

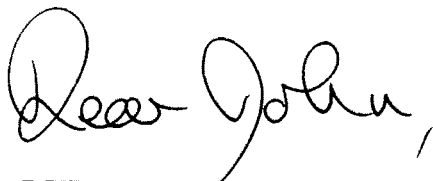
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9 December 2014

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**DURAND EDUCATIONAL TRUST**

Many thanks for the meeting last night: it seemed to me to open up the issues (!) and I hope you also thought it cleared the air a bit. I certainly felt that it did – and not before time I think we might all say!

We were puzzled that our core advice – that DET is not an exempt charity but a registered one – had not got through to you at a much earlier stage. Believe me, there was no intended discourtesy on our part in that. As I think you have recognised, it is charitable issues that are central to the difficulties inherent in the proposal made to Durand and they do not appear to have been given proper attention by any of the parties.

DET thought it might help things move forward swiftly now if I briefly set out for you the outlines of the way forward I was proposing last night on its behalf. That will give your lawyers something to consider and come back to us on. I hope it's helpful.

1. The basis is that DET is a perfectly normal site trust just like the 7,500 or so that exist for church (and non-church) voluntary schools, foundation schools and academies. It is not (and despite misunderstandings never was) a foundation body for foundation schools created under the School Standards and Framework Act and hence an exempt charity. The latter are very rare and specific beasts of which (I am reliably informed) there never were more than two or three. It should always in fact have been registered because the level of its income has always been above the threshold. It is answerable directly to the Charity

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Commission and the Secretary of State/EFA is not its Regulator just as she is not the Regulator of the rest of the thousands of these trusts.

2. So essentially our proposal is that we proceed just as would be the case for a voluntary school or a church academy changing site. That seems to us to be the key.
3. The procedures for voluntary or foundation schools are statutory and set out currently in the School Standards and Framework Act 1998, the Education and Inspections Act 2006 and the Regulations that depend on them. In brief either the private trustees sell their site and buy a new one (the normal Voluntary Aided position) with the Secretary of State providing any necessary top-up grant and enabling the inevitable cash-flow, or the state (either the Secretary of State or more often the Local Authority) provides a new site and gains in return the proceeds of sale of the old one. The latter is the norm for Voluntary Controlled and foundation schools. All this is set out in the SSFA. Church academies have to "do a deal" along similar lines though of course there have been few of these as yet. We are in discussion with your officials about details of how such agreements could be made easy to reach and indeed I believe you may have been briefed on some of the issues that have arisen. Your officials in the Schools Assets Team and VA Capital Team or in Susan Acland-Hood's immediate team can I am sure assist you in getting fuller picture of the statutory processes or indeed of course so can we. Our most recent extensive discussions were with Qiraat Ghory. She has moved on to another post, but Susan and also Gila Sacks and David Shand are all I think aware of them.
4. The legal principles underlying this arise from the 1944 Education Act settlement between the state and the churches and from the 1946 Education Act which put much of the detail in place. Indeed the crucial wording about freehold transfers has been identical from 1946 until today. There is an interesting statement in parliament by the 1946 Minister for Education which refers to the need for such arrangements in order to safeguard the charitable position and private assets of the site trustees. That is exactly the point.
5. What we suggest in the case of Durand therefore is that we follow those principles. The Secretary of State buys the new site and transfers the freehold to DET as would be required by statute if this were a voluntary school. In return DET sells the existing St Cuthman's site (at a point agreed with you so as to maximise the sale proceeds) and you are entitled to them. There needs to be a Memorandum of Agreement between DET and yourselves to record what has been done so that it is clear that the new site is publicly funded land and that on acquisition £X of public money went into the purchase of the site £Y of private money went into the purchase of the site and £Z of public money went into the building works. Then on any future disposal the Memorandum gives a basis for determining the respective public and private values. Your Department has published extensive guidance

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(2007) about how this is done. The trustees would normally put money into the land, not into the building works, but in the VA model there can be 10% of private money (from the trustees or from private local fund-raising) going into the capital works. There is surely room for discussion in this case as to the best and most effective use of the private funds. This model does not run to the trustees providing more than 10% of the building works but I think that the normal statutory balance would enable you to have in effect a 10% contribution to the capital costs and (depending on what can be afforded) the rest of the sale price towards the land purchase if that was the way you wanted to play it. That also would be recorded in the Memorandum. There would need to be discussion as the project moved forward to ensure the best use of the proceeds of sale or indeed about when and even whether to sell (it might be possible that all parties thought it best to let the high level of income generation that DET plans to put in place on the St Cuthman's site continue) but the basis would be that the proceeds of sale were due to you and that at a point when you felt that appropriate value could be achieved St Cuthman's would be marketed.

6. That in brief is our proposal. It protects public value as well as private value and enables the site trustees to fulfil their duty to their trust. Agreeing it would enable the purchase of the new site to proceed without any further delay.
7. In the meantime DET is today asking Tom Cornwell to take the actions he outlined to make DET the sole owner of LHL, and DET and LHL can settle with the Charity Commission a way forward for managing DET's assets so as to provide the level of private income that is going to be required to meet DET's obligations set out above and (even more important) to secure the boarding project into the future. Making the boarding viable is I know the primary objective that the DET trustees are setting themselves.

I hope very much that this way forward commends itself to you and look forward to a discussion with your legal advisers or other officials to put it into swiftly into place.

With kind regards.

Yours sincerely



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