



Department
for Education

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National Infrastructure Planning
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By email only to: SizewellC@planninginspectorate.gov.uk

Dear Sirs

Application by NNB Generation Company (SZC) Limited for an Order Granting Development Consent for The Sizewell C Status of land at Alde Valley Academy, Leiston as Crown land for planning purposes

Thank you for inviting the Department to comment on whether the land at this school is “Crown land” for planning purposes and the powers and interests of the Secretary of State for Education has over it. This is confirmation of the position we set out when EDF asked about this issue, and which is broadly set out in Suffolk County Council’s written representation submitted to the ExA in REP6-050. We do not believe that this school site is Crown land as defined in s227 of the Planning Act 2008. While we can understand why an applicant may seek the involvement of a party having the benefit of a restriction over the leasehold interest in the land (which in this case the SoS has), we do not agree in this instance that the Secretary of State for Education (SoS) holds any relevant interest as referred to in s227 of the 2008 Planning Act. The restriction is there to protect regulatory powers over academies, as laid down in legislation, guidance and individual funding agreements.

Whilst there is no statutory definition of “interest” in this context, when s.227(2) and s.227(3) are read together, they are concerned with interests in land (including property rights over land such as easements). This is not the case with school land in the vast majority of cases. It may now be true of a small number of free schools, but this is a comparatively new innovation and does not apply here. For most school land the freehold will belong to the top tier local authority, with a lease in place to an academy trust where the school has become an academy, as is the case here. In other cases, the freehold may belong to an academy trust, a governing body, an ancient charity/trust of a religious body (diocese) (often with site ownership shared with the LA for different parts). The SoS becomes involved if and when any of these bodies, including a leaseholder academy trust, wants to dispose of land (including by

lease or appropriation by an LA) or change its use. The legislation requires the landowner to seek his consent to any transaction before it can go ahead. The policy presumption is against any loss of educational land and even more strongly so for playing field land, which means any land on a school site not built on, road, pathway or car park or garden connected with staff residential accommodation. In most cases the SoS can consent, refuse or direct the land to another party, usually an LA or person connected with the running of an academy.

These rights and powers do not indicate any form of ownership or legal interest in school land. The SoS would not normally take the land for himself, although some academy agreements do have an option to purchase at nil cost (the same as the trust would have acquired it for) in the event of academy termination. This is rarely exercised and even if it was the SoS would not take ownership, other than on a temporary basis until he could direct it to another educational use in line with legislation. In the vast majority of cases there is no provision for educational land to revert to the Crown, if it is no longer required. The only examples one can think of is where the SoS has purchased land for a new free school (a recent and comparatively rare innovation, which is not the case here) or the freehold or head lease was owned by the Crown Estate or the Duchy of Cornwall (again rare – I have probably dealt with 2 such cases in 8 years). It would be much more likely that the land would revert back to the LA, who would then need the SoS's consent to dispose or appropriate it out of educational use, if no longer required for an academy. I do not think this constitutes the sort of secondary ownership rights some parties have referred to in earlier exchanges on the Sizewell C project.

We have therefore declined to give the applicant the s135 consents the applicant had asked for. It mentioned compulsory acquisition, which is not something mentioned in the other material we have seen, and for which we can see no need. For the avoidance of doubt this does not negate the need for consent to be obtained under legislation (Schedule 1 of the Academies Act 2010 and s77 School Standards and Framework Act 1998) to any disposal or change of use of school land, as mentioned above, that may be necessary for the applicant to implement its proposal in respect of this school site.

Our understanding is that any such disposal or change of use should not be necessary, a position I understand is shared with SCC as freeholder, as the community and contractor use of the new facilities should be agreed without any lease or other disposal to a third party. We would not seek to get involved in any agreement, such as a joint use agreement between the applicant, East Suffolk Council, Suffolk County Council as freeholder if necessary and the academy trust, so long as there is no loss of land or amenity to education. If the SoS consent is required the strong presumption against loss of playing field land to the school mentioned above would apply.

I hope this helps to clarify the Department's position.

Yours sincerely

Simon Foster
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Edith Putt, Nuclear Development, EDF Energy - [REDACTED]

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