



DETERMINATION

- Case reference:** LAN 64
- Applicant:** Seabridge Primary School, Seabridge, Newcastle-under-Lyme, Staffordshire
- Application:** For the former caretaker's house used by Clayton Playgroup to be transferred by Staffordshire County Council to The Newcastle Co-operative Learning Trust following the school's change of category from a community school to a foundation school with a foundation.
- Date:** 31 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 former caretaker's house used by Clayton Playgroup is retained by Staffordshire County Council and not transferred to the trust for Seabridge Primary School.

The application

1. A letter was received on behalf of Seabridge Primary School (the school) by the Office of the Schools Adjudicator on the 30 October 2014 to refer a dispute over the ownership of the building previously used as the caretaker's house (the property) for the school. The school converted from a community school to become a foundation school with a foundation (commonly known as a trust school) as part of the Newcastle Co-operative Learning Trust on 1 September 2012. The school believes that the property should be transferred to its ownership by Staffordshire County Council (the local authority) for educational purposes.

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 school with a foundation 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.*"
5. The school changed its status from a community school to become a foundation school with a foundation on 1 September 2012, the implementation date. Since no agreement was reached within the prescribed period, and the school has requested that a determination be made by the Adjudicator after the end of this period, I am satisfied that the transfer has been properly 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. communications from the school and DWF (solicitors acting on behalf of the school); and
 - b. communications and supporting documents from the local authority, including a copy of the lease for the property and a plan of the site.
8. I have also considered information available on the school's and Clayton Playgroup's websites.

Background

9. Seabridge Primary School was formed when the former community infant and junior schools closed in 2005 and the community primary school opened on the same site. The property that was previously used as a caretaker's house is adjacent to the school. I understand from the school that Clayton Playgroup (the playgroup) has had use of the property since 1992.

Staffordshire County Council has leased the property to the playgroup since at least 1998. The school became a foundation school as part of Newcastle Co-operative Learning Trust on 1 September 2012. The school, through DWF, applied to the Office of the Schools Adjudicator in a letter received on 30 October 2014 that the property should be transferred to the school.

10. Clayton Playgroup registered with Ofsted in 1992 and its address is The Bungalow, Seabridge School Grounds, Roe Lane, Newcastle. At the time of its last inspection by Ofsted in 2012 there were 47 children registered with the playgroup. The report describes the playgroup as managed by a voluntary management committee and *“registered on the Early Years Register and the voluntary and compulsory parts of the Childcare Register. A maximum of 26 children aged between two and eight years may attend at any one time. Currently there are 47 children on roll, all of whom are in the early years age group. The group is in receipt of funding for the provision of free early years education to children aged three and four-years-old. The group supports children with special educational needs and/or disabilities.”*

11. Newcastle Co-operative Learning Trust comprises of various schools in the area. Each school has representation on the board of trustees.

The dispute

12. The school, through DWF, says that it would be able to provide more pre-school continuity for children if it had ownership of the property. It refers to a demand from parents for childcare provision for children aged 0 - 3 years and the opportunity to address practical difficulties of the school's nursery with children joining the nursery and the school at different stages and times of the year from the playgroup. The opinion is expressed that these problems could be addressed if the property were under the control of the school.

13. The local authority says that the property has not been used by the school for over a decade and thus there is no justification under paragraph 2 of Schedule 6 of the Regulations to transfer the property to the school. The local authority argues that for the Regulations to apply the school must have had use of the property immediately before the implementation date which was 1 September 2012 and that this was not the case as the playgroup has had use of the building since 1992.

Consideration

14. For my consideration I must apply the terms set out in paragraph 2 of Schedule 6 of the Regulations which apply with regard to land transfers when a school changes category; in this instance when a community school

becomes a foundation school. Paragraph 2(2) 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.”

15. My assessment therefore is whether the school was using the property at the point when it converted to become a foundation school, September 2012, or whether it was held for the purposes of the school.
16. The school does not dispute that the playgroup has had long term tenure of the property. The school believes that about 20 children a year transfer from the playgroup to the school and this includes children who join the school nursery and reception class. My understanding of the information provided on behalf of the school is that it would like to provide for children aged 0 – 3 years at the property and then for children aged 3 years onwards on the school site. This would give parents the option of childcare and continuity. The school has told me that this has been requested by parents and that ‘all-through’ provision will address some practical difficulties with children joining the school at different stages.
17. Childcare provision for children aged 0 – 3 years is not a responsibility for a school and the desire of the school to make continuous provision from 0 – 5 years is not a legal justification for the transfer of the property. The local authority could not, therefore, have been holding the property for the school for this purpose. The school was not using the property nor was it being held for the purposes of the school.
18. The school also argues that the property is part of the school site and indeed its address contains, ‘*Seabridge School Grounds.*’ The plan that has been made available to me shows that the property is completely separate to the school buildings and there has been no suggestion that access or security is a problem. As the playgroup has operated independently for over 22 years I do not believe that there is any valid reason for regarding the property as anything other than independent of the school. There is no evidence provided by the address or location that the property was being held for the school’s use immediately before the implementation date.
19. The school informed me that it was asked by the local authority whether, when the lease to the playgroup was renewed, the lease should be short or long term. The school said that it gained the impression from this that the

property would be transferred to it when it became a foundation trust and accordingly requested a short term lease.

20. The local authority made no comment on this directly but refers to the playgroup as having security of tenure under the Landlord and Tenant Act 1954. It also describes the playgroup as a well-established and high quality provision for the community. The local authority further argues that the school does not need to own the property to work with the playgroup and expresses the fear that the school intends to close the playgroup. The school argues that it does not want to end the playgroup provision but to work with it.
21. The evidence is that the playgroup has security of tenure and the right to extend its lease. The long-standing lease is with the local authority and the school has had no part in this. The playgroup and the local authority have been responsible for the property's maintenance. The property has independent access and there is no necessity for any shared facility with the school. There is no evidence that the property was used by or held for the use of the school immediately before the implementation date and therefore does not meet the requirements of the Regulations for the property to be transferred to the school.

Conclusion

22. I have considered all the points made to me and the documentation provided. The Regulations require that property is transferred to the trustees or governors of the foundation school as appropriate if it has been used by or held for the purposes of that community school by the local authority immediately before the implementation date. The local authority did not hold the property for the use of or for the purposes of the school immediately before the implementation date. The school's claim to the property cannot be upheld and the property therefore remains with the local authority.

Direction

23. 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 former caretaker's house used by Clayton Playgroup is retained by Staffordshire County Council and not transferred to the trust for Seabridge Primary School.

Signed:

Adjudicator: Deborah Pritchard

Date: 31 March 2015