



Department for
Communities and
Local Government

Plain English guide to planning for free schools



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Plain English guide to planning for free schools

Introduction

1. This guide explains how the planning system in England works. It is intended to give an overview only and does not set out new planning policy or guidance. We have done our best to ensure that the information in this guide is correct as of January 2015. It is possible that some of the information is oversimplified, or may become inaccurate over time, for example because of changes to the law. Planning Guidance can be accessed online via the [Planning Portal](#).
2. The Government is committed to ensuring there is sufficient provision to meet growing demand for state-funded school places, increasing choice and opportunity in state-funded education, and raising educational standards. Free schools have an important part to play in delivering this challenge.
3. The establishment of free schools provides choice for parents while driving up standards and addressing the need for new places in many areas.
4. The aim of this guide is to provide parties considering opening a free school with an overview of the planning system as it relates to schools in England, and to signpost to sources of further guidance and support. We have also published an accompanying plain English guide on how the planning system works in general.
5. Parties interested in opening a free school will find it helpful to engage at the earliest possible opportunity with the [Department for Education](#) around potential sites for their proposed school and the broader range of issues involved in preparing to open a school.
6. Important information and detailed guidance on the full range of considerations involved in opening a state-funded free school can be found [here](#).

Government policy statement on planning for schools development

7. Government policy on the consideration of applications for planning permission for free schools is made clear in the 2011 [Policy Statement – planning for schools development](#). This makes clear our expectation that

all parties will work positively to help plan and deliver free schools, and that priority should be given to planning applications and appeals. This guidance reflects the core messages of that Statement.

Role of the local authority

8. The local authority is required to plan to meet current and future needs for school provision as part of preparing a Local Plan for their area.
9. The national planning for schools Policy Statement is clear that all parties are expected to work together proactively to help plan for state-school development and to shape strong applications. The local planning authority can provide advice on the local area and the planning process, and will determine the planning application for any new free school. Usually it will be elected councillors who make the decision on significant development

Role of the Education Funding Agency

10. The [Education Funding Agency](#) Capital Division is the part of the Department for Education which funds and administrates the creation of free schools providing expertise and technical support to ensure good value for money on capital investment. It provides professional support to free school groups to locate and secure suitable premises, dealing with the planning and other necessary requirements, and helping parties avoid unnecessary delay and expense. Education Funding Agency Capital undertake all the negotiations over free school sites and lead on any applications for planning permission. Full details of the support it provides can be found [here](#).
11. Parties considering opening a free school are encouraged to engage with the Education Funding Agency Capital team at an early stage They can be contacted at: FreeSchools.EFACAPITAL@education.gsi.gov.uk

The planning process

Obtaining planning permission

12. A planning application for a new free school will not be submitted by the Education Funding Agency on behalf of the free school trust until after the free school group's application to be a free school has been approved by the Department for Education.
13. A planning application may be required for the change of use of an existing building and for alterations or extensions to the building as well as for

construction of a new building. Full details of what is involved in the submission of a planning application can be found on the [Planning Portal](#) and your local planning authority's website. (See Annex A for an overview of the planning process).

14. Where a planning application is required, the local planning authority is generally responsible for making a decision on the proposal in the first instance. Parties are encouraged to speak with the local planning authority about the proposal at an early stage and in the case of free schools the Education Funding Agency will ensure this happens.
15. The Policy Statement makes clear that local planning authorities should work positively and collaboratively. This includes engaging with pre-application discussions, and ensuring that information requested to support the application is necessary and proportionate.
16. A local planning authority usually has up to thirteen weeks to make a decision on the planning application for a free school. This is reduced to 8 weeks for planning applications for minor development, such as the erection of a small building. Some small buildings or extensions benefit from a permitted development right (see paragraph 38 below).
17. Generally, once planning permission is granted, development must be started within three years. If work has not started by then, the applicant will probably need to reapply. For a change of use conversion the work must have completed within three years.
18. The National Planning Policy Framework places emphasis on the need for local planning authorities to approach decision-taking in a positive way to support the delivery of sustainable development. The Policy Statement supports this by making clear that there should be a presumption in favour of schools. It is expected that any refusal of planning permission for a free school should be clearly and robustly evidenced.
19. Any planning application must be determined in accordance with the development plan (Local and neighbourhood plans and, where relevant, the London Plan) unless other material considerations indicate otherwise.
20. Many issues are capable of being material considerations but in broad terms should relate to the use and development of land. As a general principle, the planning system considers what is in the public interest and matters that affect solely private interests are not usually material considerations in planning decisions. However, each application is considered on its merits.
21. Local planning authorities can consider whether proposed development could be made acceptable through the use of conditions or a planning obligation attached to a planning permission. Any planning conditions including those imposed on the planning permission for a free school will need to be clearly and robustly evidenced, and should only be those

absolutely necessary to make the development acceptable in planning terms.

22. Section 106 of the Town and Country Planning Act 1990 enables a local planning authority to enter into a legal agreement (known as a “planning obligation” or “Section 106 agreement”) with a developer to secure contributions towards the provision of community facilities, infrastructure or services that are required to make a proposed development acceptable. For example, this mechanism could be used to ensure the delivery of a new access road or junction improvements necessary to service a new school. Similarly a local planning authority may seek to negotiate a Section 106 agreement in respect of a free school to secure final agreement to a site.
23. The Secretary of State for Communities and Local Government has the power to take over (‘call in’) particular planning applications of national significance rather than letting the local planning authority decide. The Secretary of State uses these powers very sparingly.

Planning appeals

24. If a local planning authority refuses to give planning permission, or grants it subject to conditions, or fails to deal with an application within statutory time limits, the applicant has a right to appeal to the Secretary of State via the [Planning Inspectorate](#).
25. An independent inspector is appointed by the Secretary of State to consider each appeal and they will make their decision in line with the plan for the area unless there are material considerations that justify taking a different view. The inspector may come to a different view from the local planning authority and decide that planning permission should be granted. This does not mean that they have disregarded the views of the local planning authority or local residents – rather that they have attributed different weight to the issues in coming to their decision.
26. Where planning permission for a state funded free school is refused and an appeal made, the Secretary of State has committed to prioritise the determination of such appeals as a matter of urgency.

Recovery of planning appeals

27. Planning appeals can be ‘recovered’ from the Planning Inspectorate by the Secretary of State for his own determination, if the case raises particular issues that justify a Ministerial decision. In these cases the planning

inspector will consider the issues before submitting a report and recommendation to the Secretary of State. The Secretary of State will then make a decision taking into account the inspector's assessment of the proposals.

28. Where a local planning authority refuses planning permission for a free school, the Secretary of State will consider carefully whether to recover for his own determination appeals against the refusal of planning permission. He will attach significant weight to the need to establish and develop free schools when determining appeals that come to him for decision.
29. Further detail on the planning process can be found in the Plain English Guide to the Planning System and in the online [Planning Guidance](#).

Permitted development rights

30. National permitted development rights allow specified development to proceed without the need for a full planning application. This can be for the change of use, or for minor operational works such as extensions to existing buildings. Details of the current permitted development rights are set out in regulation in the Town and Country Planning (General Permitted Development) Order 1995, as amended. For detail see [here](#).
31. Some permitted development rights allow works to be undertaken without any notification to or approval of the local planning authority. However, with other permitted development rights there are impacts which local planning authorities are asked to consider. This is managed through a process called "prior approval".
32. Prior approval is a simpler and less time consuming process than a full planning application, allowing local consideration only of specific planning issues such as transport and highways, and noise. Where prior approval is required, the local planning authority has 56 days in which to make a decision. Applicants have the right to appeal if prior approval is refused.
33. To further secure the expansion of new school places, the Government has granted a range of permitted development rights for certain types of building to change use to a new free school. Different types of buildings are grouped together into a number of use classes which reflect the nature of their use and likely impacts. Uses fall within four main classes:
 - Part A covers shops and other retail premises such as restaurants and bank branches;
 - Part B covers offices, workshops, factories and warehouses;
 - Part C covers residential uses;
 - Part D covers non-residential institutions and assembly and leisure uses.For more details on use classes see [here](#).

34. In May 2013 a new permitted development right for permanent change of use was introduced to enable offices, hotels, residential institutions such as children's homes, secure residential institutions, and assembly and leisure uses such as cinemas to change use to a free school without the need for a planning application. The change of use to a school is subject to prior approval by the local planning authority (see para 32) on specific planning matters covering noise, contamination and transport and highways. See [here](#) for details.
35. In April 2014, this list was extended to include agricultural buildings to help support rural communities. In addition to the planning matters noted above, prior approval is also required in respect of flooding, and siting and location. See [here](#) for details.
36. To support state funded free schools to set up while they are looking for permanent premises, a permitted development right was introduced in May 2013 to allow the change of use from any building to a free school for a period of one academic year. See [here](#) for details.
37. All schools also have permitted development rights to erect a gate, fence or wall up to two metres high. For details see [here](#).
38. Schools also have additional rights to undertake some limited physical development (known as operational works) including:
- the erection of small buildings related to the use of the school within specified limits
 - the extension of a school buildings within specified limits
 - provision of hard surface within the curtilage
- See [here](#) for details. These rights (known as Part 32 rights) only apply once the school is operating and may allow for the extension of buildings or the erection of kitchen pods to meet the requirement to provide meals. Early engagement with the local planning authority is advised on whether the rights allow for particular proposed physical works.
39. National permitted development rights may be removed by a local planning authority by making an Article 4 direction. Where such a direction is in place, a full planning application is required.

Annex A. Stages in the planning application process

