

Kent County Council
Letter by email to:

cc. [REDACTED]

12 March 2019

Dear Mr Nehra,

Local Authority special and alternative provision free schools bid

I am pleased to inform you that the Secretary of State has decided that your bid to establish a special school in your local authority should proceed to the next stage of the process – the trust competition stage.

The approval of your bid is subject to specific conditions set out in Annex A. We will need to receive written confirmation from the Director of Children's Services that you accept the conditions by 1 April 2019. Please email your confirmation to [REDACTED]

The next step is to advertise the opportunity for potential trusts to apply to establish the new school. You must publish your specification on your website and send the link to your published specification to [REDACTED] within a week of this letter. We have included an induction guidance sheet which contains information and next steps.

As we have made clear in the published guidance, 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 only do so if he is satisfied that (a) there is 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) the school will be ready to deliver at least a good standard of education, with a viable and sustainable number of places, from its first day of operation.

I would like to thank you and your colleagues for the commitment and time that you have shown in developing your bid.

Please note a copy of this letter has been sent to your DCS, Mr Matt Dunkley CBE.

Yours sincerely

[REDACTED]

[REDACTED]

Annex A

The approval of your bid is conditional upon:

i. Fair and open competition

This process is intended to create open competition, which will be available to all types of proposer groups.

It is not designed for co-located schools where there is only one feasible proposer. This is particularly important where the new school will be co-located with an existing school. You and the co-located school in question must confirm that you understand and accept that another provider could win.

It is also crucial for you to give an equal chance to all proposer groups, whether or not you think they are likely to submit a high quality application – you cannot give information only to favoured proposers, or only to established providers. If we believe a competition is not treating all potential applicants equally, we may either terminate the process or coordinate the competition internally. The information in the bid will form the basis of the information local authorities will need to publish.

ii. Deliverability

The LA to provide the site on a 125 year peppercorn lease without premium or the freehold subject to agreed precedent documents. Heads of Terms to be agreed within 3 months of project entering pre-opening and exchanged within 5 months. LA to meet any abnormal costs in relation to current access road and infrastructure on site or any section 278 costs which are imposed.

The LA/applicant to engage with the Local Planning Authority to arrange a meeting between the Head of Planning (or equivalent), the Director of Children Services, other LA and Local Planning Authority representatives where appropriate, and a Department for Education official, to be held within 6 weeks of the Secretary of State's formal approval of the project. A

minute of the meeting, setting out the strategy for, and prospects of, securing the necessary planning permission in a timely manner, to be circulated and agreed by all parties within two weeks of the meeting.

With regards to playing pitches, the LA/applicant to engage with relevant parties to arrange a meeting with Sport England, a representative of the Local Planning Authority and a Department for Education official, to be held within 12 weeks of the Secretary of State's formal approval of the project. A minute of the meeting, setting out the strategy for, and prospects of, securing Sport England's support in principle for a strategy to mitigate the loss of playing fields to be circulated and agreed by all parties within two weeks of the meeting.

iii. New provision

The process is to establish a new special free school and not to replace or expand existing provision. This is not a mechanism to close a school and re-open it as a special free school in a new building.

However, strong independent schools wishing to join the state sector may apply to become free schools on the condition that the new places that are created meet the specification and are in addition to the number of existing places that they plan to convert.

iv. Financial viability

The school must be affordable and sustainable within your local authority's high needs block funding allocations, and the high needs funding of other local authorities commissioning places. To enable prospective proposers to develop realistic applications including robust financial plans, you must be able to state clearly in the specification the number of places your authority (and any other local authorities) will be commissioning, at a cost of [REDACTED] per place and the top-up funding rates your authority and other authorities will expect to pay in addition to the place funding to secure the required provision.

v. Eligible places

For special schools, the provision is only for pupils with an EHC plan, or, without an EHC plan in accordance with the SEND Code of Practice.

Alternative Provision is: education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; education arranged by schools for pupils on a fixed period exclusion; and pupils being directed by schools to off-site provision to improve their behaviour. Pupils attending AP may or may not have an EHC plan.

In many cases, the aim is for the child to reintegrate back into mainstream or move onto special education, after their placement. Where this is not

possible, the Department expects schools and providers to work together to ensure that the young person can move on to suitable education, employment or training.

vi. Impact assessment

As part of the planning process for new schools, local authorities must also undertake an assessment of the impact of the proposal, both on existing educational institutions locally and in terms of impact on particular groups of pupils from an equalities perspective. This is to enable the Secretary of State to meet his duties under section 9 of the Academies Act 2010 and under section 149 of the Equality Act 2010. Most local authorities will do this when putting together the specification, so in practice, we anticipate that it will just be a matter of providing the Secretary of State with a copy of their assessment.

However, in the unlikely event that the Secretary of State has concerns about the level or quality of analysis, he may require the relevant local authority to undertake further work on the impact of the proposed new school and/or the equalities assessment so as to ensure the effective discharge of the duties mentioned.