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Letter by email to:

[REDACTED]

14 June 2019

Dear Mr Hassack

**FREE SCHOOL APPLICATION: OUTWOOD ACADEMY MIDDLEHAVEN**

I am very pleased to let you know that the Secretary of State for Education has decided that your application to establish Outwood Academy Middlehaven 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.

The final decision to open any free school depends on the Secretary of State formally entering into a funding agreement (a legally binding contract which contains the terms and conditions upon which a free school is funded) with the academy trust proposing to set up the school.

The Secretary of State will only enter into a funding agreement if he is satisfied 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
- the school will be ready to deliver at least a “good” (in Ofsted terms) standard of education, with a viable and sustainable number of pupils, from its first day of operation.

If the Secretary of State is not confident that the school will be viable, sustainable and successful, he will not hesitate to defer or even cancel a project at any point during the pre-opening phase.

Once the funding agreement is signed the Secretary of State can still defer or cancel a project on the basis of the provisions set out in the funding agreement.

This application to establish a school has been approved to meet a specific identified demographic need for a high proportion of the additional places. If that demographic need disappears or reduces significantly, we might need to cancel the project during pre-opening. During pre-opening we will also monitor demand for school places across the local area, in order to determine the optimal capacity for the school. Equally if the project is proving too costly or not sufficiently good value for money it might be necessary to cancel it.

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 costs and 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.

This Annex includes information (at paragraphs 28 to 30) 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.

One of my free schools lead contacts, based in the MAT and Sponsor unit led by [REDACTED], will be responsible for your project on a day-to-day basis. The lead contact will work closely with a specialist project director who will lead on site and capital issues, reporting to [REDACTED] as regional head of capital. In addition, you will be allocated an external expert 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.

I am copying this letter to Janet Renou, regional schools commissioner for the North.



**MELA WATTS CBE**

**Director, Free Schools Directorate**

## **Annex A – Key information ahead of kick-off meeting for Outwood Academy Middlehaven wave 13 application**

This annex 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 the department**

1. Throughout pre-opening, your 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 your trust.
  
2. If the Secretary of State is not confident that the school will be viable, sustainable and successful, he will not hesitate to defer or even cancel a project at any point during the pre-opening phase.
  
3. Equally, if you run an existing school – and/or have another application in pre-opening – and a departmental official or external expert 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;
  - 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 your 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.
7. The [New Schools Network](#) (NSN) receives a grant from the Department for Education to provide free advice, tools, guidance and events to help you plan your approach to pre-opening, based on the experience of trusts that have opened schools successfully. For more information on NSN's support for free schools in pre-opening visit its website [here](#), or contact [open@newschoolsnetwork.org](mailto:open@newschoolsnetwork.org).

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

### Opening date

8. 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 costs, 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 one month before national offer day for admissions (early February for secondary schools, mid-March 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.
9. Of course, you will have your own preferred opening date for your project, but you should discuss with your lead contact 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 between two and 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 2020 should be agreed by September 2019.

## Project plan

10. We would like you to send us a draft project plan to inform the kick-off meeting. You should use the pre-opening guidance to help draft the plan. The plan should be designed so 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. Before 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

11. 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.
12. 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 design or types of construction. If your school requires a new build, the school will have a standardised design and is likely to be a modular construction.

## Sites

13. Your Free Schools Capital (FSC) project director will work with their property advisers to identify and secure a site for your proposed school. These property advisers could be situated in the department or in LocatED (a body accountable to the Secretary of State). The FSC project director will remain your main contact on site and capital issues and keep you informed of progress in identifying a suitable site for your school. Due to land availability and cost, 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).
14. 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 demographic 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

15. Schools will open in temporary accommodation only in very 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 need 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

16. Mainstream free schools are required to have admissions policies which comply with the School Admissions Code, which can be found at: <https://www.gov.uk/government/publications/school-admissions-code--2>.
17. Proposers of all phases of free schools must use the relevant admissions 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>. Please note the 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 pre-16 schools must use this template, including those in existing multi-academy trusts (MATs).
18. 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 policies

19. As a guide the timeline for submitting admissions policies for schools already working towards opening in September 2020 is as follows:
- Mainstream (pre-16) projects: trusts to submit admissions policies and application forms to DfE by 22 March 2019 and DfE to work with trusts to ensure policies are in final form by 30 August 2019 at the latest.
  - 16-19 projects: trusts to submit admission policies – including application forms for 16-19 free schools – to DfE by 12 July 2019 and DfE to work

towards policies being in final form by 27 September 2019.

20. However, this will all be agreed on an individual basis with your lead contact. It is important that admissions policies are submitted to the department by the agreed deadlines. Meeting the deadlines 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.

### Governance

21. 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.

22. 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 proposer 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.

23. 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.

24. Trusts moving from single to multi-academy-trust (MAT) 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

25. 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.

26. The Secretary of State will not enter into a funding agreement with your trust unless we are confident that the proposed school has a viable and sustainable

financial plan. To support this, we would normally expect to see firm evidence of applications for places ahead of the relevant national offer day.

27. In order to provide a sustainable, broad and balanced curriculum, we have a presumption that primary provision (reception to year 6) 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

28. A project development grant will be paid to your 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 always be able to account for having spent the grant properly and seek the best value for money. 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 your trust.
29. We will make an initial payment of [REDACTED] 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 your trust shortly. A subsequent grant agreement, where due, will be put in place after the provisional opening date has been agreed (see paragraphs 8 to 9).
30. Your lead contact 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 your trust sets up a bank account to receive the grant. Your bank account details must be provided directly to the department's payments team using the [online form](#) available on GOV.UK. Payments can only be made once the grant agreement has been signed, any pre-disbursement conditions have been met and the bank account details have been received. If you do not have a bank account, we will not be able to pay you this money.

### Risk Protection Arrangement

31. 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 [REDACTED] 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.



32. Further information about RPA and the membership rules can be found [here](#) and your lead contact will discuss this further with you at the kick-off meeting. 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, please let us know within 4 weeks of the kick-off meeting or we will assume that you **will be** opting into the scheme. We would welcome your feedback, so that we can consider whether any changes to the arrangements should be made in the future.

## **Annex B – Conditions for Outwood Academy Middlehaven wave 13 application**

- 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).