

IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

EA/2012/0167

BETWEEN:

DEPARTMENT FOR EDUCATION

Appellant

-And-

THE INFORMATION COMMISSIONER

Respondent

-And-

THE BRITISH HUMANIST ASSOCIATION

Second Respondent

RESPONSE
BY THE BRITISH HUMANIST ASSOCIATION

Introduction

1. This Response is served in accordance with Rule 23 of the Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules 2009.
2. The Department for Education ("The Appellant") is appealing against the Information Commissioner's ("the Commissioner") Decision Notice under reference FS50415927. The appeal is brought under section 57 of the Freedom of Information Act 2000 ("the Act").
3. The British Humanist Association ("the BHA") of 1 Gower Street, London, WC1E 6HD has been joined to the appeal as a second respondent, as the complainant that submitted the request for information that led to this case. The BHA intends to oppose the appeal, but also argue that the case should be considered on a wider scope understood by the Appellant and the BHA, but not the Commissioner. The grounds for this are set out in what follows.

Background and request for information

4. The British Humanist Association (BHA) is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity.

5. The BHA campaigns against state-funded religious schools. The BHA wants an end to the proliferation of such schools; discrimination in admissions and employment in religious schools outlawed; and a comprehensive curriculum across all subjects, including religious education, to be taught objectively in all schools. Ultimately, the BHA wants all religious schools to be absorbed into the notionally secular schools sector, becoming inclusive schools. Instead, the BHA advocates an inclusive, secular schools system, where children and young people of all different backgrounds and beliefs can learn from and with each other.
6. The BHA does not have a position on the success or otherwise of the Free Schools programme: it is a matter outside of the BHA's remit. However, the BHA is concerned about religious Free Schools, just as it is concerned about any state-funded religious school.
7. On 21 June 2011, the BHA requested the following information from the Appellant:

"A list of free school proposals received by the Department for Education, including the 323 received during the first wave and the 281 received during the second wave, giving for each:

- *The name of the project*
- *The local authority / area of the proposed school*
- *The previous name (if applicable) of the proposed school*
- *The faith (if any) of the proposed school*
- *Whether the proposal was received in the first wave or the second wave."*

By "faith (if any)", the BHA meant both schools formally designated with a religious character, and schools with a 'faith ethos'.¹

By "local authority / area", the BHA meant the local authority of the proposed schools, as the DfE did when it gave the local authorities in its published spreadsheets of approved Free School proposals under the same heading of "Local Authority/Area".

¹ 'Faith ethos' Academies are Academies which are defined by the DfE as: 'If you want your school to have a distinct ethos based on a set of morals that are aligned with a particular faith and you want to make this explicit you can describe your school as having a faith ethos. This could then be reflected within the vision for the school, the values the school represents and the importance placed on particular beliefs. Religious education and collective worship cannot be provided in line with the faith ethos if this is anything other than Christian in nature.' These schools are not formally designated with a religious character.

Examples identified by the BHA from among the first wave of approved Free Schools include Discovery New School, The Priors School, Langley Hall Primary Academy and Sandbach School. An example in the second wave of approved Free Schools is The Hawthorne's Free School. In each of these cases, the BHA has been able to identify the faith of the school from statements on its website.

8. The Appellant sets out the factual background to the request, its response to the request and a summary of the Commissioner's decision in paragraphs 4-13 of the Appellant's grounds of appeal. The BHA would like to add to paragraph 5 that when, at the first stage, groups and individuals make applications to the DfE, they must provide 'evidence of demand'. In 2012, proposers were required to 'Provide information that clearly shows the number of parents that want to send their children to your particular school, ensuring that the evidence you have collected is consistent with your stated admissions policy (eg. age range, proximity to the proposed site etc.)'² The request did not ask for details of any proposals *before* they have built up this evidence of demand.
9. In addition, the Appellant sets out in paragraphs 10-12 that it holds the relevant information, but did not provide the BHA with a list of approved schools for the first wave because the list of approved schools with their areas was already in the public domain. However, this omits the fact that BHA also requested for these schools their faith (if any). Subsequent to their opening, Free Schools formally designated with a religious character have had their designation recorded through the periodic statutory instruments which designate them as such.³ However, this information had not, at the time of the FOI request, been published by the DfE for these schools – nor was it considered when the DfE claimed exemptions for the other unpublished information. In addition, the DfE had not, and still has not, published whether or not any of the schools are not formally designated with a religious character but have a 'faith ethos'.

Scope of appeal

10. In paragraph 8 of the Commissioner's response, it sets out that the Commissioner wrote to the complainant during his investigation concerning the scope of that investigation. The BHA can confirm that the Commissioner wrote on 26 October, stating that:

'The focus of my investigation will be determine whether the DfE were correct to withhold the names of the unsuccessful applicants in the first and second waves under section 35(1)(a) or section 36(2)(c).

'Your request was also for the faith and area of the proposed school but as a breakdown by faith and regional area has been provided and information can be accessed through the DfEs website I am proceeding on the basis that this part of your request has been satisfied. If this is not the case please let me know by 9 November otherwise I will continue on the basis that the outstanding part of

² Appended as evidence.

³ Specifically, The Designation of Schools Having a Religious Character (Independent Schools) (England) (No. 3) Order 2011, The Designation of Schools Having a Religious Character (Independent Schools) (England) (No. 4) Order 2011 and The Designation of Schools Having a Religious Character (Independent Schools) (England) (No. 2) Order 2012.

your request which you want investigating is the refusal to disclose a complete list of proposals received in the first and second waves, including unsuccessful applicants.’⁴

The Commissioner also says in paragraph 8 that this statement was meant to be read as saying that the subsequent investigation would not consider the faith and proposed area, and that the names of the proposed schools is all the subsequent decision notice considered. However, the BHA did not read the statement in this narrow manner on October 26 – merely understanding it to mean that a *breakdown* by faith and area would not need to be provided, as this information had already been published. The BHA therefore still understood that the case would consider whether the DfE should provide a list of the area and faith (if any) of each of the proposed schools, alongside their names. In addition, the Commissioner’s more limited understanding of the scope of the case was not made explicit in the Commissioner’s subsequent decision notice, which in fact states in paragraphs 35-37 that areas are being considered as well as names, and in paragraph 35 that religious character is being considered. It is plain from paragraph 23(1) of the grounds of appeal that the Appellant shares the BHA’s understanding of the wider scope of the case.

11. With that said, the Commissioner did make clear on 26 October, and in the subsequent decision notice, that it did not consider successful proposals to be within the scope of the case. However, on reflection the BHA would now contest that the DfE did not correctly respond for successful proposals as it had not (and still has not) provided the faith (if any) of these proposals – as set out in paragraph 9 of this response.
12. In light of the above, the BHA would therefore contest that the Commissioner has misunderstood the scope of the case. Consequently, the BHA requests that the Information Tribunal:
 - 1) Either reads the Commissioner’s decision notice as having been made on the broader scope as understood by the BHA and the Appellant, and as supported by paragraphs 35-37 of the decision notice;
 - 2) Or, failing that, whether it would be appropriate to exercise its powers under section 58(1)(b) of the Act to substitute the Commissioner’s decision notice for one written on the broader scope as understood by the BHA and the Appellant;
 - 3) Or, failing that, the Commissioner failed to rule on the entirety of the BHA’s complaint, and therefore the BHA would like to appeal against the Commissioner’s non-determination of the majority of its complaint.

Legal framework

⁴ Email appended in full as evidence.

13. The Appellant sets out the legal framework in paragraphs 14-20 of its grounds of appeal, and the BHA accepts this.

Grounds of appeal

14. The BHA notes that the Appellant has not contested the ruling that sections 21 and 22 of the Act do not apply. The BHA notes that the Appellant shares the BHA's understanding that the Commissioner's ruling included publishing the faith (if any) and area of each proposed school, and still chose not to contest the ruling on these grounds.
15. The BHA accepts the Commissioner's summary of the Appellant's Grounds of Appeal, as found in paragraph 13 of the Commissioner's response, but again notes that the Appellant shares the BHA's understanding that the Commissioner's ruling included publishing the faith (if any) and area of each proposed school, and still chose not to contest the ruling on these grounds.

The BHA's response to the Commissioner's decision notice

16. In paragraph 14 of its response, the Commissioner sets out that it would mainly rely on its decision notice. In paragraph 26 of its decision notice, the Commissioner concludes that section 35 of the Act (the formulation or development of government policy) is engaged, as the DfE argued that policy was still being developed.
17. The BHA would contest that this is incorrect. This information does not relate to the formulation or development of government policy, but to the normal process of government business, subsequent to the formulation and development of the Free School policy. This information is part of the implementation of that policy, along with an annual review of how that policy should be implemented next year. It will always be the case that the Free School policy is being reviewed, and it is not clear how many years the DfE envisages that the process must be repeated before the information would not engage section 35 of the Act. Therefore, the BHA would invite the Tribunal to oppose this appeal, not only on the basis that the Commissioner was wrong to decide that the public interest is in favour of disclosure (something we will subsequently address), but also on the basis that section 35 was not engaged in any event.
18. In paragraph 28 of the decision notice, the Commissioner decides that 'the introduction of the Free School policy is an area of considerable public debate.' The BHA notes that religious Free Schools are also an area of considerable public debate, which has generated a large amount of media attention. This is because:
 - 1) State spending on religious schools in general is an area of considerable public debate.
 - 2) Religious Free Schools have generated even more public interest, because of the wider diversity of religious groups opening and

applying to open schools. This includes many more minority religious groups, evangelical Christian groups, and also pseudoscientific proposals, such as the many known proposals to establish Free Schools by the Exclusive Brethren and members of the creationist Christian Schools' Trust.⁵ In part, this is as a consequence of the fact that Free School proposers do not have to make any financial contributions to establishing a new school, as was often the case for maintained schools; or to have their proposals publicised by the local authority, as was always the case by maintained schools.

- 3) Religious Academies and Free Schools have also generated even more public interest because of the extra freedoms they enjoy over other types of state funded religious school. This includes not having to make any financial contributions to the school; not having to follow the national curriculum; and not having to hire teachers who hold Qualified Teacher Status. These facts allow religious Academies and Free Schools to be more discriminatory than was previously possible for maintained schools.

19. In paragraphs 28-31 of its decision notice, the Commissioner sets out arguments in favour of disclosure of the names and local authorities of proposed Free Schools. The BHA believes that these arguments are also applicable for the faith (if any) of the proposed schools, as like the Commissioner, the BHA considers that there is a public interest in people who would potentially be affected by a Free School to be able to have an informed debate about any proposal that would affect them; but furthermore, knowing whether the school is religious would seriously impact upon that debate.
20. In addition, the BHA considers that the broader national public debate about religious Free Schools would be furthered if the public were able to know which religious groups were applying to set up Free Schools, and which local authorities their proposals were based in.
21. In paragraph 33 of the decision notice, the Commissioner sets out the DfE's argument that informing the public about unsuccessful proposals would discourage those proposers from re-applying. The BHA is not convinced by this. The DfE has not provided any evidence that this would be the case, and the BHA considers it to be possible that if the public were informed of unsuccessful proposals, people may offer to help these proposers to re-apply.
22. In paragraph 34 of the decision notice, the Commissioner sets out the DfE's argument that informing the public of Free School proposals currently approved at the first stage but not yet approved at the second stage would be more likely to make them be unsuccessful, due to increased public scrutiny. Again, the DfE has not provided any evidence that this would be the

⁵ Relevant BHA news items appended.

case, and the BHA considers it to be possible that if the public were informed of these proposals, the extra scrutiny may in fact strengthen many of them.

23. In paragraph 34 of the decision notice, the Commissioner sets out the DfE's argument that informing the public of Free School proposals that have been unsuccessful would increase public questioning of why this would be, and may increase local tensions. However, if the result of this is greater transparency as to why some of these proposals have failed, and if the public is able to appreciate the reasons given, then this may in fact increase public support for the Free School programme, which would benefit the programme in the long run.
24. The BHA endorses the reasoning made by the Information Commissioner in paragraphs 37-43 of the decision notice.

The BHA's response to the grounds of appeal and comments on the Commissioner's response

25. In paragraph 24 of the grounds of appeal, the Appellant argues that the BHA's request would only provide it with further information about proposals for Free Schools which did not reach the second stage. However, this is incorrect, as set out in paragraph 9 above; to reiterate, the faith (if any) of the proposed schools had not been published at that time, and still hasn't for 'faith ethos' schools.
26. In addition, the BHA's request was for the local authority of the proposed schools. The Appellant is therefore incorrect to argue in paragraph 24 that the BHA requested the 'precise locations' of proposed schools – this information would be of much more 'low level' than what the BHA requested.
27. Otherwise, the BHA accepts paragraph 24 of the grounds of appeal as accurate.

Engagement of section 35 of the Act

28. As set out in paragraph 17 above, the BHA believes that the Commissioner and Appellant are incorrect to conclude that section 35 of the Act is engaged in this case.

Balance of public interest

29. However, if the Tribunal were to accept that section 35 of the Act is engaged, then the BHA would also argue that the Commissioner was correct in concluding that the balance of public interest lies in favour of disclosure. In paragraph 25 of the grounds of appeal, the Appellant sets out why it does not think the public interest in this case should favour disclosure, and in paragraphs 10-27 of its response, the Commissioner argues against this. The

BHA agrees with the Commissioner's arguments, and would like to make a number of additional points.

30. First of all, the arguments made by the Commissioner about providing the area of any proposed school also seem to be applicable when it comes to providing the faith (if any) of proposed schools. The BHA has set out why this is, as well as further arguments in favour of disclosure, in paragraphs 18-20 above.
31. Secondly, providing the previous names (if any) of proposed schools would be unlikely to bring any extra scrutiny to particular proposals beyond providing the current names; it would merely allow the public to correctly identify proposals. This is important in order to enable the public to take part in the wider debate about those proposals.
32. Thirdly, the Appellant states in paragraph 25(4)(i) of the grounds of appeal that 'the local community will almost always be aware of a Free School proposal even at the first stage of the application process because applicants will consult with them in order to gauge public interest.' This fact seems to the BHA to seriously weaken most of the Appellant's arguments against disclosure. Furthermore, it is the cases where the local community are *not* aware of a Free School proposal that the BHA is particularly concerned about, as these seem to the BHA to be more likely proposals from insular groups, such as certain religious groups, that can build up sufficient demand without making the wider community aware of proposals.
33. In paragraph 26 of the grounds of appeal, the Appellant refers to the prospect that disclosure may result in teachers being dismissed by their current employers if they knew they were applying to set up a Free School, and organisations that already work with schools in the area do not want to be thought of as acting against the interests of schools that they are already working with.
34. However, the BHA did not ask for the names of any teachers or organisations working on Free School proposals to be approved; just the names, previous names, local authorities and faith (if any). In addition, it would be unlawful for a school to dismiss an employee because the employee is applying to set up a Free School. If the employee has worked at a school for over two years, then this would constitute unfair dismissal. Otherwise, the school would be able to dismiss the employee regardless. Finally, the BHA notes that this argument is undercut by the Appellant's comments in paragraph 25(4)(i) that 'the local community will almost always be aware of a Free School proposal even at the first stage of the application process because applicants will consult with them in order to gauge public interest.'
35. The BHA has dealt with paragraph 27 of the grounds of appeal in paragraphs 21-23 above, and further notes that this argument is undercut by the Appellant's comments in paragraph 25(4)(i) that 'the local community will

almost always be aware of a Free School proposal even at the first stage of the application process because applicants will consult with them in order to gauge public interest.’

36. In paragraph 28, the DfE refers to comments made in *The Guardian* by Richy Thompson of the BHA that by the time proposals reach the second stage, it is ‘often too late to stop them.’ The full quote is:

‘It is hard to know how the public is able to scrutinise these proposals if we don’t even know about them in the first place. By the time Free Schools are “pre-approved” to open by the DfE and publicly listed, it is often too late to stop them.’⁶

However, the BHA would argue that if increased scrutiny of individual Free School proposals *did* cause some proposals to be unsuccessful when they would otherwise succeed, this may ultimately be in the interests of the Free Schools programme. As things stand, there have been a number of high profile examples of Free School proposals which were approved by the DfE at the second stage, that were subsequently abandoned before opening. These include Newham Free Academy, Chorley Career and Sixth Form Academy, and One in a Million Free School, which had its funding delayed by a year just one week before it was due to open.⁷ If these proposals had been subjected to more scrutiny earlier on, it is quite probable that these proposals would either have not been approved by the DfE at the second stage, or become stronger as a result of that scrutiny. Therefore, there may well be fewer instances of Free School proposals failing at the eleventh hour, which would in turn save money and increase public trust in the decisions made by the DfE as to which Free School proposals to support. This would increase overall public support for the Free School programme, and so benefit the programme in the long term. It also seems to be most apparent in the cases where the local community would not otherwise have known about the Free School proposal at the first stage, as these would be more likely to have come from groups which had narrower interests (as set out in paragraph 32 above).

37. In addition, the BHA notes that when proposals for maintained schools are published, they have always been consulted on prior to gaining support to open by the local authority concerned. This has not negatively affected these proposals, nor has it appeared to adversely affect faith-based proposals when compared to other groups. The Appellant has not set out any reasons why the matter should be different here.
38. Furthermore, the BHA notes that it is a legal requirement for consultations to happen at a formative stage – it is no good consulting just on issues of timing and implementation where the principle has already been decided upon.⁸

⁶ Full article appended.

⁷ Relevant articles appended.

⁸ As established by *R(Sadar) v Watford BC* [2006] EWHC 1590

The BHA would question whether consulting on Free School proposals after they have gained support to open from the DfE is consulting on those proposals at a formative stage. This is particularly true in light of continued DfE support for proposals such as Beccles Free School. This school has now opened, in spite of the fact that the consultation showed only 21 parents in favour of the school, while a local petition found over 3,000 against. The school has just 68 pupils, with a capacity of 162.⁹ It is hard to conclude that the DfE's already existing support for the school was a reason why the consultation found in favour of its opening – in essence, the school could not be stopped whatever the consultation's outcome. This perception is what Mr Thompson was referring to in *The Guardian*. While this Tribunal ruling cannot challenge whether the consultations are happening at a formative enough stage, the Tribunal may wish to consider that releasing high level details of proposers which have been approved at the first stage (but not yet considered at the second stage) may go some way towards mitigating this issue. This extra scrutiny would further increase the public trust in the Free School programme.

39. Finally, the BHA speculates whether the DfE may have an ulterior motive for not releasing the information, namely that the DfE may be embarrassed by some of the proposals received, and perhaps some of those which were approved at the first stage, if they were from extremist, evangelical or pseudoscientific groups (such as those from the Exclusive Brethren, which only entered the public domain very recently). The BHA does not consider this to be a reason for withholding the information: if it is a factor, it would surely only increase public interest in disclosure, and at any rate, the Appellant has not presented this as an argument. However, the BHA would note that speculation about what the DfE is hiding by not releasing this information has made the public trust the whole process less, as well as heightened public interest in the matter, and this damage can only be repaired if the information is released.

Conclusion

40. For the reasons set out above, the BHA considers that section 35 of the Act is not engaged in this case; and if it is, then that the public interest in favour of disclosure of the name, former names, faith (if any) and area of proposed Free Schools is extremely strong, and certainly outweighs the public interest against disclosure.
41. In addition, the BHA reiterates that the DfE has not published the faith (if any) of successful Free School proposals, and has not given any reasons for not doing so.
42. As a result of the above, the BHA believes the Tribunal should ask the DfE to publish the faith (if any) of successful Free School proposals, and either:

⁹ Relevant article appended.

- 1) Dismiss the appeal, and take a reading of the Commissioner's decision notice as having been made on the broader scope as understood by the BHA and the Appellant, which includes the name, former names, local authority and faith (if any) of all proposals; or
- 2) Exercise its powers under section 58(1)(b) of the Act to substitute the Commissioner's decision notice for one written on the broader scope as understood by the BHA and the Appellant, which includes the name, former names, local authority and faith (if any) of all proposals; or
- 3) As the Commissioner failed to rule on the entirety of the BHA's complaint, therefore consider an appeal from the BHA against its non-determination of the majority of the BHA's complaint, and conclude that the DfE must publish the name, former names, local authority and faith (if any) of all proposals.

Oral / Written hearing

43. The BHA has no objection to the Appellant and Commissioner's suggestion of a paper hearing in this case.

Name and address of respondent/address for service

Please use the Richy Thompson of the British Humanist Association's address (below).

David Wolfe QC, MATRIX
Griffin Building
Gray's Inn, London
WC1R 5LN

Richy Thompson, BRITISH HUMANIST ASSOCIATION
1 Gower Street,
London,
WC1E 6HD
richy@humanism.org.uk

14 September 2012

Free Schools in 2012

How to apply

Mainstream schools

Introduction

This guidance:

- sets out the aims of the Free Schools programme;
- outlines the timetable for the preparation, submission and assessment of applications to open Free Schools in 2012;
- details the information you must provide in each part of your application;
- sets out the criteria against which your application will be assessed; and
- lists the minimum requirements which all Free School applications must meet in order to be considered.

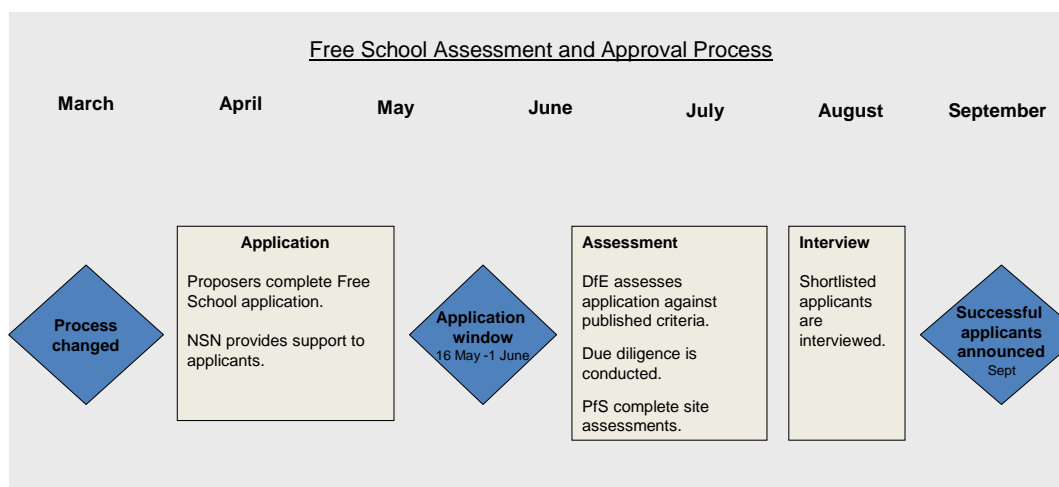
Free School aims

The vision of the Free Schools programme is to raise standards by encouraging a range of new and diverse providers to play a much greater role in state education. These new providers will have the opportunity to propose establishing new schools in response to parental demand, thereby introducing increased competition, new ideas and greater diversity into the school system.

In delivering this change, the Free Schools programme aims to:

- drive up quality of provision and standards – not only by the introduction of new Free Schools which are of high quality themselves, but also in other local schools;
- provide parents with greater choice about the school their child attends – with the power to propose to set up their own school if they are unhappy with existing options;
- encourage greater innovation in the education system by opening it up to a much wider range of providers and approaches;
- provide a value for money solution to creating new school places and driving system-wide change; and
- create an increasingly self-sustaining and self-improving system, relying far less on central government intervention and more on school leaders, teachers and parents themselves to ensure a good quality of education for all.

The timetable for assessing and approving applications



What happens when

Preparing and submitting your application – up to 1 June 2011

- Read this guidance carefully;
- New Schools Network is able to provide advice and guidance to help you prepare your application; and
- **Please note that any applications received by the Department either before 16 May or after 1 June will not be considered.**

Assessment of your application – 1 June to 31 July 2011

- We will assess your application against the criteria set out in this document;
- Any applications that do not meet the minimum criteria will be rejected;
- All applications that meet the minimum criteria will:
 - be judged against each other on a competitive basis, using both the minimum and comparative criteria set out in this guidance;
 - be subject to due diligence checks - this means that we will use the personal information you provided to ensure your application is suitable to be submitted to the Secretary of State for his approval; and
 - undergo viability and cost assessments of your preferred site by Partnerships for Schools.

Interviewing applicants – 1 to 12 August 2011

If your application meets the minimum criteria *and* is assessed as one of the strongest applications against both the minimum and comparative criteria we will invite you to interview in the first two weeks of August (between 1st – 12th August).

This is a key part of the process. Therefore, please ensure that the key people in your team hold this time in their diaries in case your application reaches the interview stage.

Final approval and decisions – 12 August to end of September 2011

- We will let everyone know the outcome of their application, successful or otherwise, by the end of September;
- If the Secretary of State approves your application to move to pre-opening stage you will be provided with a dedicated project lead from the Department, along with support to help secure a site and open your school in September 2012;
- There will be a significant amount of work to complete between approving your Free School application and your Free School opening in September 2012; and
- Assuming you make good progress against the key milestones in the pre-opening stage, the Secretary of State will then make a decision on whether to enter into a Funding Agreement – this represents final approval.

Application guidelines and criteria

This guide to completing your Free School application is divided into sections:

- Details of the **applicant group**, including information on the registered company and individual members;
- A **summary sheet** with basic details about the proposed school; and
- **Specific sections** on educational vision and plan, evidence of demand, organisational capacity and capability, premises, initial funding and financial viability.

Each section includes instructions on what you are expected to demonstrate, criteria against which your application will be evaluated and reference to any relevant laws, regulations or guidance.

Format requirements

Sections 1 and 2 require you to complete template forms. Please include these with the main part of your application.

Sections 3 to 7 should be on A4 paper and in Arial font with a minimum font size of 12.

Section 8 requires you to complete the template spreadsheet. Please include this with the main part of your application.

You are also required to complete **Section 9** (which is self-standing and is accessible in a *separate* downloadable form). This section asks you to provide and confirm personal details and declarations.

Application deadline and instructions

We must receive your application no earlier than 16 May and no later than **5pm Wednesday 1 June 2011** in order for it to be considered¹⁰. You must submit one copy of your application electronically and **two** in hard copy. You will need to return two copies of “Section 9: Suitability and Declarations” to us by hard copy using the address highlighted in that document within the same timescales.

Further details on how to submit your application form will be available on our website on 9 May 2011.

We will inform applicants of the outcome of their application by the end of September 2011, if not earlier. Please note that there will not be any appeals processes.

¹⁰ Applicants should not submit additional supporting material after this date, although the Department reserves the right to request additional information if deemed necessary.

Process and criteria

We will assess your form in three ways:

- against the minimum criteria, to decide if your proposed Free School is likely to be one of acceptable quality;
- against other Free School applications, to ensure that only the best applications are approved; and
- against cost considerations, to ensure that the proposed Free School is affordable and offers maximum value for public money.

To that end, please note that:

- **applications that do not meet all minimum criteria will not be approved**, these criteria are set out at the end of sections 3-8;
- **all applications that do meet the minimum criteria will then be assessed against each other**, using both the minimum and comparative criteria, also set out at the end of sections 3-8; and
- **value for money and overall cost will be a consideration throughout**, and applications will be assessed against each other in this regard.

Wider contextual factors for all Free School applications

In assessing an application, we will take into account a wide set of contextual factors, including but not limited to:

- the age range of the free school;
- overall cost;
- value for money;
- the level of deprivation in the community that it serves;
- the standards of schools in the local area;
- the type of provider; and
- its faith or not.

Free Schools for pupils aged 16- 19

Under current legislation, it is not possible to establish a Free School solely catering for pupils aged 16-19. Subject to Parliamentary approval, the Education Bill currently before Parliament will make that possible, and will enable the Secretary of State to approve applications for 16-19 Free Schools to open in September 2012. If you wish to set up a 16-19 Free School, please submit your application using the same sections set out below.

Additional criteria for existing independent schools seeking to become Free Schools

Only existing independent schools that already provide high quality places will be considered. If independent schools do not meet the following minimum criteria, their applications will be rejected:

- For schools inspected by Ofsted, the Bridge Schools Inspectorate or the School Inspection Service, judgements of good or better in each of the following areas of its latest inspection report:
 - (i) the quality of education;
 - (ii) safeguarding pupils' welfare, health and safety; and
 - (iii) promoting the spiritual, moral, social and cultural development of pupils.
- For schools inspected by the Independent Schools Inspectorate, judgements equivalent to good or better in each of the following areas of its latest inspection report:
 - (i) the quality of academic and other achievements;
 - (ii) the contribution of curricular and extra-curricular provision;
 - (iii) the contribution of teaching;
 - (iv) the quality of the pupils' personal development;
 - (v) the contributions of arrangements for welfare, health and safety; and
 - (vi) the effectiveness of governance, leadership and management.
- There are no significant outstanding issues on compliance with the independent school standards; and
- The existing trust has a good track record of managing their accounts (see section 8 below).

If an existing independent school meets these criteria, we will take into account not just the information included in the application form but wider contextual factors, including:

- examination performance, both in absolute and relative terms compared to other state schools (our expectation is that the school should perform significantly better than other schools in the local area at the relevant key stage);
- the popularity of the school (our expectation is that the school is at or near maximum capacity in terms of pupil numbers);
- the appeal of the Free School to parents who do not currently have children at the school, especially from more disadvantaged homes;
- the level of deprivation in the area - in the event of two similar applications, those from more deprived areas will be prioritised;
- overall cost – including judgements on revenue and capital cost estimates; and

- value for money.

Checklist for applicants

Before submitting your application form, please ensure you have:

- established a Company Limited by Guarantee (also commonly known as an 'Academy Trust') and registered this with Companies House (not the Charity Commission) - guidance can be found at the link below^{11 12};
- completed ALL SECTIONS of the application and suitability and declarations forms, using the section numbering and titling consistent with the guide below:
 1. Applicant details
 2. Outline of the school
 3. Educational vision
 4. Educational plan
 5. Evidence of demand and marketing
 6. Organisational capacity and capability
 7. Premises
 8. Initial costs and financial viability
 9. Suitability and Declaration (separate downloadable form);
- completed and attached the financial viability assessment spreadsheets (section 8); and
- considered your responses against the evaluation criteria for each section.

¹¹ <http://www.companieshouse.gov.uk/>.

¹² Model Memorandum and Articles of Association are available from <http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/a0074737/free-schools-model-funding-agreement>

Free School requirements

The Free Schools programme aims to increase the range and quality of education for children in a pluralist and democratic society. The Secretary of State will therefore seek to ensure that only suitable persons are permitted to establish Free Schools which will be publicly funded. In addition, any decision relating to the establishment of Free Schools must be affordable and in accordance with the Government's wider policies and guidelines.

The Secretary of State will consider each application on its merits, and take into account all matters relevant to the application. He will reject any applications put forward by organisations which advocate violence or other illegal activities.

In order to be approved, applications will need to demonstrate that they would support UK democratic values including respect for the basis on which UK laws are made and applied; respect for democracy; support for individual liberties within the law; and mutual tolerance and respect.

Assessing the suitability of applications

In addition to the evaluation criteria set out in this application form, you should also be aware of the following **minimum requirements**.

1. Section 149 of the Equality Act 2010 places a duty on the Secretary of State to promote equality of opportunity. The Secretary of State must have due regard to the need to:
 - Eliminate discrimination, harassment and victimisation
 - Advance equality of opportunity¹³
 - Foster good relations (and tackle prejudice and promote understanding)¹⁴.Applicants are required to ensure that their proposed Free School will be able to further those aims.
2. Free Schools with a religious character will have to balance the needs of (a) children with a faith and (b) children of other faiths or none; and when oversubscribed, be able and willing to admit at least 50% of their intake without reference to faith.
3. Applications for schools seeking to be designated as a school with a religious character (faith school) must be accompanied by a letter of endorsement from the relevant religious body or diocese for the Church of England or the Roman Catholic Church.
4. Creationism, intelligent design and similar ideas must not be taught as valid scientific theories.
5. Existing independent school applicants should note the additional criteria set out on p.8-9.

¹³ This refers to people who do / do not share a protected characteristic; protected characteristics' refer to age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation

¹⁴ ibid

6. Free School applicants will need to confirm that they understand and accept the following:
- Free Schools must have arrangements to safeguard and promote the welfare of children who are pupils at the school. This is set out in parts 3 and 4 of schedule 1 of the Education (Independent School Standards) (England) Regulations 2010 (<http://www.legislation.gov.uk/uksi/2010/1997/contents/made>);
 - Free Schools are required through their Funding Agreement to adopt practices and arrangements that are consistent or in accordance with the School Admissions Code, the School Admission Appeals Code and admissions law as it applies to maintained schools <http://www.dcsf.gov.uk/sacode>;
 - Free Schools must meet the Education (Independent School Standards) (England) Regulations 2010 <http://www.legislation.gov.uk/uksi/2010/1997/contents/made>; and
 - the model Free School Funding Agreement www.education.gov.uk/freeschools/a0074737/free-schools-model-funding-agreement.

Section 1: Applicant details

As Companies Limited by Guarantee, certain details will be publicly available on the Companies House website. However, personal information will be treated in accordance with the Data Protection Act 1998.

We realise that not all of this section will be relevant or appropriate to existing Academy sponsors.

Details of Company Limited by Guarantee
Name:
Company address:
Company registration number:
Main contact
Name:
Address:
Email address:
Telephone number:
Members and Directors
Please confirm the total number of (a) Company Directors <input type="checkbox"/> and (b) any other members of the Governing Body <input type="checkbox"/> appointed to date and list them below. Please also confirm who the proposed Chair of the Governing Body is.
Name: Position:
Name: Position:
Name: Position:
Name: Position:
Name: Position:
Name: Position:
Name: Position:
Name: Position:
Related organisations
Does the Company Limited by Guarantee have any links (through the members, directors or otherwise) with any other charitable or commercial organisation? Y/N
If Y please provide their name and Charity Commission number and describe the

role that it is envisaged to play in relation to the Free School:
If your organisation is an existing independent school, please provide your six digit unique reference number:

Declaration to be signed by a Company Director

I confirm that the information provided in this application is correct to the best of my knowledge and that if the application is successful the Company will operate a Free School in accordance with the requirements outlined above and the requirements of the Independent Schools Standards* and the Funding Agreement with the Secretary of State.

Signed:

Print Name:

Date:

Each Member and Director of the Company should also complete and return the personal information and declarations from Section 9 (which is in a separate downloadable form).

* The requirements of the Independent Schools Standards are not applicable for 16-19 Free Schools.

Section 2: Outline of the school

Proposed school name:										
Age range:										
<p>Proposed numbers in each year group at point of opening and explanation of how pupil numbers will expand to fill the school over time.</p> <p>If your application includes nursery provision, please add additional rows as appropriate.</p>										
	Rec eption									
	Year 1									
	Year 2									
	Year 3									
	Year 4									
	Year 5									
	Year 6									
	Year 7									
	Year 8									
	Year 9									
	Year 10									
	Year 11									
	Year 12									
	Year 13									
If an existing independent school, provide details of your latest inspection (including the report), current numbers on roll and total capacity of school.										
Will your school have a religious character										

(i.e. be a faith school)? If Y, please specify which faith. Please see notes below (at the end of this table).	
Is this an application for a single-sex school? If so, please tick the relevant box.	Y / N. If Y, please tick one of the following boxes <input type="checkbox"/> Boys <input type="checkbox"/> Girls
Local authority area in which the school would be situated (and if near to a LA boundary please include names of neighbouring LAs).	

Being designated as a school with a religious character will allow you to admit pupils or recruit some teaching staff on the basis of religious belief. The Funding Agreement requires you to teach Religious Education according to the tenets of your faith. You do not need to apply for religious designation as part of the application process, but this will be necessary if your application is approved. The Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 (as amended), available here <http://www.legislation.gov.uk/uksi/2003/2314/introduction/made>, sets out the procedure for Independent Schools and Academies to be designated as schools with a religious character. As Free Schools will legally be Academies they will need to follow the same process.

Section 3: Educational vision

The educational vision should describe why you are setting up *this* Free School and its defining features and ethos. This is your opportunity to tell us in your own words about the overarching vision for your school.

Information required

- Set out why you are establishing your Free School – the rationale for this age range/ curriculum offer/ location / pedagogy; and
- Identify what will make the school distinctive in its vision and ethos.

Evaluation Criteria

Minimum Criteria:

- A clearly focused vision that underpins the application; and
- Aligns with the aims of the Free Schools programme (as set out on page 3).

Section 4: Educational plan

The educational plan should describe the structure of your school and the experience that pupils will have whilst attending it. You should set out what pupils will achieve, how they will achieve it and how the school will evaluate performance, both of individual pupils and the school as a whole.

Information required

Admissions

Set out your admissions policy, including the criteria to be used to prioritise places if your school is oversubscribed. Free Schools with a religious character will have to balance the needs of (a) children with a faith and (b) children of other faiths or none; and when oversubscribed, be able and willing to admit at least 50% of their intake without reference to faith. 16-19 Free Schools do not have to adopt arrangements that are consistent or in accordance with the School Admissions Code but should still set out the details of their planned admissions policy.

Curriculum and organisation of learning

Set out expectations around the length of the school day, term and year.

Describe the curriculum in detail, setting out how it will be broad and balanced and meet the different needs and interests of all pupils including, for secondary students, the range of qualifications which might be offered (16-19 Free Schools do not have to offer a broad and balanced curriculum).

Set out a curriculum model that shows what proportion of learning is given over to each subject or area of learning for each year group.

Set out your approach to disabled pupils and pupils with Special Educational Needs, who may or may not have a statement, and set out how you will have regard to the SEN Code of Practice.

Organisation of pupils

Explain how pupils will be organised, for example through year groups, tutor groups or other class structures.

Pupil development and achievement

Show how your school will define, measure and hold people accountable for the success of: i) the whole school; and ii) individual pupils.

Behaviour and Attendance

Show how the Free School will promote good behaviour, positive relationships and good attitudes to learning; and show how the Free School will maintain high levels of attendance.

Community Engagement

Explain how when the Free School is established it will aim to foster good community relations and promote active contribution to modern British society, in line with the Equality Act 2010.

Evaluation Criteria

Minimum Criteria:

- confirmed commitment to meeting the accountability requirements applicable to all state funded schools, as set out in the model Free School Funding Agreement www.education.gov.uk/freeschools/a0074737/free-schools-model-funding-agreement;
- commitment that the Free School will adopt practices and arrangements that are consistent or in accordance with the School Admissions Code, the School Admission Appeals Code and admissions law as it applies to maintained schools
<http://www.education.gov.uk/schools/adminandfinance/schooladmissions>
- a broad and balanced curriculum¹⁵;
- a viable curriculum plan with appropriate focus on core areas of learning. For primary, this includes the core subjects of English, mathematics and science and will need to support pupil progression to secondary education. For secondary, this includes but is not limited to the core subjects of English, mathematics, science, and a regard for supporting young people to achieve the English Baccalaureate;
- a clear strategy for ensuring that the needs of pupils with different abilities are met;
- a clear definition of success and how it will be measured;
- a sound approach to behaviour management and attendance;
- fostering good community relations and promote active contribution to modern British society, in line with the Equality Act; and
- if a faith school, have clear plans to encourage applications from pupils of other faiths or none.

Further Guidance

¹⁵ In order to be considered broadly based and balanced the curriculum must (a) promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and (b) prepare pupils at the school for the opportunities, responsibilities and experiences of later life.

Behaviour and exclusions: <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/>

SEN code of practice: <http://www.teachernet.gov.uk/docbank/index.cfm?id=3724>

School Admissions Code <http://www.dcsf.gov.uk/sacode>

Equality Act 2010: http://www.equalities.gov.uk/equality_act_2010.aspx

Section 5: Evidence of demand and marketing

You must demonstrate that you have sufficient parental demand for the type of provision and number of places proposed and have engaged with the wider community. Solid evidence of parental demand is a minimum requirement and you **must** provide the information required in order for your application to be considered.

Information required

Evidence of parental demand

Provide information that clearly shows the number of parents that want to send their children to your particular school, ensuring that the evidence you have collected is consistent with your stated admissions policy (eg. age range, proximity to the proposed site etc.) However, please **do not** provide us with copies of individually completed survey forms.

Tell us the questions that you asked in your survey - which should be specific to your school.

Applications for 16-19 Free Schools may wish to show demand directly from young people of the relevant age.

Demonstrate how you have - or how you intend to - make the school known and attractive to pupils from deprived or disadvantaged families.

If you are proposing a faith school you should demonstrate that you have actively engaged with parents of other faiths and none.

You may consider providing wider demographic data and evidence about local need in the area to add context to the data from your survey findings.

Consultation and equality of opportunity

For all applications that are approved, the Academy Trust will need to carry out a statutory consultation – please set out your plans for consultation as set out under Section 10 of the Academies Act 2010; in doing so, you will want to consider your wider responsibilities under equalities legislation.

Marketing strategy

Provide a plan for how you will market the school to prospective parents. You will need to be able to achieve the demand you have identified for your school so that places will be filled in each intake year going forward.

Include details of any discussions you have had with the local authority to admit pupils, although having had such discussions is not essential.

Evaluation Criteria

Minimum Criteria:

- Evidence of demand from parents with children of the relevant age equivalent to a minimum of 50% of enrolment in your first two years of operation; and
- Confirmation from parents that they would select your Free School as one of their child's choices.

Comparative Criteria:

- Demonstrate how you intend to reach out to the wider community, including children from a range of backgrounds and faiths (if relevant) and across the ability spectrum, (independent schools will need to demonstrate evidence of demand beyond their existing pupil and parent base);
- A clear plan for the statutory consultation which must be undertaken by the applicants (should the application be approved), including consideration of how you might respond to feedback; and
- A robust marketing strategy built on your educational vision and plan, taking into account your proposed intake and the demand that you have already gathered.

Further Guidance

Statutory Consultation: <http://www.legislation.gov.uk/ukpga/2010/32/section/10>

Equality Act 2010: http://www.equalities.gov.uk/equality_act_2010.aspx

Section 6: Organisational capacity and capability

You must demonstrate to us that your group / team has the capacity to set up and run a school, and has access to the relevant educational and financial expertise.

If your application is approved, we will then support you to secure additional expertise that you may need in relation to project management, ICT and sites and buildings.

Before submitting an application for a Free School, you **must** have established a Company Limited by Guarantee (also commonly known as an Academy Trust) with members and directors appropriately skilled to discharge their duties. The company number should be provided in Section 1 and copies of the registered Memorandum and Articles of Association should be appended to your application. We will not consider applications that do not have this information attached.

Information required

Capacity and capability to set up a school

Provide details of the members of the company, their particular areas of experience and expertise, and the time they are able to commit to the project.

Show that you have considered the resources, people and skills that you will need to set up a school, and in particular demonstrate that you have educational and financial expertise on your long-term team.

Identify if there are skills gaps within your group / team at present and how you propose to address these if your application is approved. This could be through the involvement of people with expertise as part of the applicant group, through voluntary partnership with a provider, or through having procured this support from another organisation (once your application has been approved and you have agreed support arrangements with the Department).

Set out plans for recruiting your school's Principal Designate (headteacher) and the role you envisage him/her playing in the pre-opening phase. *If you have already identified your preferred Principal Designate you should provide their CV and evidence of their ability to deliver your educational vision and lead your proposed school.* You should be aware that if your application is approved, you will – subject to Departmental considerations – be able to appoint a Principal Designate and two terms in advance of the school's opening date.

Set out plans for appointing a committed Governing Body with the breadth of skills needed to oversee both the pre-opening and post-opening phases.

Capacity and capability to run a school

Set out how you will have appropriate financial expertise to oversee the financial management of the school.

Set out your plans for the leadership and staffing of your school. This should reflect both the arrangements upon opening and as the school develops to full capacity, with clear delineation of roles and responsibilities.

Evaluation Criteria

Minimum Criteria:

- Company Limited by Guarantee established; and
- access to appropriate and sufficient educational and financial expertise.

Comparative Criteria:

- the experience of the individuals involved in the project, and the time they will be able to commit to it, (where you are relying on external support, you will need a clear plan for accessing that support);
- an adequate staffing structure to deliver the planned curriculum, building up from year 1 to when the school is at full capacity. You will be asked to demonstrate the financial viability of this staffing plan later in the application form in Section 8: Initial costs and financial viability;
- a robust and realistic set of plans for recruiting high quality staff and governors in accordance with your proposed staffing structure and educational plans; and
- clear understanding of the respective roles of the Company, Governing Body and Principal Designate.

Further Guidance

Companies House: <http://www.companieshouse.gov.uk/>

Procurement Guidance: <http://www.education.gov.uk/freeschools/b0073235/procurement-guidance-for-free-schools/>

Governance Guidance: <http://www.governornet.co.uk>

Section 7: Premises

You will need to set out the range of possible site options available for your Free School including details of the preferred site. This information is to allow Partnerships for Schools (PfS) to evaluate your site options. PfS are assisting Free School applicants to secure sites.

You are not required to enter into any negotiations for sites and **must not** do so at this stage. Where an application meets the minimum criteria for consideration, PfS will undertake visits to assess proposed sites for their suitability, procurement plans, and consideration of any work required. We will make an overall cost and value for money assessment of your proposed site options. You must be aware however that if it proves impossible to identify a preferred feasible site by mid-July 2011, it is highly unlikely we will be able to approve your application for opening in 2012. You should bear in mind that those applications that are able to achieve the best overall cost and best overall value for money will naturally be prioritised for approval over those that do not.

Information Required

Possible site options

Please provide brief details of the steps you have taken to search for suitable sites and what sites (if any) are available in the local area.

Details of your preferred site

Please set out (where you can):

- your reasons for choosing this site;
- the address of the proposed site;
- the current use of the proposed site;
- the current freeholder of the proposed site;
- a brief description of the site including size (in sqm) and the proposed pupil numbers; and
- the availability of the site and the nature of the tenure.

You **must not** enter into any negotiations for sites at this stage if you are hoping for Government support to purchase your site.

Capital investment

Please detail any sources of funding available to you to support site acquisition.

Evaluation criteria

Minimum Criteria:

For this section, there are no minimum criteria that must be met at the point of submitting your application; however, please note that if it proves impossible to identify a preferred feasible site by mid-July 2011, it is highly unlikely we will be able to approve your application for opening in 2012, simply because of the time available to do whatever is necessary to prepare the site for the opening of the school.

Comparative Criteria:

- We will make an overall value for money and cost assessment of your preferred site options. Applications which are able to achieve the best value for money and best overall cost will naturally be prioritised for approval over those that do not.

Further Guidance

Guidance on accommodation requirements: www.teachernet.gov.uk/curriculumanalysis

Partnerships for schools: <http://www.partnershipsforschools.org.uk> and <http://fsk.partnershipsforschools.org.uk/default.htm>

Section 8: Initial costs and financial viability

You must demonstrate that the cost of establishing your proposed school and bringing it to full capacity represents value for public money, making best use of available resources while maintaining the school's educational vision and objectives.

You will also need to demonstrate that once at full capacity, the Free School will be financially viable in the long term and sustainable within the per pupil funding which it is likely to receive. Funding for years 2012/13 and beyond is yet to be confirmed and is subject to work on the wider reform of the school funding system, so Free School funding figures for 2011/12 will need to be used when completing this section.

Information Required

Financial spreadsheet and long-term viability

You will need to demonstrate that your proposed Free School will be financially viable and sustainable within the per pupil funding that it is likely to receive once it is at full capacity ('steady state').

A **financial plan template spreadsheet** (www.education.gov.uk/freeschools) is provided as a framework to enable you to build up indicative income and expenditure academic year budgets for the proposed school from opening until pupil numbers are forecast to have reached capacity in a consistent way. You should ensure it covers a minimum of five years.

This financial plan template must be used for all proposals for primary, secondary, 16-19 and all-through Free School applications. It should not be used for proposals for alternative provision or special schools – instead, a separate template will be available for those proposals. Instructions for completing the spreadsheet are contained within it.

Your application should also include detailed assessment of how you would manage your budget and remain financially viable if only 90% of places were filled, and/or if the number of pupils eligible for Free School Meals was less than planned, as you would only be receiving funding for the pupils recruited. You might find it best to provide this as an amended version of the financial spreadsheet.

If you are assuming significant income from sources other than DfE grant e.g. third party contributions, you should provide a detailed assessment of how you would manage your budget and remain financial viable if these contributions were significantly less than expected. You might find it best to provide this as an amended version of the financial spreadsheet.

There may be uncertainties in some parts of the budgets. In these areas, you should use your current best estimates, referenced to established benchmark information where available. You should clearly state the assumptions which you have made in the appropriate place in the financial template.

Companies Limited by Guarantee, known also as Academy Trusts, are not permitted by their Funding Agreement to enter into borrowing arrangements without the specific approval of the Secretary of State. Such approval may only be granted in limited circumstances. Academy Trusts are not

permitted by their Funding Agreement to carry over excessive balances (presently 12% in total of which 2% can be revenue). Your financial plans should not therefore be predicated on your school being able to borrow or to carry over significant balances of funding from one year to the next.

Your completed financial template(s) should be submitted alongside your main application.

Start-up funding

Start-up funding is intended to enable a new school to cover essential costs when the school opens, such as employing a headteacher and buying books and equipment, where these costs could not otherwise be met by the per pupil funding initially received.

Start-up funding guidance and a template is included in the financial spreadsheet to allow you to see how much of this funding is likely to be needed by your Free School proposal. Most elements of start-up funding are calculated on a formulaic basis which is based on the number of pupils the school will have.

Formulaic elements of start-up funding include funding for books, materials and equipment, post-opening recruitment costs and some initial senior staff training. These formulaic elements will automatically complete in the financial spreadsheet once you have entered pupil and teacher number information.

There is also some funding available to meet the diseconomy of scale costs of employing senior staff when the school opens, when not all of the pupil cohorts are yet at the school. This funding is calculated on a school by school basis, depending on the way the pupil cohorts are building up and which senior staff are essential for a particular school to be able to operate. The **staffing diseconomy** lines of the spreadsheet are blank for you to complete, so you will need to estimate how much diseconomy funding your school will need as a minimum while building up your pupil cohorts. As a guide, a school which has 500 pupils and is starting with 100 pupils will have 20% of its pupils in the first year, so might expect diseconomy funding to cover 80% of the headteacher's salary in the first year. Diseconomy funding should reduce proportionately as pupil numbers build up.

Please note that independent schools becoming Free Schools will not normally be eligible for start-up funding.

Prior year audited financial statements (existing independent schools only)

Existing independent schools seeking to become Free Schools should submit their last two years' audited financial statements with their completed application form. An up to date set of audited accounts must be produced before we can approve your application. If you are unable to provide audited accounts please explain why and supply an alternative.

Evaluation Criteria

Minimum Criteria:

- Demonstrate that the proposal to establish the school represents value for money in the use of public funding - any additional funding considered necessary e.g. staffing diseconomies, above that provided through the per

pupil funding formula and any formulaic start-up funding, should be kept to the absolute essential items to provide a balanced budget whilst ensuring that the educational vision of the school can still be delivered;

- Demonstrate that the planned school will be financially sustainable once there is a cohort of pupils in each year (as an expectation, this means generating in year operating surpluses);

Comparative Criteria:

- Show that the planned school would be financially resilient to reductions in income caused by failure to recruit pupils to your best estimate recruitment pattern or failure to receive contributions from third party sources (where these are expected to be significant) - as a minimum, this means demonstrating that there is sufficient flexibility in the budget so that the school will be able to realistically change its expenditure to keep within reduced levels of income, without detriment to the delivery of the educational vision;
- Financial plans that are consistent with other aspects of the application and are based on supportable and realistic assumptions about income and expenditure; and
- For existing independent schools, show that the existing school has a good track record of financial management and that there are no other existing financial issues which would impact on the transfer to academy status.

Further Guidance

Academy Financial Handbook – http://readingroom.ypla.gov.uk/ypla/ypla-academies_financial_handbook-gn-nov06.pdf

Visit the Schools Benchmarking website to see examples of maintained school finances:
<https://sfb.teachernet.gov.uk/Login.aspx>

V1.2

© Crown Copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

Your complaint to the ICO about the Dept for Education[Ref. FS50415927]

casework@ico.gsi.gov.uk 

26/10/2011

to richy@humanism.org.uk

26 October 2011

Case Reference Number FS50415927

Dear Mr Thompson

Further to our acknowledgment of your complaint against the Department for Education ("DfE") I am writing to inform you that your case has now been allocated to me to investigate.

In order to reach a decision as to whether the Freedom of Information Act ("FOIA") has been correctly applied, I will need to carry out a thorough investigation. This may take me some time as I will need to ensure that I am aware of all the relevant facts and that I carefully consider the application of the law to those facts.

Where possible the Information Commissioner prefers complaints to be resolved by informal means. If this does not prove to be possible, he will usually issue a Decision Notice to you and the public authority once an investigation has been completed. This will inform you of his decision and the reasons for it.

Where the Commissioner decides that a request has not been handled properly he may specify what steps he believes are necessary to remedy the situation. This can include requiring a public authority to release information which has previously been withheld. A copy of the Decision Notice will be placed on our website (with your details omitted). If you disagree with the decision that has been reached you have a legal right of appeal to the Information Tribunal.

Your request

From the information which has been provided to us, I understand that you made a request to DfE on 21 June 2011 for:

"A list of Free School proposals received by the Department for Education, including the 323 received during the first wave and the 281 received during the second wave, giving for each:

- *The name of the project*
- *The local authority/area of the proposed school*
- *The previous name (if applicable) of the proposed school*
- *The faith (if any) of the proposed school*
- *Whether the proposal was received in the first wave or the second wave"*

The DfE responded on 22 July 2011 providing links to its website where lists of approved proposals from the first wave were available as well as breakdowns of second wave applications by faith groups and regional areas. DfE also explained that a list of successful second wave applications would be published later in the year but information on unsuccessful applications was being withheld under section 36(2)(c) of the FOIA (disclosure would prejudice the effective conduct of public affairs).

You requested an internal review of the public authority's decision on 1 August and on 8 September the DfE wrote to you with the result of the internal review it had carried out.

In their response DfE cited section 21 of the FOIA (information accessible by other means) as links had already been provided to information on DfEs website in response to the request. DfE also relied upon section 22 (information intended for future publication) as detailed business plans for all successful applicants and the names of successful applicants in the second wave would be published in the autumn.

DfE did provide a breakdown by faith of applications in the first wave but continued to withhold the names of unsuccessful applicants under section 35(1)(a) of the FOIA (information relating to the formulation or development of government policy).

The scope of the case

The focus of my investigation will be determine whether the DfE were correct to withhold the names of the unsuccessful applicants in the first and second waves under section 35(1)(a) or section 36(2)(c).

Your request was also for the faith and area of the proposed school but as a breakdown by faith and regional area has been provided and information can be accessed through the DfEs website I am proceeding on the basis that this part of your request has been satisfied. If this is not the case please let me know by 9 November otherwise I will continue on the basis that the outstanding part of your request which you want investigating is the refusal to disclose a complete list of proposals received in the first and second waves, including unsuccessful applicants.

Next steps

The process of reaching a decision may take some time but I will update you on the progress of the investigation as appropriate but at least every 6-8 weeks. However, if you have any queries at any time you are welcome to write to me at the above address, at casework@ico.gsi.gov.uk (please ensure that you quote the above case reference) or by telephoning me on 01625 545509.

It may not be possible for me to respond to enquiries immediately due to other work commitments but I will endeavour to provide a response as promptly as possible and will ensure that a response is provided within 14 working days of the receipt of any enquiry.

Yours sincerely

Jill Hulley
Senior Case Officer
Complaints Resolution

The ICO's mission is to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

If you are not the intended recipient of this email (and any attachment), please inform the sender by return email and destroy all copies. Unauthorised access, use, disclosure, storage or copying is not permitted. Communication by internet email is not secure as messages can be intercepted and read by someone else. Therefore we strongly advise you not to email any information, which if disclosed to unrelated third parties would be likely to cause you distress. If you have an enquiry of this nature please provide a postal address to allow us to communicate with you in a more secure way. If you want us to respond by email you must realise that there can be no guarantee of privacy. Any email including its content may be monitored and used by the Information Commissioner's Office for reasons of security and for monitoring internal compliance with the office policy on staff use. Email monitoring or blocking software may also be used. Please be aware that you have a responsibility to ensure that any email you write or forward is within the bounds of the law.

The Information Commissioner's Office cannot guarantee that this message or any attachment is virus free or has not been intercepted and amended. You should perform your own virus checks.

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
Tel: 0303 123 1113 Fax: 01625 524 510 Web: www.ico.gov.uk

BHA press release on Christian Schools' Trust Free School proposals, 19 December 2011

<http://www.humanism.org.uk/news/view/951>

More creationist Free Schools planned for 2013 opening

More Free Schools are being planned for opening in 2013 by creationists or groups with links to a creationist organisation, the British Humanist Association (BHA) has learned. The BHA has concerns about proposals in Bedford and Barnsley, in addition to plans in [Sheffield](#) and [Newark](#) that the BHA had commented on earlier this year.

In Bedford, [Destiny Christian School](#) is being proposed by the Miracle Church of God in Christ, and if approved to open, will be a member school of the [Christian Schools' Trust](#) (CST). At an open meeting attended by a BHA supporter, the group were asked about their policy on creationism and responded that they believe creationism is science and intend to teach it as such.

In Barnsley, the independent [Barnsley Christian School](#) is hoping to enter the state sector as a Free School. Like Destiny Christian School and [Sheffield Christian Free School](#), Barnsley Christian School is a member of the CST. The CST is founded by creationist [Sylvia Baker](#), author of *Bone of Contention*, and while not every CST school advocates creationism, the organisation as a whole [has a statement](#) explaining that the organisation is creationist and recommending the teaching of creationism in its member schools.

The BHA has already commented on applications to open a Free School in 2013 by [Sheffield Christian Free School](#) and [Everyday Champions Church](#), who are also creationist groups. In November, Everyday Champions Church [had a meeting](#) with officials at the Department for Education (DfE) to discuss why their application to open in 2012 was rejected, and their local MP, Patrick Mercer, additionally met privately with Secretary of State for Education Michael Gove to voice his support for the bid.

Other creationist groups have also applied to open Free Schools in the past, without their views on creationism getting public exposure. One example is [The King's School](#) in Nottingham, another CST school that [openly teaches creationism in science](#), also previously applied to open a [Free School](#), both in 2011 and a second time in 2012, though it is unclear if the school intends to apply again in 2013.

BHA Chief Executive Andrew Copson commented, 'It is easy to see the appeal of Free Schools to certain religious groups, not only because they have freedom to discriminate in employment and admissions but because of the considerable latitude they have over the syllabus taught, which would in practice permit schools to promote religious dogma in place of objective teaching on issues such as creationism. Even more concerning is that so many groups with openly creationist positions believe they have a chance of receiving government approval for their schools to open within the state sector as Free Schools.'

'In supporting and coordinating the ["Teach evolution, not creationism!"](#) position statement, we are calling on the government to make statutory and enforceable the current guidance that creationism and 'intelligent design' should not be taught as science in schools, and to ensure that all state-funded schools must teach evolution. Without such measures, the risk that one of these creationist schools will gain approval to become a Free School remains.'

Notes

For further comment or information, please contact [Andrew Copson](#) on 07855 380 633.

Read the Christian Schools' Trust's '[Statement concerning: The place of the teaching of the Creation/Evolution debate and Intelligent Design in schools affiliated to the Christian Schools Trust](#)', pages 354-356. The statement explains that *'The Christian Schools Trust affirms a high view of God as the Creator and sustainer of the Universe and of all living things. It categorically rejects the notion that living things have come into being by a random and purposeless process in which God has played no part. It rejects the idea that living things came about by a process involving the death and destruction of mutated creatures and affirms the belief, held by many scientists both past and present, that nature provides abundant evidence of the hand of a Designer.'*

Discussing the secondary curriculum, the statement explains that *'ideally, by the time students reach Years 10 and 11 they will have been fully exposed to the creation/evolution debate. Evidence for and against the theory of evolution will have been evaluated and discussed and they will have been made aware that many, probably most, of today's scientists support the theory. However, it will also have been pointed out that many well-qualified scientists oppose it or dissent from it in some way. The role taken in the development of modern science by Christians such as Kepler, Boyle, Newton, Linnaeus, Faraday and Mendel will have been emphasised and it will have been noted that some of these, including Isaac Newton and Carl Linnaeus, held essentially the same position as today's Young-Earth 'creationists.'*

[Read more about the BHA's campaigns work on countering creationism.](#)

Read the 'Teach evolution, not creationism!' statement from scientists including Sir David Attenborough, Professor Richard Dawkins and Professor Michael Reiss, the British Humanist Association, the Association for Science Education, the British Science Association, the Campaign for Science and Engineering and Ekklesia at <http://evolutionnotcreationism.org.uk/>

View the BHA's government e-petition on the same subject, which with over 18,000 signatures is one of the most popular on the site, at <http://epetitions.direct.gov.uk/petitions/1617>

In addition to the freedoms discussed above, there are further reasons why Free Schools are attractive to religious groups. Like most other maintained 'faith' schools, religious Free Schools can be approved without two things groups would previously have needed to set up a maintained 'faith' school. First, proposals for maintained schools undergo open local scrutiny and are likely to require local authority support in order to gain approval to open. On the other hand, Free School bids do not need local authority approval, and are only announced to the public once they have support from the DfE, by which point they are very likely to gain approval to open. Second, maintained school proposers often agree to invest substantial capital into setting up the schools, which these groups can't afford, whereas Free School proposals need no financial investment from the proposer.

The British Humanist Association is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. It promotes a secular state and equal treatment in law and policy of everyone, regardless of religion or belief.

BHA news item on Exclusive Brethren Free School proposals, 13 September 2012

<http://www.humanism.org.uk/news/view/1114>

Over the last two years, at least 15 private schools run by the Exclusive Brethren have applied to the Department for Education (DfE) for Free School status. The British Humanist Association (BHA) has expressed concern that the beliefs of the Brethren may have trouble fitting in with mainstream education, and welcomes the rejection of the proposals by the DfE.

The [Focus Learning Trust](#) is a network of [39 private schools](#) that teach in line with beliefs of the Exclusive Brethren. Schools from within the network known to have applied to open as Free Schools in 2013 include [Wilton Park School](#), [Surrey Hills School](#) and [Northmoor School, Cottingham](#). In addition, the DfE also received bids to open in 2012 from [Tamar Valley School](#), [Sefton Park School](#), [Eastbrook School](#) and [Highfield School](#), and in an unstated year, from [Ashton Park School](#), [Copeswood School](#), [Highcombe Edge School](#), [Prospect School](#), [Highview School](#) and [Moordale School](#).

[Hornby Park School](#), run by the Brethren Christian Fellowship, also applied to open in 2013, and [Focus School - Berkeley Campus](#), run by the Prospect Education Trust, announced last week that it is applying to open in 2014.

The Focus Learning Trust twice [met with](#) junior schools minister Lord Hill of Oareford in late 2010, to discuss coalition support for Free Schools. The Trust's schools are inspected by their own body, the School Inspection Service (SIS), which in turn is inspected by Ofsted. SIS also inspects Steiner schools.

BHA Faith Schools Campaigner Richy Thompson commented, 'We have a number of concerns about what is contained within the curriculum of these schools. They do not appear to offer ICT GCSE, but instead teach it within "Focus Learning Trust guidelines"; this is because they see technology as a potentially corrupting influence, and for many this leads them ill-equipped to deal with the outside world. They also do not offer standard Religious Education, but instead teach narrower "Bible Studies". Many Exclusive Brethren groups are also creationist, so we would be concerned about the science taught in the schools. Finally, the Brethren view sex as corrupting, and homosexuality as immoral, so the Personal, Social, Health and Economic (PSHE) Education is likely to be of a very subjective nature.

'We are also concerned that many of the applying schools' websites do not state their links to the Brethren, instead just stating they have a Christian ethos. And none of them mention their link to the Exclusive Brethren, who are even more secretive than the more common Plymouth Brethren. As a result, we are concerned that many parents who indicate support for the proposals will not realise what they are endorsing.

'We are pleased that the Department for Education has rejected all Free School bids from Exclusive Brethren groups.'

Notes

For further comment or information, please contact [Richy Thompson](#) on 020 7462 4993.

Read more about the BHA's campaigns work on 'faith' schools:

<http://www.humanism.org.uk/campaigns/religion-and-schools/faith-schools>

View the BHA's table of types of school with a religious character:

http://www.humanism.org.uk/_uploads/documents/schools-with-a-religious-character.pdf

Read a list of 2013 Free School bids identified by the BHA:

<http://www.humanism.org.uk/news/view/995>

The British Humanist Association is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. It promotes a secular state and equal treatment in law and policy of everyone, regardless of religion or belief.

The Guardian, 6 July 2012

<http://www.guardian.co.uk/politics/2012/jul/06/freedom-information-victory-free-schools>

Free schools campaigners celebrate freedom of information victory

Education department ordered to release free schools proposals amid humanist concerns over 'pseudoscientific' institutions

Hélène Mulholland

guardian.co.uk, Friday 6 July 2012 22.55 BST



Free schools victory – Disclosure could lead to speculation about why a proposal was unsuccessful, the education department has warned. Photograph: Bubbles/Alamy

The Department for Education has been ordered to release details of all proposals to establish free [schools](#), after a complaint by the British Humanist Association over an unsuccessful [freedom of information](#) (FOI) request lodged in June last year.

The BHA asked for the release of the information amid concerns that the additional freedoms afforded to [free schools](#) could lead to a rise in religious discrimination within the state-funded sector, and see a growth in what it considers "evangelical and pseudoscientific schools".

It argued that since applications were only known once successful, the public had been denied a chance to scrutinise the bids, and requested a list of all free school proposals – including unsuccessful ones – in the first and second wave since the policy was introduced in 2010.

The [Information Commissioner's Office \(ICO\) ruled](#) there were "very strong" public interest grounds to publish.

Education secretary Michael Gove's department argued against disclosure under a section of the FOI Act, initially on the grounds that such a move would be "prejudice of effective conduct of public affairs". The DfE subsequently argued for exemption on the grounds that the information related to the formulation or development of government policy.

The department argued that unsuccessful proposals could be improved and successfully resubmitted and that the release of earlier failed proposals could attract negative publicity and deter proposers, thereby reducing choice for parents and pupils.

Disclosure could also lead to speculation about why a proposal was unsuccessful, such as whether the proposed area or religious character of the school was a factor, and this could increase local tensions and deter other proposals, said the DfE.

But the ICO said the public interest factors in favour of disclosure were "very strong".

"The withheld information relates to the practical application of a new national education policy and the expenditure of public money," the decision notice stated. "There is a very strong public interest in providing the public with information about free school applications, both on a national and local level. The disclosure of this information would help to increase the transparency of the programme, help public understanding and enable participation."

While acknowledging there were valid public interest arguments for maintaining the exemption, it concluded these were outweighed.

BHA [faith schools](#) campaigner Richy Thompson welcomed the ruling. "The BHA campaigns against state-funded faith schools, and an important part of being able to do this effectively is being able to identify who is applying to set them up," he said. "This year we have been trying to identify all free school applications, but have only been able to identify about two-fifths of the groups that applied – the majority of groups are simply unknown to the public at large.

"It is hard to know how the public is able to scrutinise these proposals if we don't even know about them in the first place. By the time free schools are 'pre-approved' to open by the DfE and publicly listed, it is often too late to stop them."

The DfE has 35 days to comply or appeal. A spokesperson said: "We are currently considering the ICO's decision, and will respond in due course."

The decision follows a separate ruling in May instructing the DfE to publish a list of proposed university technical colleges and 16-19 free schools.

The Guardian, 18 July 2012

<http://www.guardian.co.uk/education/2012/jul/18/free-school-withdrawn-lack-parent-interest>

East London free school withdrawn due to lack of parent interest

Newham Free Academy, one of coalition's flagship free schools, unable to prove demand for scheduled opening in September

[Jeevan Vasagar](#), education editor
[guardian.co.uk](#), Wednesday 18 July 2012 18.06 BST
[Jump to comments \(253\)](#)



Education secretary Michael Gove on a school visit. Newham Free Academy in east London has been withdrawn from the programme due to lack of parent demand. Photograph: Eddie Mulholland / Rex Features

One of the coalition's flagship free [schools](#) has collapsed weeks before it was due to open, apparently because there was too little demand from parents.

The [Newham Free Academy](#), in east [London](#), which advertised a "no-frills high-quality traditional education" and was preparing to open in September, has been withdrawn from the [free schools](#) programme, ministers have confirmed. Free schools are meant to prove evidence of parental demand before winning approval to set up.

Schools which receive approval are given state funding for the costs of building or converting premises.

The Department for Education has published [details](#) of the capital costs for the first wave of free schools, ranging from £177,500 to convert a private school to £6m for a primary school in north London.

The government also provides funds, known as "lead-in costs" so that the school's backers can develop detailed plans, including drawing up a curriculum, and recruit a headteacher.

The collapse of the Newham school emerged after the shadow education secretary, Stephen Twigg, asked, in a [parliamentary question](#): "How many pupils have applied to join the Newham Free academy in September 2012?"

The schools minister, Nick Gibb, replied: "Following careful consideration, we have judged that the proposal to establish Newham Free academy has not progressed sufficiently for it to proceed to opening and it has been withdrawn from the free school programme."

The school was due to open with 180 places in each year group, and its founders claimed to have "developed large community links in Newham with many parents and families worried about secondary school provision in their local area."

The collapse of the school underlines concerns that the free schools programme is not sufficiently focused on areas of need.

A [study by the thinktank RSA](#) recently described free schools as an "unguided missile". It said: "The impact of free schools would be enhanced if they were developed strategically in localities where new places are needed or where there is school failure, rather than investing in extra capacity in areas where the school system is performing well." In 2011 57% of 16-year-olds in Newham's state schools achieved five GCSE passes including English and maths, just below the national average of 58.9% – a remarkable achievement in the second most deprived borough in the country.

Labour has accused [Michael Gove](#), the education secretary, of focusing on "pet projects".

Twigg said: "We have learned today that another free school plan has collapsed at the 11th hour – just weeks before the school was due to open. At a time when education funding is being cut by the biggest amount since the 1950s, the government must explain how much money has been spent on failed projects like these.

"Ministers need to get a grip on this programme to ensure money is not wasted on projects that are unlikely to succeed."

It emerged last month that Beccles Free school in Suffolk had [just 37 applications](#) for children to join in September. Demand is critical because funding depends on the number of pupils a school attracts.

The Newham school is backed by a private organisation, Redeemer Educational Services Ltd. The school's founders are listed on its website as Funmi Gbadeyan, a former headteacher and science teacher, and Sade Bright, a former councillor in Hackney, east London.

The school's website declares: "We are an ordinary group of people, parents and families who wish to open a new secondary school in Newham."

The school planned to make French, German, Spanish or Mandarin compulsory to 16, and all pupils would have done at least eight GCSEs, including history and science.

The backers proposed to divide pupils into houses to "foster interaction, unity, promote leadership skills and competition". It is not clear whether the school had found a site before it was dropped from the free schools programme.

The school's founders did not respond to a request for comment.

Bradford free school One In A Million has funding cut



A free school in Bradford has had its government funding withdrawn a week before it was due to open after it failed to attract enough pupils.

The One In A Million Free School was set to open in the grounds of Bradford City football club on 3 September.

It had a target of an initial intake of 50 pupils but had only enrolled 30.

The Department for Education (DfE) has asked the charity-run school to defer opening until 2013. Parents said the decision was a "devastating blow".

The project was a collaboration between the One In A Million charity co-founded by former Bradford City player Wayne Jacobs, the football club and the DfE.

'Completely baffled'

It involved equipping a building next to Bradford City's Valley Parade stadium and has already cost the taxpayer £213,000.

Mr Jacobs said: "We are completely baffled and stunned at this decision by the DfE and absolutely devastated for the parents, children and staff of the One in a Million Free School."

The charity said it had been assured by the DfE in June that its funding was "all on track for sign-off" by Education Secretary Michael Gove.

However, it was told last Friday the DfE had decided to recommend the funding was not approved.

Free schools are run by faith organisations, parents' groups or charities. They are independent of local authority control and funded by central government.

The DfE said: "Before any new schools open their doors, we have to be sure that all the conditions we set have been met.

"Setting up a free school is a difficult task and we thank One In A Million for all their hard work. We still hope that One in a Million will open in 2013."

An online petition has been set up by parents who have been left with less than seven days to find alternative schools for their children.

'Callous and cruel'

Bradford Council said all 30 children would be found local authority school places.

Parent Janet East, who launched the petition on a social networking site, said: "This news that the government has decided not to go ahead with funding this great school has come as an enormous devastating blow.

"We would like to show the government how disgusted we all are with the decision not to fund at such a late stage in the academic year, when it is not possible now to look at alternative schools, get new uniform, sort out transport and child care.

"My son James and others are expecting to be starting school [on Monday]. James has additional needs and there is not another school in this area that is suited to James' needs."

David Ward, Liberal Democrat MP for Bradford East, said: "It is callous, cruel and quite stupid in my view and incredibly unfair on the parents and children and One in a Million.

"They have put heart and soul into this."

TES, 15 June 2012

<http://www.tes.co.uk/article.aspx?storycode=6256558>

21 for, 3,000 against - but free school will go ahead

news | Published in TES magazine on 15 June, 2012 | By: Richard Vaughan

Approval of Beccles proposal labelled a 'tragedy' by local head

Opponents of one of the country's most controversial free school proposals have vowed to appeal against the decision by ministers to approve the plans, describing it as an "extraordinary waste of public money".

Beccles Free School in Suffolk was finally approved by the Department for Education at the end of May after a long and, its biggest critics say, "grubby" battle was fought to prevent the school from opening its doors in September.

Schools minister Lord Hill gave the proposed secondary the green light despite an official consultation into its viability showing that it was supported by just 21 parents in the area.

Jeremy Rowe, headteacher of Sir John Leman High School, a recently converted academy that will be directly affected by the school opening, labelled the decision a "tragedy", pointing to a petition signed by more than 3,000 people as proof that Beccles Free School was not wanted locally.

"It's an extraordinary decision, especially when you consider the weight of public opposition to the free school," Mr Rowe said. "Even the local Tory MP came out against it. Just 21 parents have brought this school into being, and they have done so because it is a Tory pet project."

Mr Rowe claimed it would be "impossible" for two secondaries to be successful in a town with a population of just 9,000, adding that the creation of a new free school could mean Sir John Leman will be forced to reconsider its curriculum.

"There is no way that we will be able to maintain everything we offer as a school if another opens up around the corner," the head said. "It's an absolute tragedy. We will appeal the decision, but people now have little faith that they will be successful. After all, it is the government that they are fighting against, and they are despairing over it."

The conflict over the Beccles proposal has become increasingly bitter since the plans were put forward last year by parents backed by private school charity the Seckford Foundation.

At the very start of the application, the bid team proposed to establish the Beccles Free School in buildings already promised to Sir John Leman - a move that was heavily opposed.

But the row grew even more heated earlier this year after it transpired that the man appointed to act as an independent adjudicator as part of the public consultation on the free school's viability was later hired as the school's executive principal.

Commenting on the fact that just 21 parents supported the plans in the consultation, the DfE said that the questionnaire was "just one way" in which people were able to contribute their views, adding that it felt the school would "improve choice for parents in the community".

"All Free School groups must give evidence of demand for their proposed school, in order to be approved," a DfE spokesperson said. "Parents also contacted Suffolk County Council and the Seckford Foundation to register expressions of interest."

The decision was heavily criticised by the NUT, which said that free schools are "causing havoc" in the education system. Christine Blower, NUT general secretary, added that the decision called into "serious doubt" the process by which education secretary Michael Gove exercises his legal responsibility to take into account the impact of any new school on its neighbours.

"There is no shortage of secondary school places and a new school opening up could succeed only by undermining the excellent Sir John Leman High School," Ms Blower said.

Graham Watson, director of the Seckford Foundation, said: "We were pleased to receive approval from the government ... The new school will cater for all pupils and will provide a real alternative to parents for the future education of their children."

AS IT HAPPENED

February 2011 - Beccles Free School application submitted

October 2011 - the Department for Education gives the school the nod

November 2011 - a row breaks out over the free school site

January 2012 - Sir John Leman High School wins the fight to use the proposed site for two years

January 2012 - a consultation is launched into the viability of Beccles Free School after the site move

April 2012 - the man who refereed the public consultation is hired as Beccles' executive principal

May 2012 - the government approves Beccles Free School for a second time

June 2012 - opponents, led by Sir John Leman head Jeremy Rowe, vow to appeal.