

DURAND EDUCATIONAL TRUST: comments on NAO report

This note covers issues arising from the draft NAO report ("the Report") relating to Durand Academy which are of particular concern to the Durand Educational Trust (DET). They have been shared with the directors of Durand Academy Trust (DAT).

1. STATUS OF DURAND EDUCATIONAL TRUST

1.1 The draft Report describes DET as an exempt charity. This is not the case. DET is a trust created in 2010 otherwise than under the School Standards and Framework Act 1998 as a trust to hold land for a Foundation school. As such it was initially an excepted charity - ie was not required to register but was otherwise subject to normal Charity Commission powers and legislation. It is currently registered with the Commission because its level of annual turnover requires it so to be.

1.2 The only exempt charities holding school sites are (a) the governing bodies of Foundation schools without a foundation (b) academy trust companies and (c) foundations established under the SSFA 1998 to act as foundation bodies for Foundation Schools. DET does not fall within any of these categories. (See 2.3/2.4 below.)

2. RECENT HISTORY OF DURAND SCHOOL

2.1 The draft Report fails to state that prior to becoming an academy Durand school was a Foundation School with a foundation. This is crucial.

2.2 Durand initially became a Foundation School without a foundation under the provisions of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007. Paragraph 2 of Schedule 6 to these Regulations transferred the freehold of the then Local Authority land held for the purposes of the school to the governing body of the school by operation of statute.

2.3 In early 2010 (before the academy option became live) Durand published proposals to become a Foundation School with a foundation (established otherwise than under the SSFA). The statutory process which followed included informing the Secretary of State. Consequently in August 2010 (at which point the school was still a Foundation School with a Foundation) all the land then held by the governing body was transferred to the newly created DET. This was done under the authority of section A1(2) of Schedule 22 to the SSFA. This section requires that such transfers be treated as not being disposals for the purposes of the Schedule. The Report is wrong in suggesting that the consent of the Secretary of State was required but not obtained. It is also wrong in stating that the land was transferred from DAT to DET. DAT never owned this land as Durand did not become an academy until Sept 1st 2010 by which time the land had already been transferred.

2.4 During the academy conversion process discussions were undertaken with the DfE as to how the land should be handled and it was agreed that because of what by then was the extensive private value in the estate the land should remain in the ownership of DET. While this solution is unusual for Foundation Schools (which rarely have private value in their

trustee sites) it is absolutely the norm for voluntary schools, where there is almost always trustee value.

3. PRIVATE VALUE IN DET'S PORTFOLIO

3.1 The above changes were made because it became clear that DET was putting considerable private funding into the Durand sites and generating considerable private charitable income from them.

3.2 The Report does not appear to recognise that DET private income has:

(a) wholly paid for the sports centre and the accommodation development on the Hackford Rd site; (that investment has enabled substantial private income to be earned there permanently);

(b) provided more than 50% of the cost of purchasing the St Cuthman's site and

(c) committed itself to subsidising boarding costs into the future from its private income.

3.3 It is consequently the case that considerably in excess of 50% of the present value of the Hackford Rd site with its new facilities as developed by DET is private value and St Cuthman's is publicly funded land only to the extent that it may be conferred by the public funds used for purchase and by present publicly funded building works.

3.4 DET also has financial reserves which are of course private charitable funds.

3.5 All the above are DET assets for its charitable purposes of which the principal one is the development of the DAT project and the creation of a secure future for this innovative solution to the educational challenges of Lambeth. DAT is in practice the sole purpose for which DET profits are used.

3.6 Both private and public values in the sites are protected by statute. There is no question of public funds being converted into private ones. Equally though private funds cannot be treated as though they were public.

4. THE CONSEQUENCES FOR THE ISSUES RAISED IN THE REPORT

4.1 This history and the registered charity status of DET have consequences for the treatment of DET's assets now and for the Report.

4.2 DAT cannot make agreements with the EFA in respect of DET's assets.

4.3 DET's procedures are governed by its company articles and charity law, not by DAT's articles and the Academies Financial Handbook.

4.4 DET may only make agreements subject to Charity Commission approval or in situations where it is clear that Charity Commission consent is not required.

4.5 DET is willing to cooperate in finding a solution acceptable to the Charity Commission which will enable the acquisition of a replacement site to the St Cuthman's one and the continued development of the vision of a boarding project for the education of children in an inner London borough.

5. OTHER POINTS IN THE REPORT

- (a) It will be apparent from the above that DET has generated to date very large private funds which have been used for the purposes of DAT and specifically for the development of the boarding school project. This is not reflected in the Report and is highly relevant.
- (b) Durand became an academy on Sept 1st 2010, not during August.
- (c) The figure of £17.4M in 1.6 is we understand now £9.5M of which the EFA is we understand requiring DET to contribute £1M.
- (d) The Report does not appear to realise that the Directors of DAT are the "governors" of the school. To the extent that there are "Local Governing Bodies" these are merely sub-committees of the Directors.
- (e) 2.2 is partly mistaken as is shown by the site history outlined above.
- (f) Figure 1 should surely record the trading profits of LHL as gifted to DET for the purposes DAT.
- (g) Figure 2 should include the Foundation School element of the school's history as set out above and should record the funds generated by DET and used for the purchase of St Cuthman's.
- (h) Figure 3 should show Durand becoming an academy in September and record the history of Durand as a Foundation School.
- (i) 2.4 is wrong, as is footnote 7. As is shown above, the consent of the SoS to the transfer of the sites to DET was not required. However please note that the public value in the land is indeed protected by statute.
- (j) Neither contractual nor conflict of interest matters as between DET, LHL and GMG are for the EFA or for the NAO, as they do not relate to public funds. They are dealt with under the laws relating to charities.
- (k) It may simply not be lawful or acceptable to the Charity Commission to transfer the private assets of DET to DAT because of the private value. Certainly if DET did so it would have to be on the existing DET trusts – ie not just as part of DAT's property subject to the ordinary control of DAT and to the requirements of the Academies Financial Handbook. The Handbook is only effective in respect of public funds. DET will do its best to provide a workable solution to this issue but the Commission has made it plain that DET must not make such a transfer just because it would be convenient for DAT and for the Secretary of State. DET must make its own decision based on an analysis of all the options.
- (l) Consequently DET must in its own right be treated as a partner in the continuing EFA discussions which are now required.

The Trustees of the Durand Educational Trust

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