will allow the council and the school to consider if there are ways that between them they can work to support the out of hours needs of young people in the area.

Direction

26. 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 The Marshalls Park School and Performing Arts College from the London Borough of Havering to the governing body of the school consequent upon the School becoming a foundation school, shall include the youth centre and its associated car park and walkways. The school has stated its willingness to enter into negotiations for an out of school hour's usage agreement with the council should the council wish to re-establish youth service provision on the site in the future.

Dated: 31 October 2012

Signed:

Schools Adjudicator: David Lennard Jones

Annex A

