

[REDACTED]

1 August 2016

[REDACTED]

### **FREE SCHOOL APPLICATION: Newark - Toot Hill Free School**

We confirmed on 15 July that your application to establish Newark - Toot Hill Free School should proceed to the next phase of the free schools process – the “pre-opening stage”. We promised to write with further information about next steps.

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 the 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 some precise and strict conditions, which are set out at Annex A. Failure to meet these conditions would make it unlikely that the

Secretary of State would be in a position to enter into a funding agreement with you. 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.

On a day-to-day basis one of my lead contacts, based in the regional unit led by [REDACTED] will be responsible for your project. The lead contact will work closely with a project director, based in the department's Education Funding Agency, 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 Jenny Bexon-Smith, regional schools commissioner for East Midlands and Humber.



**MELA WATTS CBE**  
**Director, Free Schools Group**

Conditions

1. [REDACTED]  
[REDACTED]  
[REDACTED]

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 you will be operating.

### **Pre-opening framework**

#### **Engaging with DfE**

1. Throughout pre-opening your DfE lead contact will:
  - support 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; and
  - advise ministers and the regional schools commissioner on how the project is progressing through the pre-opening stage.
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 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 mandatory points of engagement between trusts and the department to be the initial kick-off meeting; a checkpoint meeting to discuss confirmation of the provisional opening date; a checkpoint meeting in the December or January before the provisional September opening date, with a focus on pupil recruitment, to prepare for signing the funding agreement; and a readiness to open meeting two or three 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 mandatory meetings may take the form of a teleconference, more often than not they will be formal face-to-face meetings. Between these formal 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 contains the information and supporting materials you will need to complete the key tasks required to open a successful free school. We intend to update the guidance in September. 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

7. 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 you draft the plan. The plan should help to ensure that all the key actions needed to ensure that the school opens successfully, such as the appointment of a suitable principal designate and the agreement of robust governance arrangements, are completed on schedule. However, given that the school's opening date is reliant – amongst other things – on identifying and securing a site, we recognise that the project plan may need to change during your time in pre-opening.

### **Opening date and site**

#### Opening date

8. 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 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. For mainstream free schools, this will help to ensure – but not guarantee – that where appropriate funding agreements are entered into before national offer day (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.
9. 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 2017. 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 three years), so unless a site is already secured and requires very little

work and no planning approval, opening in a shorter period will be extremely challenging.

### Capital funding

10. The capital funding available for free school projects is strictly limited. The final approval of your proposal is conditional on the capital costs representing good value for money. During the pre-opening phase we will seek to deliver your school at the lowest possible capital cost (ie the cost of acquiring the site plus construction and fit out costs). The department will not pay for sites which proposer groups already own.
11. Approval of your application 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.
12. Your EFA project director will work with LocatED to identify and secure a site for your school. LocatED is an arm's length body, due to be established in autumn 2016, which will be commissioned by the EFA to secure sites for free schools. Your project director will liaise with LocatED and keep you informed of progress towards securing a school.

### Sites

13. 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).
14. 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. The 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.
15. The department will work with housing developers to try 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.

### Opening in temporary accommodation

16. 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 evaluate 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**

17. 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>.
18. Special, alternative provision and 16-19 free schools must adopt admissions and referral policies that comply with the law and should also comply with guidance. This means that they must be clear, fair and transparent.
19. 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 – see link at <https://www.gov.uk/government/publications/free-schools-admissions>.
20. 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 8 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**

21. The timeline for submitting admissions or referral policies for schools provisionally due to open in September 2017 is as follows:
  - for **mainstream projects**, trusts to submit to DfE by 12 August 2016; and DfE to work towards policies being in final form by 21 October 2016 for secondary and all-through schools and by 4 November 2016 for primary schools;

- for **non-mainstream projects** (i.e. special, alternative provision, 16-19), trusts to submit to DfE by 12 August 2016; and DfE to work towards policies being in final form by 1 December 2016.

22. Lead contacts will confirm the timeline for provisional 2018 openers by the end of the year.

### Governance

23. 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 would expect you to consider adopting 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 are expected to move to a position of not having members who are also employees of the trust. We will discuss with you any particular governance issues that you will need to consider in order to establish a highly effective governance structure.

### Finance

24. Your proposal's approval is conditional upon you submitting robust financial plans at key points during the pre-opening phase, so that the department can be assured that your school is on course to be financially viable and sustainable on opening. The department will need to be confident that your plans reflect your income, based on the best estimates of available grants, your outgoings and the likely number of pupils.

25. In order to provide a sustainable, broad and balanced curriculum, there is 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. Your lead contact may ask you to revise your plans, or provide further information, to show that the school will be viable and sustainable. We would for instance expect to see firm applications ahead of the relevant national offer day before ministers enter into a funding agreement with the trust.

26. We will also need to be satisfied that the school will have robust financial management and governance arrangements in place; that your financial plans are consistent with your educational and staffing plans; and that the school will not go into deficit in any year. The department will not enter into a funding agreement unless it is confident that the school has a viable and sustainable financial plan.



## Project Development Grant

27. 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 is 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.
28. 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

29. 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. [REDACTED] 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.
30. 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.

## 16-19 provision

31. If you are proposing to open a 16-19 institution or a secondary school with a sixth form, we will wish to discuss your plans with you in the light of any relevant outcomes emerging from the local area review of post-16 education and training.