



DETERMINATION

Case reference: LAN 63

Applicant: Turnfurlong Infant School, Turnfurlong, Aylesbury

Application: For the transfer of a property used as a caretaker's house from Buckinghamshire County Council to Turnfurlong Infant School following the school's change of category from a community school to a foundation school with a foundation.

Date of direction: 27 March 2015

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 property known as the caretaker's house shall not transfer to the trust for Turnfurlong Infant School and it will remain the property of Buckinghamshire County Council. Also an agreement is to be drawn up between the trust for Turnfurlong Infant School and Buckinghamshire County Council granting right of access to the property across the land transferred to the school.

The application

1. A letter was received on behalf of Turnfurlong Infant School (the infant school) by the Office of the Schools Adjudicator (OSA) on 16 October 2014 referring a dispute over the ownership of a caretaker's house (the property). The infant school converted from a community school to become a foundation school with a foundation (commonly known as a trust school) on 1 September 2013. Until 2006 the property had been rented by the caretaker who worked for both the infant school and Turnfurlong Junior School (the junior school) under a shared arrangement. After 2006 it was rented by the caretaker who worked solely for the junior school. The infant school believes that the arrangement made in 2006 included consideration of the use of the property by the infant school when it became vacant and therefore the property was held for the use of the infant school by Buckinghamshire County Council (the local authority). The infant school further argues that as it has greater need for a residential caretaker than the junior school, the caretaker's house should transfer to the Aylesbury Learning Partnership, the trust for the infant school.

Jurisdiction

2. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 as amended (the Regulations) apply to this matter. I am aware that The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 came into force on 28 January 2014, but by virtue of regulation 8(2) of these regulations, as the proposal to change category was made before this date, the 2007 Regulations continue to apply.

3. Paragraph 2 of Schedule 6 to the Regulations establishes that when a school changes category from community to foundation that all land which immediately before the implementation date was held or used by the local authority for the purposes of the school transfers to the school.

4. The date when a school changes its status from community to become a foundation school is the implementation date. Paragraph 17 of Schedule 6 of the Regulations makes provision that if, "*an agreement has not been reached within a period of 6 months from the implementation date, the adjudicator may give a direction determining that matter.*" The local authority or the governing body might apply to the Adjudicator for a direction to decide the matter.

5. No agreement was reached between the infant school and the local authority within the prescribed period as to the transfer of the caretaker's house and the infant school has requested that a determination is made by the Adjudicator. I am satisfied that this matter has properly been referred to me and 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.

7. I have considered all the papers put before me including:

- a. letters and supporting documents from DWF (solicitors acting on behalf of the infant school) and from the infant school; and
- b. letters and supporting documents from Buckinghamshire County Council (the local authority).

8. I held a meeting with representatives of the infant school and the local authority at the infant school on 27 January 2015 (the meeting) in order to help my understanding of the background to the matter before me and to see the site and location of the caretaker's house. The headteacher of the junior school also attended at my invitation. Before the meeting I visited the site, with the representatives, to allow me to view it at first hand and so understand the geographical context.

Background

9. Turnfurlong Infant School and Turnfurlong Junior School are physically joined. The site contains another school, St Edward's Roman Catholic Junior School which is completely separate and has no part in this dispute. Turnfurlong Infant and Junior Schools (originally a first and a middle school) opened in 1974. The infant and junior schools were designed together and continue to share some infrastructure.

10. Although originally the two schools had the same governing body, they have had individual governing bodies since 1999. A caretaker lived in the caretaker's house and worked across both schools until 2006. Line management of the caretaker was provided jointly by the two schools until 2006.

11. In 2006 an agreement was made that the caretaker would be employed solely by the junior school and that the infant school would make separate arrangements. This agreement was made as there were difficulties in the previous arrangement. The agreement in 2006 is viewed as crucial by both parties and I consider this below.

12. The caretaker left his post and the caretaker's house became vacant by March 2014. In April 2014 the infant school communicated with the local authority that it disputed the ownership of the caretaker's house and intended to refer the matter to the Adjudicator. The referral was received by the OSA on 16 October 2014.

Consideration

13. The infant school believes that it should have the ownership of the caretaker's house because:

- a. the caretaker's house is on the asset register for the infant school;
- b. the property is on the infant school site, it is necessary to cross the infant school site to access the property and the property is closer to the infant school than the junior school;
- c. it is unfair that the unusual circumstances which led to the change of caretaking arrangements in 2006 should mean that the infant school loses the right to own or use the property;
- d. it had understood the agreement in 2006 was that once the caretaker left that consideration would be given to the infant school having use of the property again; and
- e. both the infant school and the junior school have claims to the property. The infant school argues that the provisions of paragraph 15 Schedule 6 of the 2007 Regulations apply and in particular paragraph 15 (3)(a). This paragraph relates to the division and apportionment of property where the property is used or held for wider purposes than that of one body. This is where there is shared use of some kind. Paragraph 15 (3)(a) specifies that ownership is decided on the basis of need where there is shared use of a property. The infant school argues that the current need for a residential caretaker is higher at the infant school than the junior school therefore the property should transfer to the infant school.

14. The local authority argues that:
- a. the local authority owns the caretaker's house and as a residential property it is not in the 'ownership' of any one individual school or held for any one school;
 - b. historically the junior school has had greater need and use of the property;
 - c. that the caretaker's house is excluded from transfer as it is specifically excluded in Education Act 1996 Section 579;
 - d. the agreement in 2006 was that when the caretaker left, it would be the decision of the local authority as to its future use; and
 - e. the infant school has managed for eight years without a residential caretaker and thus cannot show that it needs one.

15. Paragraph 2 (2) of Schedule 6 to the Regulations with regard to land transfers when a school changes category from a community school to a foundation school says that "*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

(b) if the school has no trustees, the governing body, to be held by that body for the relevant purposes."

The word "land" includes any buildings on that land.

16. The infant school believes it has a stronger claim to ownership, a view that is not shared by the local authority. I must consider whether the terms for transfer of property on the change of category of the school have been met in relation to the property.

17. The evidence provided to me is that immediately prior to 1 September 2013 the property was lived in by the caretaker for the junior school and he worked only for the junior school having not worked for the infant school since 2006. The property was being held for the use of the junior school's and not the infant school's caretaker. As the property was not being used by or held for the purposes of the infant school it was not included in the statutory transfer that took place on the change of category of the infant school. I have nevertheless for the sake of completeness considered the reasons given to me to on behalf of the infant school as to why the property should be transferred.

18. The infant school says the property is named on the local authority's asset register of the infant school and that this is evidence that the property was held or used for the purposes of the infant school. The local authority has pointed out that all costs relating to the caretaker's house, including repair and maintenance, are paid for by the local authority and the caretaker paid rent to the local authority. I therefore take the view that the naming of the property on the asset register is administrative only and not evidence that it was held for the use of the infant school.

19. The property is situated at one end of the overall site of the three schools, the infant school's end of the site. It is necessary to travel over a few feet of the infant school's site to enter the garden to the house. The caretaker has rented and lived in the property since 2006 while working solely for the junior school and no problems over access have been raised by the school or brought to my attention in any other way. I therefore regard the location of the caretaker's house as not materially affecting how it was held or used. The location does not indicate that the property was used or held for the purposes of the infant school immediately before the infant school changed status.

20. I have been provided with various figures regarding the need for a caretaker including the lettings by both schools, the loss of lettings for the junior school since the permanent caretaker left and the tasks that caretakers undertake for the individual schools. The junior school also makes reference to the security of its site and how a residential caretaker can make vandalism and rubbish being left on its playing fields less likely to occur.

21. Both schools state the advantages in having a residential caretaker. The use or otherwise of a caretaker will depend upon what is practical at any given time and this evidence is not substantial in making the determination. At the meeting I was told that the two schools were unable to come to an arrangement by which the facility could be shared. This seems unfortunate. However great each school regards its need for a residential caretaker, the consideration for me remains how the property was being used or held for the purposes of the infant school immediately before the implementation date.

22. I asked questions prior to the meeting and at the meeting regarding the agreement in 2006. In summary there was a breakdown of relationships between the infant school and the caretaker. The junior school did not have the same problems. The local authority made a proposal to address this and the outcome was that the junior school agreed to take on the full time contract for the caretaker and the infant school made other arrangements for its caretaking.

23. Neither party has been able to provide me with any document that records an agreement on this matter. The local authority proposed a way forward to a joint meeting of the governing bodies of the infant and junior schools on 16 March 2006. The proposal was that the caretaker works solely for the junior school and contains the line, "*Both schools agree that the caretaker stays in the house but when he leaves his position at Turnfurlong Junior School, the local authority will determine what happens to the house.*" The local authority could not provide a written record of an agreement about the proposal.

24. The infant school could not provide me with any minutes of the governing body relating to this. The minutes of the governing body of the junior school that were provided to me demonstrated an ongoing discussion related to this matter but no resolution to the proposal. It is, however, a known fact that the junior school alone became the employer of the caretaker. At the meeting we looked at various versions of the job description for the caretaker, but they did not add materially to the information available.

25. The infant school believes that it was agreed that there would be consideration of the use of the caretaker's house by the infant school when the caretaker left; nothing has been produced in writing from 2006 that gives any evidence of a formal agreement on this aspect. I consider that the lack of written agreement or contract or record in any form from 2006 means that, for the purposes of this determination, I can only consider the outcome which is that the infant school stopped any use of the caretaker's house from 2006. What might have been meant or said in 2006, does not alter the fact that at the time when the infant school changed its category, the caretaker's house was not being used for the purposes of the school nor is there any evidence that it was being held for the purposes of the infant school. The Regulations require that the property is held or used for the purposes of the infant school immediately before the implementation date in order for it to transfer: there is no evidence that this was the case and therefore the terms for statutory transfer of the caretaker's house to the infant school on its change of category have not been met.

26. I note that the local authority also argued that the Education Act 1996 Section 579 particularly excludes caretaker's houses and indeed it does state, "*school buildings*", *in relation to a school, means any building or part of a building forming part of the school premises, other than a building or part required only— as a caretaker's dwelling.*" I do not think that this argument is relevant as the Regulations apply in this case. The Regulations are concerned not only with school buildings but with all land, including all buildings on land, which might be held or used for the purposes of a school.

27. The infant school's reasons for the property to be transferred to it also refer to paragraph 15 (3)(a) of the Regulations which pertain to where there is shared use of some kind in the land that is included in the statutory transfer. As I have concluded that the property was not held or used for the purpose of the infant school immediately before the implementation date this provision does not apply.

Conclusion

28. I have considered all the points made to me and the documentation provided. The Regulations require that land, including buildings on that land, is transferred to the trustees or governors of the foundation school as appropriate when it was held or used by a local authority for the purposes of that community school immediately before the implementation date. The local authority did not hold or use the property for the purposes of the infant school immediately before the implementation date. The infant school's claim to the caretaker's house cannot be upheld and the land and property on that land therefore remains with the local authority.

29. There has been no difficulty brought to my attention with regard to access to the property since 2006. However, as access to the property is across a very small part of the infant school site that has transferred to the school I include as part of this determination the requirement for an agreed right of access to the property to be drawn up between the infant school and the local authority for the avoidance of any future doubt about access.

Determination

30. 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 property known as the caretaker's house shall not transfer to the trust for Turnfurlong Infant School and it will remain the property of Buckinghamshire County Council. Also an agreement is to be drawn up between the trust for Turnfurlong Infant School and Buckinghamshire County Council granting right of access to the property across the land transferred to the school.

Dated: 27 March 2014

Signed:

Schools Adjudicator: Mrs Deborah Pritchard