



## DETERMINATION

**Case reference:** LAN 67

**Applicant:** Sandwell Metropolitan Borough Council

**Application:** To return land known as Phoenix Collegiate North Campus to the Local Authority

**Date of direction:** 8 July 2016

### Direction

**Under the powers conferred on me by Section 76 and sub-paragraph 7 of paragraph A23 of Schedule 22 to the School Standards and Framework Act 1998 I reject the application by Sandwell Metropolitan Borough Council for a transfer order in relation to the site known as Phoenix Collegiate North Campus.**

### The application

1. Sandwell Metropolitan Borough Council, the local authority (the LA) wrote to the Office of the Schools Adjudicator (the OSA) on 22 July 2015 to request a determination concerning the land known as Phoenix Collegiate North Campus (the site). The LA had received a letter from Phoenix Collegiate (the school), a foundation school, on 14 September 2014 asking for the LA's views on the future of the site as the school had decided that all classroom-based teaching would be concentrated on the South Campus. The LA requested the OSA that "*an order be made to the school to relinquish it's [sic] interest in the land and that the land returns to the Local Authority [sic] control.*"

### Jurisdiction

2. Paragraph A23 of Schedule 22 to the School Standards and Framework Act 1998 (the Act) is entitled "*Land required by local education authority for certain purposes*". It provides in sub-paragraph (1) that:

*"A local authority in England may apply to the adjudicator for a transfer order under this paragraph in relation to publicly funded land which—*

- (a) *is held for the purposes of a foundation, voluntary or foundation special school by the governing body of the school,*

- (b) *is held by a foundation body for the purposes of the group of schools for which it acts, or*
- (c) *is held, or held on trust, for the purposes of a foundation, voluntary or foundation special school by the trustees of the school.”*

3. The LA’s application falls within the scope of this sub-paragraph; sub-paragraph (7) states that:

*“Where an application is made under sub-paragraph (1) for a transfer order in relation to publicly funded land, the adjudicator may make a transfer order if he is satisfied that—*

- (a) *the land is not required for the purposes of the school ... ,*
- (b) *the land is required for the authority for the stated purpose,*
- (c) *the stated purpose is a qualifying purpose, and*
- (d) *it is appropriate for the land to be used for that purpose.”*

4. Section 76 of the Act gives effect to Schedule 22. It provides that *“Schedule 22 (which makes provision as to the disposal of land held for the purposes of foundation, voluntary or foundation special schools and as to the property of maintained schools on their discontinuance) shall have effect.”*

5. I am satisfied that I have jurisdiction, under the power conferred on me by Section 76 of the Act, and sub-paragraphs (1) and (7) in paragraph A23 of Schedule 22 to the Act, to consider this matter.

## **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:

- the application to the OSA from the LA, dated 22 July 2015, with attached copies of letters from the school to the LA, dated 14 September 2014, and from the LA to the school, dated 10 December 2014 and 15 March 2015;
- the notification and accompanying documents concerning this matter sent by the LA to the Secretary of State for Education, dated 10 December 2015;
- a letter to the adjudicator, with attached documents, from the legal firm representing the school, dated 14 December 2015;
- a letter to the adjudicator from the legal firm representing the school, dated 14 January 2016;
- a letter to the adjudicator from the LA, dated 16 December 2016; and
- a letter to the adjudicator from the legal firm representing the LA, dated 29 January 2016; and
- confirmation received on 6 July 2016 from the Secretary of State for Education that the land is not required for the purposes of an academy.

8. I convened a meeting on 2 February 2016 attended by representatives of the LA and the school, including each party's legal adviser. I have considered the representations made to me at that meeting as well as all correspondence, as listed above, copies of which had been previously circulated to both parties. Following the meeting, I received an email and accompanying documentation from the legal adviser representing the school, dated 8 February 2016. This was copied to the LA, which informed me on 11 February 2016 that it "*ha[d] nothing further to add to this application*".

## **Background**

9. The school is located in the district of West Bromwich, in the Metropolitan Borough of Sandwell. On its formation (from two predecessor schools, the Manor Foundation School and Menzies High School) it operated from two sites known as Phoenix Collegiate North Campus (the site with which this application is concerned) and Phoenix Collegiate South Campus. Prior to the amalgamation with Menzies High School, the governing body of the Manor Foundation School entered into an investment and operations agreement with Pulse Soccer Limited (Pulse). The obligations under this agreement passed to Phoenix Collegiate School on its foundation. Since the academic year 2014-15, the school has consolidated classroom teaching onto the South Campus; it now uses the North Campus only occasionally for access to the playing fields and other sports-related facilities. Other buildings formerly used for teaching purposes are redundant. Although the school continues to make some use of the site, and has invited local primary schools to use the facilities, access is limited by transport issues. There have been discussions with Pulse about relocating to the South Campus as part of the rebuilding programme currently under way there, but no firm proposals have yet been tabled to that effect. The school, which continues to receive split site funding from the LA, meets the costs of securing and maintaining the site.

10. The LA states that part of the site was originally acquired by the then local authority in 1882. On the acquisition of further land, a school was opened on the site in 1968. This school converted to grant-maintained status in 1991 and later became the Manor Foundation School; in turn, this school merged in 2010 with Menzies High School to form the Phoenix Collegiate School. The merged school was a foundation trust school, specifically a National Challenge Trust School; the site was subject to a vesting order under the terms of the Act. The relevant Foundation Body was the Sandwell Excellence Trust, incorporated on 23 December 2009 and dissolved on 5 February 2013. In April 2012, the LA transferred the freehold reversions of all of its school sites to Sandwell Land and Property, a wholly owned subsidiary company; the Land Registry document TP1, "*Transfer of part of registered title(s)*", dated 4 April 2102, mentions both campuses of Phoenix Collegiate School. The LA purports that the sites were then leased back to the LA for 125 years, and the Land Registry has supplied documentation showing the registration of the freehold transfer of the South Campus to Sandwell Land and Property and the leaseback to Sandwell Council; however, no legal interest in land has been registered in respect of the North Campus. The school's legal adviser has written that "*the effect of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 ("the 2007 Regulations") was that title to both the North and South Campuses*

*vested in the Foundation Body, and the position at the Land Registry should have caught up. However, the conveyancing was never done.”*

11. On 14 September 2014 the chair of governors of the school wrote to the LA, indicating that the school was in significant financial difficulties and that the governing body *“feel that we have little option but to seek to liquidate the few assets that we do have.”* The letter had earlier indicated that the school had *“no assets but the value of our North Site Campus”*, which continued to incur costs for security, maintenance and repairs as well as other commitments arising from the contractual agreements with Pulse. The governing body’s conclusion was that *“In spite of the split site funding that we are currently in receipt of, all of these financial pressures are now draining our resources to an extent that we can no longer absorb.”* The chair of governors asked for the LA’s views on the future of the site *“before the governing body meets again to make a final decision on how to proceed.”*

12. The LA responded on 10 December 2014 by indicating that it was willing *“to take over all aspects of security and maintenance of the site, including liability and responsibility for the Pulse Soccer Investment and Operations Agreement”* provided that legal interest in the land was transferred to the LA. Under this proposal, the school would be released from the costs of securing and maintaining the site and from other liabilities under its contract with Pulse, an amount estimated by the LA as *“a minimum of £140,000 per annum”*. In this letter, the LA also stated that it considered it unlikely that the disposal of the site would result in a significant capital receipt for the school.

13. The LA wrote again to the school on 18 March 2015, stating that it was considering the development of the adjacent former Wednesbury sewage works site which, in order to provide a larger parcel of land for residential development, could usefully incorporate the North Campus site; part of this larger development would provide the location for a new school, seen as necessary to meet rapidly increasing pupil numbers within that district of the LA in future years. The school would probably not be on the North Campus site, however; the LA explained that *“To provide the most appropriate redevelopment proposals for the areas there will need to be some rearrangement of the current land uses. This will almost certainly mean that the existing school buildings would be demolished, with an alternative site provided to accommodate new educational provision within the area.”* If a subsequent application by the LA to the Secretary of State for Education for consent to dispose of the site were to succeed, the LA stated *“it is not envisaged that the Council will receive a capital receipt for the land but, instead, an exchange for an equivalent site in close proximity. As a result, the Council is not able to enter into any agreement to share proceeds of any future land sale with Phoenix Governing Body.”* The school did not accept the LA’s comments and has been exploring possible disposal options for the site, but has not made any formal proposal other than to challenge this application for a transfer order by the LA.

14. In its letter of 22 July 2015 the LA asked the adjudicator:

- (i) to note formally its objection to the disposal of the site by the school; and

- (ii) to make an order to the school to relinquish its interests in the land so that the site returns to the LA's control.

As noted above, the school has not as yet made any formal proposal to dispose of the land; the first part of the LA's request is therefore neither relevant to my consideration, nor is it within my jurisdiction in respect of this application.

15. The school's legal adviser, in his letter to the adjudicator of 14 December 2015, wrote that *"the determinations sought are as follows:*

1. *That the Governing Body is entitled to be registered as proprietor of both the North and South Campuses.*
2. *That the lease in respect of the South Campus be surrendered by the local authority.*
3. *That no order be made to require the Governing Body to transfer any of its land to the local authority or to give the local authority any entitlement to any disposal proceeds ... "*

As with the LA's request noted in the previous paragraph, not all of the above falls within my jurisdiction, which is confined to considering the third item in the list only.

## **Consideration**

16. It is unfortunate that it was not possible to resolve this matter locally between the parties. However, the apparent lack of due process in respect of title to the land – or at the very least, the lack of transparency around the processes involved – has been a complicating factor in discussions between them. The school's legal adviser has recorded a series of actions concerning the freehold of school sites within the LA, including that which is the subject of this application, and a wholly owned subsidiary company of the LA, Sandwell Land and Property, but is of the view that *"no legal interest in land has been registered in respect of the North Campus."* Moreover, the school withdrew from the Sandwell Excellence Trust in January 2013 prior to the dissolution of that Trust in February 2013 (see paragraph 10 above); the view of the school's legal adviser is that regulation 7 of the 2007 Regulations, and Schedule 6 to those Regulations which gives effect to that specific regulation, resulted in an automatic vesting of the site in question to the Governing Body of the school at the time<sup>1</sup>.

17. The LA's letter to the OSA of 22 July 2015 seeking a transfer order states that *"The land is currently subject to a vesting under the SSFA 1998 due to its conversion."* Further to this point, I note that the legal adviser to the LA wrote in his letter to the adjudicator of 29 January 2016 that *"The Council considers that the ownership of the campus land falls outside the scope of this application and that no direction should be made in relation to the ownership of either campus."*

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<sup>1</sup> The 2007 Regulations continue to apply in this matter by virtue of Regulation 8(2) of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.

18. Putting to one side, therefore, the dispute concerning ownership of the site, my consideration of the LA's application will focus solely on the extent to which it meets the criteria for a transfer order set out in paragraph A23 of Schedule 22 to the Act. The paragraph is entitled "*Land required by local authority for certain purposes*". Its relevant parts provide, in addition to a general requirement for the applicant and the adjudicator to "*have regard ... to any guidance given from time to time by the Secretary of State*", that:

*"(1) A local authority in England may apply to the adjudicator for a transfer order under this paragraph in relation to publicly funded land which—*

- (a) is held for the purposes of a foundation, voluntary or foundation special school by the governing body of the school,*
- (b) is held by a foundation body for the purposes of the group of schools for which it acts, or*
- (c) is held, or held on trust, for the purposes of a foundation, voluntary or foundation special school by the trustees of the school.*

*(2) A transfer order is an order requiring the land in relation to which it is made to be transferred by the body or trustees holding it to the authority, subject to the payment by the authority of such sum by way of consideration (if any) as the adjudicator determines to be appropriate.*

.....

*(4) Before making an application under sub-paragraph (1) for a transfer order in relation to publicly funded land, the authority must give notice of their intention to make the application to--*

- (a) the body or trustees holding the land, and*
- (b) the Secretary of State.*

*(5) An application under sub-paragraph (1) must state the purpose for which the land to which it relates is required by the authority ("the stated purpose").*

.....

*(7) Where an application is made under sub-paragraph (1) for a transfer order in relation to publicly funded land, the adjudicator may make a transfer order if he is satisfied that--*

- (a) the land is not required for the purposes of the school or, as the case may be, the schools in the group,*
- (b) the land is required by the authority for the stated purpose,*
- (c) the stated purpose is a qualifying purpose, and*
- (d) it is appropriate for the land to be used for that purpose.*

*(8) For the purposes of sub-paragraph (7)(c) the stated purpose is a qualifying purpose if it falls within one or more of the following descriptions of purpose--*

- (a) the land is required for the purposes of any school or institution which is, or is to be, maintained by the authority, or which they have power to assist;*
- (b) the land is otherwise required for the purposes of the exercise of any of the education functions of the authority;*
- (c) the land is required for the provision of children's services by or on behalf of the authority in the exercise of any of their relevant functions of that local authority*

.....

*(10) Before making a transfer order the adjudicator must consult the body or trustees holding the land in relation to which the application for the transfer order is made.*

.....

*(12) Where a transfer order is made, the authority must use the land to which it relates for the stated purpose."*

19. The first issue to note is that a considerable portion of the site in question comprises what would be defined as playing field land; it might therefore be thought, consequent upon section 77(1) in the Act, that the consent of the Secretary of State for Education is required for the disposal of such land. However, paragraph 2(B)(a) of Section 77 in the Act makes clear that the requirement does not apply to "a disposal in pursuance of a transfer order under paragraph A23" of Schedule 22 to the Act, which I have shown to be the legislation relevant to this application. The site in question is therefore not excluded from the scope of paragraph A23 by virtue of being (or of including) playing field land, and the adjudicator has jurisdiction to make a transfer order that would apply to the whole site should he so determine.

20. A necessary property of the land to which paragraph A23 in Schedule 22 to the Act applies is that it should be "*publicly funded.*" This is defined in paragraph A24 in the Schedule and includes transfers under section 210(1)(a) of the Education Act 1996. Paragraph 10 above outlines the history of the site which is the subject of the LA's application. One of Phoenix Collegiate's predecessor schools, the Manor Foundation School, made the transition from grant maintained to foundation status; although I have been unable to ascertain the precise date of this change, I am satisfied that, for the purposes of paragraphs A23 and A24 in Schedule 22, the site is publicly funded and thus qualifies under this legislation as land that might be subject to a transfer order according to the adjudicator's decision.

21. Having established that I may legitimately consider the site as potentially subject to a transfer order within the terms of paragraphs A23 and A24 of Schedule 22 to the Act, I move now to consider the substantive requirements set out in sub-paragraph 7 of paragraph A23 that the LA must satisfy in order for me to make such a transfer order on its behalf. Given that the site is publicly funded land as detailed in paragraph A24 these requirements, to recapitulate, are that:

- (a) the land is not required for the purposes of the school;*
- (b) the land is required by the local authority "for the stated purpose";*
- (c) the stated purposes is a "qualifying purpose"; and*

(d) it is appropriate for the land to be used for that purpose.

22. Although it may appear evident that the land in question is no longer required for the purposes of the school, having concentrated its teaching activities onto the South Campus, some use is still made of the sports facilities on the North Campus site by the school itself and other institutions and organisations; although, as noted previously, the school is considering how those facilities might be relocated to the redeveloped South Campus, no firm proposals have yet been made, and so at this time it is not clear that the requirement set out in (a) above is met in full.

23. It is also unclear that the land is required by the LA *“for the stated purpose”*. In its application to the OSA of 22 July 2015 for the transfer order, the LA did not openly state “a purpose” for the site, other than a general aspiration to acquire it and thus to be able to link it with adjoining land, *“the former Wednesbury sewage works.”* At this stage, the LA had not given notice of its intention to seek a transfer order to the Secretary of State for Education, as required by sub-paragraph(4)(b) in paragraph A23 of Schedule 22. This provides for the Secretary of State, on receipt of the notice, to decide whether to make a direction under paragraph 12 of Schedule 1 to the Academies Act 2010 (transfer to academy) in respect of the land and to notify the LA of that decision. When reminded of this requirement by the OSA, the LA wrote to the Secretary of State on 10 December 2015; the Secretary of State subsequently confirmed that she did not intend to make a direction regarding the land in question. I am therefore able to determine the application made by the LA.

24. In the LA’s application to the Secretary of State a *“stated purpose”* was expressed more clearly, as follows, than in the letter of application to the OSA dated 22 July 2015:

*“The Local Authority is currently advancing plans with the private sector to bring forward its land and third party land interests for comprehensive redevelopment of the area ... As part of this, a Masterplan has been developed which re-provides a site for a new school that is more appropriately located given the constraints that exist on the site and the need to maximise the benefit to the local community.”*

The *“stated purpose”* would therefore appear to be that of acquiring the land to provide for part of a larger residential development that would include a new school located on the adjoining redundant sewage works site, that is, not on the site that is the subject of this application. This marks a distinct change from the LA’s letter to the school of 18 March 2015, previously quoted, in which it stated that it would *“almost certainly”* demolish the school buildings on the North Campus site and relocate any new school to the adjoining land. At the meeting I convened on 2 February 2016, it was clear that the LA had no intention of directly using the site in question for any educational facility but rather that the acquisition of this site is seen to *“unlock the potential”* (in the words of one of the LA’s representatives) for a larger development that would incorporate a school some 200 metres distant from the school buildings currently on the North Campus site. The statement quoted above from the letter of 10 December 2015, although apparently satisfying requirement (b) set out in paragraph 21 above, therefore raises the issue of whether the *“stated*

*purpose*” is a “*qualifying purpose*” and whether it is “*appropriate for the land to be used for that purpose*” as set out in requirements (c) and (d) in paragraph 21 above. I shall now consider these points.

25. To recapitulate, in sub-paragraph 8 of paragraph A23 a “*stated purpose*” is a “*qualifying purpose*” if:

*“(a) the land is required for the purposes of any school or institution which is, or is to be, maintained by the authority, or which they have power to assist;*

*(b) the land is otherwise required for the purposes of the exercise of any of the education functions of the authority;*

*(c) the land is required for the provision of children's services by or on behalf of the local authority who are the authority in the exercise of any of the relevant functions of that local authority.”*

26. This is the key issue in my consideration: whether the LA requires the land for a specified and appropriate qualifying purpose. In summary, the LA’s application to the OSA indicates that the land is required as part of the development of a larger area. Although the development as a whole may include the construction of a school, as clarified in the LA’s letter of 10 December 2015 to the Secretary of State for Education, it is not clear that this amounts to any use of the specific site to which this application applies for a school, for the provision of children’s services, or for education functions of any kind. It does not appear to me, therefore, that any of the qualifying purposes (a), (b) and (c) listed in the previous paragraph are fulfilled in relation to the site under consideration, in which case the proposed use of the land could not meet the test of appropriateness in item (d) in paragraph 21 above. The LA’s proposal to “*exchange*” the site “*for an equivalent site in close proximity*” calls fundamentally into question whether the LA requires that specific site for a “*qualifying purpose*”. At the meeting I convened on 2 February 2016, an LA representative informed me that it “*expects a planning application to be made within twelve months*” in relation to the entire piece of land, that is, the North Campus together with the former Wednesbury sewage works site. Again, this raises questions not only concerning the LA’s intentions for the site in respect of the “*qualifying purpose*”, but also in respect of what the development proposals, once they had gone through the full planning and consultation process, might actually deliver. That the LA is not yet close to submitting a detailed planning application calls further into question the extent to which it could claim to have met in full the requirements of the relevant legislation that I have set out in paragraphs 21 and 25 above. The LA was adamant in its submissions to the school and the OSA that the North Campus site is of little value (“*it is unlikely that the school would have any realistic expectation of a significant windfall*”), but if so, I then question why the LA is keen to take control of the land, if not to make it more commercially viable, in the context of its planned linkage with the adjoining former Wednesbury sewage works site, as a larger and more attractive parcel of land to be made available to potential developers. That so much remains unclear and speculative merely underlines, in my view, the extent to which the application fails to meet the requirements of paragraph A23 in Schedule 22.

27. Moreover, following my meeting with representatives of the LA and the school, the school submitted further information through its legal adviser. Minutes of a meeting of the LA's secondary partnership on 25 November 2015, and the printout of a slide presentation made at that meeting, show a future need for some 600 additional places in the vicinity of the North Campus site, although 370 potential "offers" of places recorded in these minutes in other nearby schools indicate that the actual shortfall might be reduced to about 230 places. These minutes record, significantly, that the LA is "*committed to expand good and outstanding schools*" as a strategy for providing additional places in the future. The head teacher of the school informed its legal adviser that, at a further meeting on 4 February 2016, the LA confirmed that 570 of the 600 places had now been filled by "offers" from existing schools – thus fulfilling, according to the minute quoted above, the preferred strategy of providing additional places in established, well performing schools. The actual demand for places in the locality of the North Campus is therefore questioned by the school, even including that which might be created by the planned residential development of approximately 800 units if the whole area of land, that is, the North Campus site and the former sewage works, were available to the LA. This information raises the distinct possibility that, having obtained the site, and with no formal planning application yet submitted, the LA might decide that no new school is required but that all the land might be used for other development, thereby casting yet further doubt on the "*stated purpose*" for requesting a transfer of the site back to the LA's control. When these additional data supplied by the school concerning the provision of future school places in the area were brought to the LA's attention, it had no comment to make. I must therefore conclude that the LA accepts their validity and the consequent impact on its application for a transfer of the land.

28. If a transfer order were to be made, a further issue relates to the consideration (if any) that should be paid by the LA to the school as detailed in sub-paragraph (2) of paragraph A23, which states:

*"A transfer order is an order requiring the land in relation to which it is made to be transferred by the body or trustees holding it to the authority, subject to the payment by the authority of such sum by way of consideration (if any) as the adjudicator determines to be appropriate."*

29. Following the meeting I convened between the parties, the school submitted headline sums of the consideration it would seek if it were ordered to return the land to LA control, amounting to a total slightly in excess of £1.5 million; this sum would be sought in order to complete to an appropriate standard the fitting-out of the new premises that are being built on the South Campus site as part of the government's Priority Schools Building Programme. Despite the new build, the school submits that significant needs (including security measures, ICT and communications equipment, furniture and other practical resources) will not be met from funding granted by either central government or the LA, a claim not disputed by the LA at the meeting. The head teacher further indicated that the new school, when complete, is likely to be underpopulated at first by about 25 per cent of its planned capacity, and so will be paying some fixed costs that would not be funded by pupil numbers in the short term. It is in order to be able to explore ways in which disposal of the site might help in this situation that the school opposes any order to return the site to the control of the LA

but seeks appropriate financial consideration should such an order be the outcome of my determination.

30. I note furthermore that guidance to the adjudicator<sup>2</sup> regarding applications for a transfer of land from a school to the LA under paragraph A23 of Schedule 22 to the Act says:

*“The adjudicator must be satisfied that the land is surplus to the reasonable needs of the school and that the local authority’s proposed use for the land is for a permitted use ... is strategic, reasonably immediate, for the benefit of the local community and cannot be provided from another site. He may also consider whether the school has alternative proposals for the land. In considering these factors he may take into consideration:*

- a. whether the authority’s strategic use is in the public domain and has been agreed, for instance in a local plan;*
- b. whether the authority has consulted on its proposals, and what the evidence of the consultation has been;*
- c. whether there are likely to be planning considerations which could thwart proposals;*
- d. evidence on the availability of alternative sites for proposals;*
- e. that the use of the land is appropriate for land which borders a school ... ;*
- f. where the school proposes alternative use, whether funding is likely to be available and the benefits the proposed use will bring.”*

31. My identification of shortcomings in the LA’s application against the specific requirements of the relevant legislation is further strengthened, in my view, by this guidance. As I have indicated, the LA’s plans for the site are at an early stage – a planning application is expected to be made only within the next twelve months – and so there could be responses to consultation (were one to be held) and planning issues that might indeed “*thwart proposals*”, proposals that are by no means definitive at this time; such issues might include, for example, reconsideration of where to provide additional school places, as suggested in paragraph 27 above. Although speculative, this illustrates the point that the LA’s proposals are neither firm nor public at this stage; for this reason, I cannot be sure that, were the site transferred to the LA and a new school built on adjoining land as proposed, that the use of the site in question would be “*appropriate for land which borders a school*” since there is as yet no agreed plan for the development as a whole. The “*alternative use*” proposed for the site by the school is disposal – although no steps have yet been taken while the matter remains unresolved – and this, it is argued by the school, would bring distinct benefits, as set out in paragraph 28 above, in better equipping the new building on the South Campus.

## **Conclusion**

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<sup>2</sup> *The Transfer and Disposal of School Land in England – a General Guide for Schools, Local Authorities and the Adjudicator (May 2007)*

32. I determined that the first element of the LA's request in its application, that is, to note formally its objection to the disposal of the site by the school was premature; the school has not, as yet, attempted to dispose of the site. Similarly, the request by the school's legal adviser for me to determine matters relating to the ownership of the site in question and the leasing arrangements for the South Campus is not within my jurisdiction under this application. My consideration and decision has therefore been concerned solely with the LA's application for the adjudicator to make an order to the school to relinquish its interests in the land known as the Phoenix Collegiate School (North Campus) so that the site returns to the LA's control in order to facilitate a residential development that would include a new school on an adjacent site.

33. I have considered detailed written submissions from both parties, and have listened to their arguments in a meeting. I acknowledge that both parties have a genuine desire to achieve an outcome that is in the best interests of the need both for new housing in the area and for the provision of sufficient school places in the years to come. The LA proposes to provide a new school located within a large new residential development that includes the site to which this application refers; the school wishes to ensure that it is able to benefit fully from a rebuilding programme by realising the value of assets, to which the school believes it is entitled, in order to improve facilities and resources in its rebuilt premises. The central issue, with regard to paragraph A23 in Schedule 22 to the Act, which sets out the relevant legal requirements and constraints in this matter, concerns the legitimacy of the LA's request for a transfer of the site to its control, given its stated purpose in making that request and its proposed use of the land.

34. For the reasons set out, I do not believe that the LA has presented a proper or reasonable case for acquiring the land, nor indeed one that could permit me to order a transfer of the site to its control since I am not satisfied – as I must be to make a transfer order – that the requirements in sub-paragraph 7 of paragraph A23 in Schedule 22, concerning “*purpose*” are sufficiently met. Whatever else may or may not happen in the “masterplan” for developing the site in conjunction with land from the adjacent redundant sewage works, the LA is quite clear that it would not build a new school on the North Campus site, nor has it suggested any other educational purpose for that land should it be returned to its control. For its part, the school is not seeking a “windfall”, but wishes understandably not only to reduce its commitments in respect of a site it hardly uses, but to investigate the possibility of disposing of the site in order to use any proceeds to enhance provision for pupils in the rebuilt school on the South Campus. It might be hoped that a local agreement between the parties concerning the disposal of the site, from which both might benefit, remains possible; however, given the requirements set out in paragraph A23 of Schedule 22 to the Act, and specifically the requirements of sub-paragraphs 7 and 8 of that paragraph, there is neither *vires* nor justification for my ordering a transfer of the North Campus site to the control of the LA. Insofar as the LA has set out a “*stated purpose*” for the land it is not, in my view, a “*qualifying purpose*” and so it could not be appropriate for the land to be used for that purpose. I therefore reject this application.

**Direction**

35. Under the powers conferred on me by Section 76 and sub-paragraph 7 of paragraph 23 in Schedule 22 to the School Standards and Framework Act 1998 I reject the application by Sandwell Metropolitan Borough Council for a transfer order in relation to the site known as Phoenix Collegiate North Campus.

Dated: 8 July 2016

Signed:

Schools Adjudicator: Andrew Bennett