

[REDACTED]

12 April 2017

[REDACTED]

FREE SCHOOL APPLICATION: ORSETT HEATH ACADEMY

I am pleased to let you know that the Secretary of State for Education has decided that your application to establish the Orsett Heath Academy should proceed to the next stage of the free schools process – the “pre-opening phase”. This is a significant step towards opening your school.

In the pre-opening phase, you will need to draw on a wide range of skills within your group – and work closely with the department – to ensure that your school opens successfully. The scale and demand of the tasks you will need to undertake over the coming months will be challenging, but ultimately – we hope – rewarding.

As we have made clear, the final decision to open any free school depends on the Secretary of State formally entering into a funding agreement with the academy trust proposing to set up the school. The Secretary of State will do so only if she is satisfied (a) that we have found a suitable site on which we can construct and open a school on an agreed date and in a way that provides good value for money; and (b) that the school will be ready to deliver at least a good standard of education, with a viable and sustainable number of pupils, from its first day of operation.

We will actively work with you to manage the opening date of the school. In most cases, we will agree the provisional opening date only after a site has been identified and confirmed, and once we have assessed the time needed for obtaining planning permission and completing necessary building works or refurbishment. Further

information about how to ensure you open a successful school is attached at Annex A.

Annex A includes information (at paragraphs 32 to 34) about the project development grant which will be paid to the trust to cover appropriate pre-opening costs in the run up to the opening of your school. We will write to you separately with the formal grant agreement, which you will need to sign and return to the department.

Your project is subject to some precise and strict conditions, which are set out at Annex B. A condition relates to a specific risk to a project that must be effectively addressed if the project is to proceed through the pre-opening stage and result in the opening of a successful free school. Failure to meet any of these conditions would make it unlikely that the Secretary of State would be in a position to enter into a funding agreement with the trust in respect of the relevant school. Further conditions may be set during the pre-opening stage.

Your lead contact, [REDACTED] based in the regional unit led by [REDACTED], will normally be responsible for your project on a day-to-day basis. The lead contact will work closely with a project director, based in the department's Education and Skills Funding Agency (ESFA) previously the Education Funding Agency (EFA), who will lead on site and capital issues, reporting to [REDACTED] as regional head. In addition, you will be allocated an education adviser who will provide expert educational advice on certain issues. We will be in touch soon to confirm arrangements for liaising with the department during the pre-opening stage, including via an initial kick-off meeting.

You will also shortly receive an email about a pre-opening launch event from New Schools Network, which is helping us to organise the event. The event will take place in London on Monday 24 April 2017. This will be an important opportunity for you to 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.

I am copying this letter to Dr Tim Coulson, regional schools commissioner for East England and North East England.



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 you run an existing school – and/or have another application in pre-opening – and a departmental official or education adviser raises concerns about it (and/or it is subject to a *financial notice to improve* from the department's Education and Skills Funding Agency), we may need to reconsider the approval of this project, as a result of which it could be deferred or cancelled. 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 date once the site has been identified and confirmed;
 - a checkpoint meeting normally in the December or January 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 the funding agreement; and

- a readiness to open meeting two or three months before the proposed school is due to open.
5. In all these meetings, we will (a) assess the project's overall progress; (b) identify any key risks which might prevent the school 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. We would normally expect these to be formal face-to-face meetings. Between these occasions, however, lead contacts will also hold regular informal phone calls and/or email discussions.

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 a successful free school. Your lead contact will discuss this with you at the initial kick-off meeting between the trust and the department, which will be arranged shortly. 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 date of the school. In most cases, we will agree the provisional opening date in writing only after a suitable permanent site has been identified and confirmed, and once we have assessed the time needed for obtaining planning permission and completing necessary building works or refurbishment. For mainstream free schools, 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 school is due to open. This in turn will help to enable parents of prospective pupils or students 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 date for your project, 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 stage 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 a *draft* project plan to inform the kick-off meeting. There is no need to prepare a detailed plan for sequential projects. You should use the pre-opening guidance to help draft the plan. The plan should be designed to help ensure that all the key actions needed to ensure that the school opens successfully, such as the appointment of a suitable principal designate, 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 a provisional opening date with the department, the plan should be based on a realistic assessment of the likely opening date. The project plan will need to be revised when the provisional opening date is 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 proposal is conditional on the capital costs of delivering it – i.e. the cost of acquiring the site, plus construction and fit out costs – representing good value for money. During the pre-opening phase, we will seek to deliver your

school 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 application 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 school requires a new build, the school will have a standardised design.

Sites

14. Your Education and Skills Funding Agency (ESFA) project director will work with LocatEd to identify and secure a site for your proposed school. 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 director in the ESFA will remain your main contact on site and capital issues and keep you informed of progress in identifying a suitable site for your school.
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 school is located (as well as about the year of opening).
16. It is possible that several applicants, including trusts already running open free schools, 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 your project 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 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. Special, alternative provision and 16-19 free schools must adopt admissions and referral policies that comply with the law. They should also comply with guidance. This means that they must be clear, fair and transparent.
21. 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.
22. 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

23. 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.
 - Other projects (16-19, alternative provision, special): trusts to submit admission or referral policies – including application forms for 16-19 free schools and referral forms for AP free schools – to DfE by 14 July 2017 and DfE to work towards policies being in final form by 30 September 2017.
24. 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

25. 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.
26. We expect any proposer group which is an existing academy trust – and therefore already has articles 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. Where the group is a new trust, the trust should also adopt the latest model. Once the site is secured and the provisional opening date agreed, we will ask to see your articles, clearly showing any insertions or amendments to the model, along with a schedule table detailing any proposed changes.
27. 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.
28. Trusts moving from single to multi-academy-trust arrangements or expanding will need to move to the department's model master and supplemental funding

agreements when the time comes to sign the funding agreement for their new free school.

Finance

29. Projects should plan their expenditure to ensure that the school will be affordable within the funding provided. This should be an ongoing process, with financial plans updated as plans for the school (including the site) are developed, staff are appointed and other costs are firmly established.
30. The department will not enter into a funding agreement unless we are confident that the proposed school has a viable and sustainable financial plan. To support this, we would expect to see firm evidence of applications for places ahead of the relevant national offer day.
31. 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

32. 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 school. The grant will be set at a level commensurate with the type of school 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 school to open. That remains subject to the Secretary of State entering into a formal funding agreement with the trust.
33. We will make an initial payment of ████████ until a suitable site has been identified and we have agreed a provisional opening date with the trust. 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 date has been agreed (see paragraphs 7 to 10 above).

34. 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. If you have not already done so, you will also need to ensure that the trust sets up a bank account to receive the grant. Without a bank account, we will not be able to pay you this money.

Risk Protection Arrangement

35. 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.

36. 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.

Annex B

Your project is subject to some precise and strict conditions. A condition relates to a specific risk to a project that must be effectively addressed if the project is to proceed through the pre-opening stage and result in the opening of a successful free school. Failure to meet this condition would make it unlikely that the Secretary of State would be in a position to enter into a funding agreement with the trust in respect of the school. Further conditions may be set during the pre-opening stage.

Approval of your proposal is subject to the following condition:

1. The continued approval of your project is dependent on capital costs representing good value for money and being kept to a minimum. During the pre-opening phase the department will seek to deliver your school with the lowest possible capital cost (acquisition and property costs, plus the costs of necessary works and fit out). As part of the pre development due diligence we will consider the

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