



DETERMINATION

Case reference:	LAN 58
Applicant:	The governing body of Heamoor Primary School
Application:	Regarding land at Heamoor Primary School, Cornwall
Date of direction:	3 October 2014

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 Heamoor Primary School from Cornwall Council to Penwith Education Trust, consequent upon the school becoming a foundation school, shall include the strip of land on the north boundary.

The application

1. The solicitor for the governing body of Heamoor Primary School (the school) wrote to the Office of the Schools Adjudicator by letter received on 1 May 2014, to request that the transfer of land from Cornwall Council (the council) by operation of law, on Heamoor Primary School (the school) becoming a foundation school within the Penwith Education Trust (the Trust) on 31 March 2012, be determined to exclude the strip of land on the north boundary. This letter of application was dated 26 November 2013, this discrepancy between the date of the letter and the date of receipt was explained by the school as an oversight; it was intended that the letter should have been sent on or shortly after 26 November 2013.
2. Although the school became a foundation school on 31 March 2012, when the land transferred by operation of law, no agreement has been reached about whether or not the strip of land on the northern boundary should be included in the transfer and therefore in the formalisation of the transfer documents. The council has insisted that the strip of land should be included, but the school has resisted that view.

Jurisdiction

3. 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 and vested in the Trust, pursuant to the school becoming a foundation school on 31 March 2012. Failing local agreement, either the council or the Trust might apply to the Adjudicator for a direction as to whether any land should be excluded from the transfer.

4. I am mindful that these regulations have been superseded by the School Organisation (Prescribed Alterations to Maintained Schools (England) Regulations 2013 (2013 Regulations) which came into force on 28 January 2014, but this legislation was enacted after the school became a foundation school and the land had become a matter of dispute.

5. I am satisfied that I have jurisdiction to consider this matter under the powers conferred on me.

Procedures

6. 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, and on behalf of, the school's governing body;
- correspondence from the council;
- various plans and maps of the site and buildings of the school;
- correspondence from the school and elected members to neighbours of the school;
- internal emails from the council referring to grounds maintenance; and
- photographs, including aerial photography of the land.

7. 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.

Background

8. Heamoor is a primary school for pupils aged 4-11 years. It was originally established elsewhere in the village of Heamoor but moved to the new site on 21 June 1990. The school is in a semi-rural area close to National Trust land.

9. The school has extensive grounds including growing beds for every class; a nature reserve in the school field which includes ponds, meadows, a Cornish hedge, numerous trees and bushes planted by the children and a large play area with football and rounders' areas. Throughout the grounds there are also numerous animal habitats, gardens and various class planting schemes.

10. The school site was acquired by the council's statutory predecessor, the Cornwall County Council by a conveyance, dated 8 January 1988, made between the District Council of Penwith and the Cornwall County Council.

11. The land in question is a narrow strip approximately 100 metres in length, five metres wide at the end near the road (Bosvenna Way) end, narrowing to 3.2 metres at the other, some 330 square metres in total.

12. The land edges the northern boundary of the school site. It is contained on three sides, to the south, east and west by school land and to the north by the gardens of privately owned houses. There is no specific access from the public highway. The land can only be accessed via the school grounds or neighbours' gardens as there is no specific access point such as a gate but access may be made through unfenced sections.

13. At some time a fence was erected, it is not agreed by whom, to separate the land in dispute (hereafter referred to as the 'land') from the adjacent land that the school regards as its site. The 'land' has become overgrown and has been the cause of complaints to the school and the council by residents to the north of the school.

14. The 'land' is separated in various ways from that of the neighbouring northern properties by mesh and wooden fencing. The school reports that in some places the boundary is unfenced. There is a wire mesh fence approximately 1.8 metres high separating the 'land' from the site the school acknowledges as its own.

15. There is correspondence between the school, its neighbours and the council, both officers and elected members, about the condition of and responsibility for the land. Early in 2012, the council undertook some ground clearance. An email circulated by council officers at that time refers to the 'land' as belonging to the council.

16. As neither party wanted the 'land', the council had, what it reports as informal discussions with affected neighbours, to see if they might want to buy the 'land'; it seems they did not.

The Dispute

17. Paragraph 2 of schedule 6 to the 2007 Regulations, which relates to an approved proposal that a community school should become a foundation school states in paragraph 2(2) that *"in such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in –*

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or*
- (b) (b) if the school has no trustees, the governing body, to be held by that body for the relevant purposes."*

18. Neither party want the 'land'; the issue is whether or not this strip of land was held or used by the council for the purposes of the school immediately before 31 March 2012.

The view of the school

19. The view of the school is that the 'land' has never formed part of its site. It is separated from the school site by a fence and bushes. It has never had

use of nor maintained the 'land'. The school is concerned that the council is attempting to use the foundation conversion to transfer responsibilities for the land by including it within the school site.

The view of the council

20. The council's view is that the 'land' was held by the council for the purposes of the school. At no time was the 'land' held for any other purpose. The council has no use of any other land within the immediate vicinity.

Consideration

21. I consider these matters with reference to the statutory tests set out in the legislation and the guidance. My question is what evidence is there that, at the point the school changed its status from a community school to become a foundation school, the land was held or used for the purposes of the school; and, if so, was it held exclusively for the school?

22. There are a number of factors that I have considered in order to answer this question.

Documentary Evidence as to extent of School site

23. I have scrutinised the conveyance plan, the school site plan from the council's land records and land registry documents.

24. The Conveyance of 8 January 1988 is "*of approximately 3.2 acres of land being the School Site to the South of Boscathnoe Parc Estate Heamoor Penzance Cornwall*". The Conveyance indicates that the land to be sold is edged in blue and red on the accompanying plan titled SCHOOL SITE HEAMOOR dated 29 April 1987. This plan shows the school site, edged in blue and red, to include the 'land' and the northern border to be clearly lined with trees. It does not show a fence or any form of division between the land of the school site and the 'land' in question.

25. In the more recent documents, for example the land registry copy of title plan CL251513 dated 12 February 2013 similarly shows the 'land' within the area defined as the school site. The line defining the 'land' is drawn within the school boundary on such documentation. No land registry document presented shows two 'parcels' of land as if they were separate parts.

Other Evidence presented

26. There is no documentary evidence to show by whom or when the fence was built. The council say the fence was constructed by the school on the instructions of a previous head teacher. No one at the school now has any recollection or record of this.

27. The school has placed weight on a number of internal emails written by a council officer as evidence that the council viewed the 'land' as not part of the school site.

28. There is an email dated 29 November 2011 from a senior valuer of the council, organising the ground clearance. This email refers to an *“area of land owned by Cornwall Council but is not part of the school grounds”*. He repeats this in an email of 20 January 2012. The school relies on this as confirmation of the council’s ownership and that it is not part of the school site.

29. The council’s response is that the email was passed to the school to confirm that the work was being undertaken; the reference to ownership was a mistake by the officer in question. It argues that, in the circumstances, there was no need for the officer to carry out an in-depth investigation of who owned that land and that the email was confirmation that the work was being undertaken, not a definitive statement on the ownership of the land.

30. Clearly the council owned the ‘land’; at the time that the work was undertaken the school was still a community school, the issue is whether the land was part of the school grounds which the emails say it was not.

31. I accept that the school might have placed some initial reliance on the emails circulated within the council. I note however that these were not emails sent to the school directly and that the intent of the email is not clear other than to “chase up” the work. I do not consider the intent was to apportion responsibility for or usage of the land which was unlikely to have relevance to the grounds maintenance contractor other than to indicate with whom responsibility for payment of the contractor’s invoice would lie, which in this case was the council.

32. I do not consider that these emails outweigh the other documentary evidence, that is the conveyance and land registry documentation which place the ‘land’ within the school site.

Maintenance and oversight

33. Neither party has exercised any oversight of the ‘land’. There was some grounds maintenance in 2012 undertaken by the council. It says that it did this as a “goodwill” gesture because of the complaints of residents who did not distinguish between the council’s dual role as landowner and local education authority. There is correspondence from the school suggesting that the ‘land’ was maintained by the council “over the past 20 years”. No evidence has been presented by either party that any maintenance other than that in 2012 has been undertaken.

34. The council is of the view that the fence between the ‘land’ and the school site was installed by the direction of a previous head teacher.

35. I do not consider that this one off commissioning of ground clearance following complaints from residents demonstrates that council owned the ‘land’ for any purpose other than the school.

Use of the land

36. I can see that both parties consider the 'land' of no use to them and serves no purpose. There is no evidence that either party was making use of this land immediately prior to the school's change of status. No evidence has been presented by the parties that the council has made any use of the 'land' other than for the school site. The plans show that such access as there is can only be achieved from the school site or through the gardens of private dwellings. I have seen no evidence that the 'land' was held by the council for any other purpose.

37. I accept that the school made no use of this 'land' but note that, both parties confirm that, in the past, the 'land' was included in the school site when calculating the measurement of the site for the calculation of schools delegated funding. My view is that the school had an option to use this land if it chose to do so.

Division of land

38. This is a somewhat unusual case in that neither party want the 'land'. So while I have seen no evidence that the council has used the land for any other purpose than the school, I have considered whether the 'land' should be divided. I see no merit in this approach, other than apportioning costs of maintenance to both parties. The council has made no other use of the 'land' and cannot directly access it; there is no evidence that the council may be able to put it to use in whatever portion. It does not appear to me that it is feasible to divide the 'land'.

School organisation and safety

39. No matters of safety of pupils or an impact on school organisation have been raised. I note from the documents that there is a suggestion the 'land' could be cleared for some £3000, I further note the comment of the school that should the 'land' be transferred to them they would wish it to be cleared.

40. I note also that the school is accustomed to the maintenance of grounds and the advantages to be gained from them. I see no reason on these grounds for the 'land' to be excluded from the transfer.

Conclusion

41. My view is that neither party has demonstrated usage, regular maintenance or supervision of the 'land'. I consider that the documentary evidence of conveyance and land registry puts the 'land' within the school site. The school has relied for documentary evidence on some internal council emails which suggest the responsibility may not lie with them. I do not consider that these emails outweigh the evidence of conveyance and land registry documentation for the reasons given above. I can see no purpose for the council in holding this narrow strip of land which has not been used to serve any other of the council's functions and cannot be reasonably accessed. The school, on the other hand, could put it to some use if cleared, as its principal

argument is that the ground is unused, neglected and overgrown.

Direction

42. 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 Heamoor Primary School from Cornwall Council to the Penwith Education Trust, consequent upon the School becoming a foundation school, shall include the land to the north boundary of the school.

Dated: 3 October 2014

Signed:

Schools Adjudicator: Jill Pullen