

[FS.APPLICATIONS@education.gov.uk](mailto:FS.APPLICATIONS@education.gov.uk)

[REDACTED]

[REDACTED]

12 April 2017

Dear [REDACTED],

**FREE SCHOOL APPLICATIONS: THE OLIVE SCHOOL, MANCHESTER; EDEN BOYS' LEADERSHIP ACADEMY, BRADFORD; EDEN BOYS' LEADERSHIP ACADEMY II, BIRMINGHAM; [REDACTED]**

[REDACTED].

I am pleased to let you know that the Secretary of State for Education has decided that your applications to establish:

- The Olive School, Manchester
- Eden Boys' Leadership Academy, Bradford
- Eden Boys' Leadership Academy II, Birmingham

should proceed to the next stage of the free schools process – the pre-opening phase. This is a significant step towards opening these schools.

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]



learn about how to navigate the pre-opening stage successfully, whether or not you have gone through the process before. I look forward to seeing you there.

We also look forward to continuing to work with you on your existing free schools projects and the new ones.

I am copying this letter to Vicky Beer CBE, regional schools commissioner for Lancashire and West Yorkshire, Dr Tim Coulson, regional schools commissioner for East of England and North East London, and Christine Quinn, regional schools commissioner for West Midlands.

A handwritten signature in black ink that reads "Mela Watts". The signature is written in a cursive style with a long, sweeping tail on the letter 's'.

**MELA WATTS CBE**

**Director, Free Schools Group**

This note summarises the key information proposer groups should be aware of ahead of your kick-off meeting. It covers the overall pre-opening framework; how we will finalise the site and opening date; and the legal and financial context in which the trust will be operating.

### **Pre-opening framework**

#### Engaging with DfE

1. Throughout pre-opening your DfE lead contact will:
  - advise and challenge you to ensure that your proposed school operates successfully from day one;
  - ensure that the department's legal duties are correctly executed on behalf of the Secretary of State;
  - advise ministers and the regional schools commissioner on how the project is progressing through the pre-opening stage; and
  - advise ministers on whether or not – and if so when – to enter into a funding agreement with the trust.
  
2. The Secretary of State will not hesitate to defer or even cancel a project at any point during the pre-opening stage – even after the funding agreement has been signed – if she is not confident that your plans are on schedule and/or up to the required standard.
  
3. Equally, if a departmental official or education adviser raises concerns about your existing schools and/or an existing trust school is subject to a *financial notice to improve* from the ESFA, we may need to reconsider the approval of these projects. The same would apply if Ofsted judge a school you run as either *requires improvement* or *inadequate*; or equally if there is a significant decline in the performance of one or more of your existing schools.
  
4. We expect the normal points of formal engagement between trusts and the department to be:
  - the initial kick-off meeting, which we will be arranging shortly;
  - a checkpoint meeting to confirm the provisional opening dates once the sites have been identified and confirmed;
  - a checkpoint meeting before the provisional September opening date, with a focus on pupil recruitment and the issues that need to be resolved before ministers will consider the case for entering into funding agreements; and
  - a readiness to open meeting 2 or 3 months before the proposed schools are due to open.

5. In all these meetings, we will (a) assess the projects' overall progress; (b) identify any key risks which might prevent the schools from opening on time and operating successfully once open; and (c) assess costs incurred to date and expected future spend. We may want to set up additional checkpoint meetings, depending on progress.

### Guidance

6. Our guidance document to help proposer groups navigate the pre-opening phase effectively is at <https://www.gov.uk/government/publications/free-school-pre-opening-guide>. This contains the information and supporting materials you will need to complete the key tasks required to open successful free schools. There are, however, a number of important issues (summarised below) to which we want to draw your attention. This is by no means a definitive list, but it highlights some of the tasks that you will want to address early on.

### **Opening date, capital and site**

#### Opening date

7. In the meetings set out above (see paragraphs 4 to 5), we will actively work with you to manage the opening dates of the schools. In most cases, we will agree the provisional opening dates in writing only after suitable permanent sites have been identified and confirmed, and once we have assessed the time needed for obtaining planning permission and completing necessary building works or refurbishment. This will help to secure – but not guarantee – that, where appropriate, funding agreements are entered into before national offer day for admissions (early March for secondary schools, mid-April for primary schools) in the year when the schools are due to open. This in turn will help to enable parents of prospective pupils applying for a place at a proposed new free school to have confidence in its opening date.
8. Of course, you will have your own preferred opening dates for your projects, but you should discuss with the department whether it is sensible for you to market your school to parents on this basis. Our normal lead times for acquiring and delivering permanent sites ready for a school to open are longer than a year (and can be up to three years), so unless a site is already secured and requires little work and no planning approval, opening in a shorter period will be extremely challenging. Our intention is that, other than in exceptional circumstances, any provisional opening date of September 2018 should be agreed by September 2017.
9. If, when a project enters the pre-opening phase, a suitable permanent site has not yet been secured – and in our judgement getting one will present significant difficulties which are likely to prevent a provisional opening date from being agreed – the department will focus its efforts almost exclusively on identifying and

securing a viable site. We would expect trusts to maintain momentum by continuing to develop detailed plans for issues such as admissions, the curriculum, governance etc. in parallel. However, the department will not typically devote resources to – or feedback on – these plans until the site has been secured and a provisional opening date agreed. In other words, in these circumstances, activities in the pre-opening phase will be taken forward on a *sequential* basis, starting with the identification of a site.

10. If, however, there is a good chance of securing a site and agreeing a provisional opening date quickly – or if the proposed school is in an area of significant basic need and opening the school early is critical – then we will pursue both site and non-site activities with trusts *concurrently*.

### Project plan

11. For concurrent projects, we would like you to send us *draft* project plans to inform the kick-off meeting. There is no need to prepare detailed plans for sequential projects. You should use the pre-opening guidance to help draft the plans. The plans should be designed to help ensure that all the key actions needed to ensure that the schools open successfully, such as the appointment of suitable principal designates, the development of a strong education plan and the agreement of robust governance arrangements, are completed on schedule and that all key milestones are met. In advance of agreeing provisional opening dates with the department, the plans should be based on a realistic assessment of the likely opening dates. The project plans will need to be revised when the provisional opening dates are agreed and updated regularly throughout the pre-opening phase.

### Capital funding

12. The capital funding available for free school projects is strictly limited. The final approval of your proposals is conditional on the capital costs of delivering them – i.e. the costs of acquiring the sites, plus construction and fit out costs – representing good value for money. During the pre-opening phase, we will seek to deliver your schools at the lowest possible capital cost. The department will not pay for sites which proposer groups already own.
13. You should note that approval of your applications to the pre-opening phase does not represent any commitment to a particular type of building or level of provision or equipment to deliver your vision. We will not be able to accommodate requests for specific designs. If your schools require a new build, the schools will have a standardised design.

### Sites

14. Your ESFA project directors will work with LocatEd to identify and secure sites for your proposed schools. LocatEd is a new body, accountable to the Secretary of State, which is responsible for securing sites for most free schools. Some types

of site will still be secured by the ESFA. The project directors in the ESFA will remain your main contact on site and capital issues and keep you informed of progress in identifying suitable sites for your schools.

15. We continue to have difficulty finding sites in some areas of the country. For this reason, you may need to be flexible about where your schools are located (as well as about the years of opening).
16. It is possible that several applicants might express an interest in the same site. In such cases, where it is clear that the site is suitable and affordable but cannot accommodate all the schools proposed, we will decide which should take priority. This decision will be based on a range of factors, including the strength of the respective application/project, local demand, the need for local school places and the impact on existing provision.
17. Where appropriate the department will work with housing developers to ensure that new schools are provided, where needed, in a timely fashion. However, if the rationale for one of your projects is based on a future need for school places because of a planned housing development, you should be aware that any subsequent delay or significant change to that development would be outside of our control and could result in the opening date of the school being deferred or even in the project being cancelled.

#### Opening in temporary accommodation

18. Schools will open in temporary accommodation only in exceptional circumstances. When securing the permanent site, we will establish with you whether opening in temporary accommodation is appropriate. We will assess the risks of opening in temporary accommodation by:
  - examining the long term viability linked to a permanent site;
  - examining any risk to the proposed school's reputation associated with opening in temporary accommodation;
  - testing whether there is clear evidence of demand to open places in the area earlier in temporary accommodation than a permanent solution would allow; and
  - assessing the likely costs and ensuring they provide value for money when compared to other schools of a similar phase/location.

#### **Legal and financial context**

##### Admissions

19. Mainstream free schools are required to have admission policies which comply with the School Admissions Code, which can be found at the following link: <https://www.gov.uk/government/publications/school-admissions-code--2>.

20. Proposers of all types of free schools must use the relevant admission or referrals templates to draw up their arrangements – and also follow the guidance on the free school admissions site at <https://www.gov.uk/government/publications/free-schools-admissions>. Mainstream free school promoters will note the new admissions template (<http://www.education.gov.uk/data/Admissions%20Template%20and%20pick%20list1%20v6.docx.dotx>) which sets out a number of drop-down options with which to populate the admissions policy. All mainstream schools must use this, including those in existing MATs.
21. If you are proposing to open a mainstream school, you should be aware that our normal expectation is that, in your first year of opening, you should either (a) operate your own admissions process or (b) arrange for the local authority to process admissions on your behalf. Either way, this should be done outside – but as far as possible in parallel with – the local authority’s co-ordinated admissions process. Please read section 9 of the pre-opening [guidance document](#) for proposer groups, which explains in detail how you can do this. You must not arrange for your school to be included in the local authority co-ordinated admissions process without seeking prior agreement from your lead contact.

#### Timelines for submission of admission/referral policies

22. The timeline for submitting admissions or referral policies for schools currently working towards opening in September 2018 is as follows:
- Mainstream projects: trusts to submit admission policies and application forms to DfE by 16 May 2017 and DfE to work with trusts to ensure policies are in final form by 31 August 2017 at the latest.
23. It is important that admissions policies are submitted to the department by these deadlines. For mainstream projects, meeting the deadline will help to ensure that you are included in the local authority’s published admissions prospectus when it is published. You will also be in a stronger position when recruiting pupils. For non-mainstream projects, the benefit of getting your policy approved quickly is that you will be in a stronger position when liaising with commissioners, and consulting the public.

#### Governance

24. The department has developed model articles of association – which describe an academy trust’s constitution and establish the framework of its governance arrangements – in order to follow best practice in corporate, charitable and school governance. The model articles are flexible enough to accommodate most governance models adopted by free school proposers.
25. We expect existing academy trusts, with articles already in place, to adopt the latest model articles. Your lead contact will need to be satisfied that the governance arrangements are appropriate and your articles of association are in line with our latest model before recommending that the Secretary of State enters into a funding agreement to open your free school. Once the site is secured and



the provisional opening date agreed, we will check your articles once again, asking you to clearly show any insertions or amendments to the model, along with a schedule table detailing any proposed changes.

26. As the legal responsibility for updating the articles of association lies with the trust, we will require the senior executive leader of the trust (as set out in the latest edition of the *Academies Financial Handbook*) and chair of trustees to sign a declaration alongside its memorandum and articles of association confirming that the trust's governance arrangements are in line with the latest model, and that no changes have been made to that model.

### Finance

27. Trusts should plan their expenditure to ensure that the schools will be affordable within the funding provided. This should be an ongoing process, with financial plans updated as plans for the schools (including the sites) are developed, staff are appointed and other costs are firmly established.

28. The department will not enter into funding agreements unless we are confident that the proposed schools have viable and sustainable financial plans. To support this, we would expect to see firm evidence of applications for places ahead of the relevant national offer day.

29. In order to provide a sustainable, broad and balanced curriculum, we have a presumption that primary provision should have a minimum of two forms of entry of 30 pupils (i.e. a total of 60), and secondary provision (years 7 to 11) a minimum of four forms of entry of 30 pupils (i.e. a total of 120). Financial plans should not be based on fewer pupils unless otherwise agreed with your lead contact.

### Project Development Grant

30. A project development grant will be paid to the academy trust to cover appropriate pre-opening costs in the run up to the opening of your schools. The grant will be set at a level commensurate with the type of schools you are proposing to open and the nature of the academy trust. Because this is public money, you must be able to account for having spent the grant properly and seek the best value for money at all times. The payment of this grant does not imply that the Secretary of State has given final approval for the free schools to open. That remains subject to the Secretary of State entering into formal funding agreements with the trust.

31. [REDACTED]. At this point, we will agree a schedule of payments and a new grant funding letter will be issued for the remainder of the grant allocation. A grant agreement for the initial

payment will be sent to the trust shortly. A subsequent grant agreement, where due, will be put in place after the provisional opening dates have been agreed (see paragraphs 7 to 10 above).

32. We will need to agree arrangements to enable you to access the grant. We will send you the formal grant agreement, which you will need to sign and return to the department, in the next few days.

#### Risk Protection Arrangement

33. As your project is in the pre-opening stage, you are eligible to benefit from the government's Risk Protection Arrangement (RPA), whereby the government funds any losses that arise, as an alternative to insurance. RPA will be provided free of charge in pre-opening. The rate for open schools is currently £20 per pupil/place. There is no requirement to enter into RPA and you are free to make your own insurance arrangements. However, no additional funding will be provided for this purpose.

34. Further information about RPA and the membership rules can be found [here](#). If you would like to join the RPA scheme, please email your lead contact with the type of cover you need and start date. If you do not think the RPA cover is right for you, we would welcome your feedback, so that we can consider whether any changes to the arrangements should be made in the future.