

FS.APPLICATIONS@education.gsi.gov.uk

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Letter by email to:
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16 September 2016

Dear ██████████

FREE SCHOOL APPLICATION: Mulberry School for Boys

I am pleased to let you know that the Secretary of State for Education has decided that your application to establish Mulberry School for Boys 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. The Secretary of State will do so only if she is satisfied (a) that we have found a suitable site upon 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.

Your project is subject to a precise and strict condition, which is set out at Annex A. A condition relates to a specific risk to a project that must be addressed if the project is to proceed successfully through pre-opening and

result in the opening of a good or outstanding 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 you in respect of the relevant school. Further conditions may be set during the pre-opening stage.

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

Annex B includes information 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.

The lead contact for your project will be [REDACTED], based in the regional unit led by [REDACTED], and they 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 Funding Agency (EFA), who will lead on site and capital 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 Wednesday 12 October 2016. This will be an important opportunity for you to learn about how to negotiate 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 the East of England and North-East London region.

Yours sincerely



MELA WATTS CBE
Director, Free Schools Group

Condition to be met

1. The project is approved on the condition that the trust is flexible with the free school site location as the catchment area poses a high delivery risk.

This note summarises the key information you 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.

Academy trusts with prior experience of taking a project through pre-opening should note in particular the revised arrangements for confirming provisional opening dates, the role of LocatED, what work we will do before a site is secured, temporary accommodation, admissions timelines, governance and finance, including project development grant.

Pre-opening framework

Engaging with DfE

1. Throughout pre-opening your DfE lead contact will:
 - advise and challenge you to ensure that your 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 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 judges 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 minimum 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 discuss confirmation of the provisional opening date once the site has been 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 2 or 3 months before opening.

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. Although these formal meetings may take the form of a teleconference, more often than not they will be formal face-to-face meetings. Between these occasions, 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 guidance contains the information and supporting materials you will need to complete the key tasks required to open a successful free school. The document will be updated imminently to reflect a number of changes to the pre-opening process. We will send you the link to the updated document when we write to you about the project development grant.
7. 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 areas highlighted below to which we wanted to draw your attention.

Project plan

8. 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 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. The project plan will need to be updated regularly throughout the pre-opening phase.

Opening date, capital and site

Opening date

9. In the meetings set out above, 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 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 have confidence in its opening date.

10. 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, especially if your preferred opening date is within the 2017/18 academic year. Our normal lead times for acquiring and delivering sites ready for a school to open are longer than a year (and can be up to 3 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 2017 should be agreed by November 2016.

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 – ie 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. 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

13. Your Education Funding Agency (EFA) project director will work with LocatED to identify and secure a site for your school. LocatED is being established as an innovative new body, wholly owned by the Secretary of State, to secure sites for free schools. The intention is that EFA will commission LocatED from autumn 2016. LocatED will then be responsible for securing your site. Until it is launched, the EFA's property team will continue to undertake that role. The project director in the EFA will remain your main contact on site issues – she/he will liaise with LocatED and keep you informed of progress for your proposed school.
14. We continue to have difficulty finding sites in some areas of the country. For this reason, you may need to be flexible about where the school is located (as well as about the year of opening).
15. Several applicants, including trusts already running open free schools, can 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.

16. 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 might result in the opening date of the school being deferred or even the project being cancelled.

Work before site is secured

17. We will pursue site and non-site activities on either a *sequential* or *concurrent* basis, as set out below.
18. If when a project enters pre-opening a suitable site has not yet been secured – and in our judgement getting one will present significant difficulties – 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 feed back 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.
19. If however there is a good chance of securing a site 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*.

Opening in temporary accommodation

20. 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 risks to the delivery of the project's permanent site;
 - evaluating the viability of any proposed temporary solution;
 - 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

21. 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>.
22. 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.
23. 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 schools must also select their oversubscription criteria from the pick-list of criteria on the same site.
24. As 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 guidance document, 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 admissions/referral policies

25. The timeline for submitting admissions or referral policies for schools with an agreed provisional opening date of September 2017 is as follows:
 - for **mainstream projects**, trusts to submit to DfE by 7 October 2016; and DfE to work towards policies being in final form by 10 January 2017;
 - for **non-mainstream projects** (special, alternative provision, 16-19), trusts to submit to DfE by 7 October 2016; and DfE to work towards policies being in final form by 28 February 2017.
26. The timeline for submitting admissions or referral policies for schools with an agreed provisional opening date of September 2018 is the same for all projects: trusts to submit to DfE by 28 February 2017 and DfE to work towards policies being in final form by 14 July 2017.

Governance

27. Our expectation is that, if the Secretary of State approves the proposal for a new free school trust, free school proposer groups will adopt the department's model funding agreement and model memorandum and articles of association in full. If you are an existing academy trust and therefore already have articles in place, we will require you as a condition of approval to adopt key provisions from the latest model, which reflects the department's experience of best practice in the governance of academy trusts, as well as charity and company law. In particular, existing trusts opening a free school must not have members who are also employees of the trust.
28. 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*, which came into force in September 2016) and the trust's solicitor to sign a declaration confirming that your articles of association are in line with our latest model.

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 2 forms of entry of 30 pupils (a total of 60), and secondary provision (years 7 to 11) a minimum of 4 forms of entry of 30 pupils (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. A grant agreement for an initial payment will be sent to the trust shortly. A subsequent grant agreement, where due, will then be put in place after the provisional opening date has been agreed.
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. From September 2016, the rate for open schools will be £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 that purpose.
36. Further information about RPA and the membership rules can be found at <https://www.gov.uk/guidance/academies-risk-protection-arrangement-rpa>. 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.