



## **DETERMINATION**

**Case reference:** LAN66

**Applicant:** Leeds City Council

**Application:** For the property known as 215 Belle Isle Road to be retained by the Council following the change of category of Cockburn School from a community school to a foundation school with a foundation.

**Date:** 2 November 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 215 Belle Isle Road is retained by Leeds City Council and not transferred to the trust for Cockburn School.**

### **The application**

1. A letter was received on behalf of Leeds City Council (the council) by the Office of the Schools Adjudicator on the 6 July 2015 to refer a dispute with Cockburn School (the school) over the ownership of the building situated at and known as 215 Belle Isle Road (the property). 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 Learning Trust (South Leeds) on 1 July 2011. The council believes that it should retain the property and the school believes that the property should be transferred to the 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 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 on that date.

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 July 2011, the implementation date. Since no agreement was reached within the prescribed period, both the school and the council had the right to apply to the adjudicator for a direction. The council has requested that a determination be made by the adjudicator after the end of this period. I am satisfied that the matter has been properly referred to me and that I have jurisdiction to consider it 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. the referral from the council dated 6 July 2015, subsequent correspondence and supporting papers; and
  - b. the school's holding response of 17 July 2015 and all subsequent correspondence made through Wrigley's Solicitors, the school's legal representative, and correspondence and supporting papers directly from the school.
8. All correspondence from the council has been copied to the school and all correspondence from the school has been copied to the council with each able to comment on the other's submissions.

## **Background**

1. The property, 215 Belle Isle Road, is a semidetached house situated adjacent to the site of the former Merlyn Rees High School. The property was designated as a caretaker's property for the superintendent of that school. In different documents the property is stated as being located 3.3 and 4.5 miles from the site of Cockburn School according to the council. I surmise that the 3.3 is straight line distance as by using a route planner tool to check the

distance I found the distance to be 4.5 miles. The property is not within easy walking distance of the school which is located on a site on Gipsy Lane. There are separate land registry documents, one for the school's site and the other for part of Belle Isle Road and adjacent areas. The property is included in this title.

2. The school's website says that at present the trust comprises the school and six primary schools. As a Co-operative Trust, the members have adopted the values and principles of the Co-operative movement. The school wishes to convert to become an academy and any disputes about land matters must be resolved before such a conversion could be completed.
3. Both the council and the school have outlined the use made of the property from 2003 onwards when it was run as a Behaviour and Education Support Team (BEST) facility managed by Merlyn Rees High School. The facility was established with funding from the Government's Behaviour Improvement Programme (BIP) that was part of the Government's Street Crime Initiative. When Merlyn Rees High School merged with Matthew Murray High School in 2004 to become South Leeds High School, the new school took over hosting of the BEST facility continuing to use the property for that purpose.
4. On 1 September 2009 South Leeds High School became an academy. It was granted a 125 year lease for its site and 215 Belle Isle Road was excluded from that lease.
5. The school took over the running of the BEST facility still located at the property at that time, being commissioned to do so by the South Area Inclusion Partnership (AIP). This included being allocated a sum of money £170,000 to run BEST, which later became "Engage".
6. In April 2011 the school entered into a contract with South Area Inclusion Partnership (AIP) with respect to the Engage programme concerning the school and its partner primary schools.
7. In November 2011 the school wrote to the council to enquire about taking over the former Middleton Advice Centre in place of the property. In 2012 as the number of pupils at the property increased the facility moved to the current base at Acre Road, Middleton. The property is now let by the school as a residential let.
8. The school says that it has been given notice to quit the Middleton Advice Centre from 31 October, the premises to which it moved from the property, and that it would wish to return to the property.

## The dispute

9. The school's legal representative's argument questions what is meant by the terminology used by the council to describe the school's role with the "Resource" as it calls the provision based at the property. The question is what is meant by the term hosting or managing or running the Resource.
10. Secondly, the argument is based on what the school believes to be control of the property and legal occupation of the property, but does admit that the property should not have been let as a residential property without following the correct procedure.
11. The council argues that property was not and is not part of the school rather that the school had an agreement to run the provision, Engage, previously BEST, using the property as the base for this activity.

## Consideration

12. For my consideration and decision 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 with a foundation. Paragraph 2(2) of the Regulations 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.
13. My assessment therefore has to be whether the property was being held for or used for the purposes of the school immediately prior converting to become a foundation school on 1 July 2011.
14. The school's initial response refers to "*the Resource*" which it defines as "*a facility for education of children with additional behaviour needs*" saying in its chronology, "*September 2009 Cockburn took over 215 Belle Isle Road and ran the Resource from it*". The response goes on to include "*What is the Resource?*" and then sets out its view of what the Resource is, namely:
  - a. *The resource is referred to by the Council as 'BEST' a behaviour and education support team. It has been run under the trading names 'Footsteps' and 'Engage'.*

- b. *The Resource is a provision for educating children with additional behaviour needs away from the main school site*
- c. *All high schools within the south of the city may have pupils with such needs so as well as pupils from the School using the facilities the facilities are offered to other schools in the area who may buy the service from the School.*
- d. *The Resource is not a legal entity. It is not established as a separate educational institution. It has no DfE URN or LA reference and is not separately assessed by Ofsted. The Resource is an activity run by the School and the School has responsibility for it. Of course, the School consider it is part of the school.”*

15. The council has set out the schools that have overseen the BEST facility from its beginning in 2002/03. It describes the “Behaviour and Education Support Teams” set up in Leeds through BIP as multi-agency teams comprising a range of professionals to support schools, families and children aged 5 to 18 who show or are at risk of developing emotional, behavioural and/or attendance problems. When the first school to run the facility merged with another school the new school took on responsibility for the facility. This school, South Leeds High School, a community school, ran the facility on behalf of the other schools in the South Leeds area. When that school became an academy Cockburn was the only remaining community school and the Area Inclusion Partnership asked the school to take over running the facility. The South Area Inclusion Partnership allocated the school money to manage the BEST and later the Engage team. A sum of £170,000 has been cited as the amount provided.
16. The descriptions of the work of BEST as set out by the school and the council confirm the nature of the provision. There is no dispute that the school took over running the work of BEST in 2009 and that the facility was based at the property at that time. The school has provided copies of some appointments made in 2009 through Education Leeds, for example, an “Appointment to Learning Mentor – BEST at Cockburn High School”. As the school was running the BEST facility it is to be expected that it would be referred to in such appointments.
17. With its submission of 18 August 2015 the council provided a copy of a contract dated 20 April 2011 to run for one year titled “South AIP COMMISSIONING Cockburn through ‘Engage’”. In the “Specification of Work/Brief” section Cockburn School and partner primary schools are referred to as the trust, the Engage team will build on the work of the previous practice of BEST and the new service will offer a more clearly defined targeted service for all the schools named in the trust. The contract goes on to outline other work including the “Footsteps” provision which is to be offered to the other five

South secondary schools at £45 per day. The contract clearly refers to host and partner schools, the reporting requirements, and a great deal more. The contract is for £195,000 which includes £25,000 for potential redundancy costs plus £15,698 contribution to pension costs and was to commence on 1 April 2011 and terminate on 31 March 2012.

18. It is clear from the school's and council's submissions that immediately prior to the school changing its status it was running the facility, by then called the Engage programme, based at the property. As a community school it was running the facility under contract and the facility was based in property owned by the council.
19. The school's representative responded to the council's submission of 18 August and included comments directly on the council's letter, but made no comments on the supporting documents. The covering letter queried again the terminology used to describe the school's role with the facility such as managing, hosting, acting as agent, overseeing. With respect to the facility that was based at the property, both the school and council have said the school was running the facility. There are assertions that if the school was merely managing the facility it would not be responsible for various payments. However, the contract sets out the money paid by South AIP to the school indicating that there was dedicated money provided for the school to run the facility.
20. While a particular term may be important in some circumstances, the test the Regulations set is whether the property *"was held or used by a local authority for the purposes of the community school"*.
21. At the time of the school's change of status the property was held by the council for use for the Engage programme run by the school under a contract with South AIP. The Engage programme was for certain children from the school and its partner primary schools. It was also available to other schools. The property was not held or used for the purpose of the school.
22. Much of the material in the submissions on behalf of the school concerns what has happened since the school changed status and is not therefore relevant to the decision I must make. There are conflicting views on how the property has been used since vacated by Engage in 2012. I note matters first of neglect of the property and then by its change in use to become a residential let which continues. The decision I am required to make, however, must be based on the circumstances immediately prior to the implementation date.

## **Conclusion**

23. I have considered all the documentation provided and all the points made to me. The Regulations require that property is transferred to the trustees or governors of the foundation school as appropriate if it was held or used by a local authority for the purposes of the community school immediately before the implementation date. The local authority held and provided the property for use by the Engage programme which immediately before the implementation was run by the school under contract with the South Area Inclusion Partnership. Engage was for certain of the school's pupils and children from the school's partner primary schools. Children from other schools may also have taken part in the Engage programme. Engage was not solely for the school. The council did not hold or use the property 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**

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 property known as 215 Belle Isle Road is retained by Leeds city Council and not transferred to the trust for Cockburn School.

Signed:

Adjudicator: Dr Elizabeth Passmore

Date: 2 November 2015