

KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY:

Rory Love

Cabinet Member for Education and Skills

DECISION NUMBER:

24/00097

For publication [Do not include information which is exempt from publication under schedule 12a of the Local Government Act 1972]

Key decision: YES

Key decision criteria. The decision will:

- a) result in savings or expenditure which is significant having regard to the budget for the service or function (currently defined by the Council as in excess of £1,000,000); or
- b) be significant in terms of its effects on a significant proportion of the community living or working within two or more electoral divisions – which will include those decisions that involve:
 - the adoption or significant amendment of major strategies or frameworks;
 - significant service developments, significant service reductions, or significant changes in the way that services are delivered, whether County-wide or in a particular locality.

Subject Matter / Title of Decision

Special School Review

Decision:

As Cabinet Member for Education and Skills, I agree to:

- a. Commence the statutory prescribed alterations process by publishing a notice of proposed changes to the designation of specific special schools maintained by Kent Council, which are affected by the Special School Review;
- b. Delegate authority to the Director of SEND to issue the Public Notice;
- c. Request that specific Academy Trusts affected by the Special School Review apply to the Secretary of State under the 'making significant changes to an academy' process to change the type of SEN provision made in the special Academies affected by the Special School Review, and to confirm that KCC will support that application;
- d. Introduce a school-to-school support model for mainstream and special schools in Kent to collaborate through outreach and/or in-reach arrangements; and
- e. Delegate authority for the Director of SEND, in consultation with the Cabinet Member for Education and Skills to take relevant actions including but not limited to entering into relevant contracts or other legal agreements as required, to implement the decision.

Reason(s) for decision:

Kent County Council (“**KCC**”) has a duty to plan sufficiency of school places for all children and young people, including those with SEND. As part of its programme to transform SEND provision across the county, KCC is planning special education needs (“**SEN**”) provision for children across mainstream schools, specialist resource provision in mainstream schools (“**SRP**”), and special schools. Through its planning, KCC is seeking to ensure that children in Kent have access to suitable education within or near their local community.

In mainstream schools, KCC has defined, clear expectations for supporting children with SEN through its mainstream core standards. In SRPs, places have been planned for children with special

educational needs who have an Education, Health and Care Plan (“EHCP”) and can follow a mainstream curriculum with reasonable adjustments, specialist input and/or adaptations. KCC is also planning sufficiency of placements in special schools for children with an EHCP who have severe and complex special educational needs and require an adapted curriculum.

A comprehensive review of special school provision in Kent has not taken place since 2001, and the last review of special school funding occurred in 2010. The current system in Kent is insufficient to achieve KCC’s objective of ensuring that children in Kent have access to suitable education within or near their local community. KCC’s educational planning for children in Kent with SEN is firmly anchored in a values-based approach, that prioritises the needs and well-being of all children and young people with SEN across Kent’s state-funded education settings.

The proposals are based in values of equity, local responsibility for children and young people and their preparation for adulthood. These values have informed proposals to meet children and young people’s needs locally with suitable education provided as close as possible to a child’s home; provide equity of access to special education provision with a commitment to ensuring a child’s access to special educational needs provision is not determined by where they live; provide appropriate and equitable levels of funding so that special schools are able to meet the needs of the children they are expected to provide for; and a commitment to focus on pupil outcomes with an emphasis on progression to independence in adulthood.

The current system is also financially unsustainable, with KCC excessively relying on high-cost places in the private sector, which is insufficient to meet challenges the special school sector in Kent faces today. One of the key intended outcomes of the special school review is to enable the LA to meet its medium to long-term planning for a financially sustainable special school model.

Currently KCC is facing an unsustainable financial position and is one of the Local Authorities participating in the DfE’s Safety Valve Programme. The DfE Safety Valve Programme is designed to eliminate KCC’s deficit in its Dedicated Schools Grant by the end of 2027-2028. By this agreement with the DfE, KCC has agreed to implement a DSG management plan. The plan includes action to implement the Countywide Approach to Inclusive Education (CATIE), by improving the SEN offer in mainstream provision (which is also the subject of a separate consultation) as well as ensuring there is sufficient and consistent capacity across the county to support children with the most severe and complex needs in a special school their local area where possible. The Special School Review undertaken by KCC is a critical part of the wider reforms needed to ensure the Council can provide suitable education for all children with SEN, within the resources available.

By making changes in mainstream schools and SRPs in Kent, and medium-long term planning for children with severe and complex SEN being educated at special schools, KCC aims to reduce its reliance on the private special school sector. Currently, the annual cost of a place at a private special school is nearly double that of a state-funded special school place, making it crucial for KCC to transition towards more strategically planned and cost-effective solutions that meet the needs of all children with SEN.

On 16 May 2024, the outcome of the Special School Review was presented to the Children, Young People and Education Cabinet Committee as part of KCC’s system wide transformation projects alongside the Locality Model for Special Educational Needs Inclusion (now known as Communities of School) and the SRP Review. The Cabinet Committee agreed to proceed with a public consultation on proposed changes to the designation of publicly funded special schools in Kent, and proposed changes to admissions guidance for certain special schools.

The public consultation ran from 19 June 2024 to 14 August 2024, and has now closed. The consultation focussed on proposed changes to the designations and admissions guidance for certain special schools in Kent, and a new proposed school-to-school support model in Kent. Consultees

were also asked to provide feedback on KCC’s expectations statement for how special school places should be planned (which is consistent with the requirements of the Children and Families Act 2014 (“**CFA 2014**”)).

The consultation made clear that if KCC decided to move forward with the proposals, following consideration of the consultation feedback received, the next step would be to commence the statutory prescribed alteration procedure in relation to changes to SEN designation of KCC maintained schools. In relation to special Academies, KCC does not have any power to make changes to the type of SEN provision provided. The consultation therefore made clear that, if KCC decided to move forward with the proposals, the next step in relation to special Academies would be for KCC to the relevant Academy Trust(s) apply to the Secretary of State to approve the proposed changes under the ‘significant change’ mechanism which applies to academies.

The responses to the public consultation have been analysed, a report has been prepared for the Cabinet member which summarises those consultation responses. The Cabinet member will carefully consider that report before taking any decision.

The recommendations are that the Cabinet member agrees as follows:

1. Prescribed alterations (maintained schools)

KCC will proceed to publish a statutory notice of proposed changes to the type of special educational needs for which the school is organised to make provision, for the following special schools:

| School Name | Current Designation | Proposed Designation |
|-----------------------|---|--|
| Broomhill Bank School | Communication and Interaction | Neurodivergent and Learning Difficulties |
| Grange Park School | Communication and Interaction | Neurodivergent and Learning Difficulties |
| Laleham Gap School | Communication and Interaction | Neurodivergent and Learning Difficulties |
| Stone Bay School | Communication and Interaction with Severe Learning Difficulties | Profound, Severe and Complex Needs |
| Valence School | Physical Disabilities and Complex Medical Needs | Profound, Severe and Complex Needs |

A formal consultation and representation period will run for 4 weeks following publication of the statutory notice. Any representations and/or objections received in relation to the changes proposed will be considered by KCC before a final decision is taken on whether to proceed with the change in the type of special educational needs for which the school is organised to make provision. If the changes are adopted, then admissions guidance for the schools will also be amended to reflect the change.

2. Academy Trusts

KCC will proceed to request that the Bourne Alliance Multi Academy Trust and the Leigh Academies Trust respectively apply to Secretary of State to make changes to the type of SEN provision in the following special Academies:

| School Name | Current Designation | Proposed Designation |
|-------------|-------------------------------|--|
| Aspire | Communication and Interaction | Neurodivergent and Learning Difficulties |

KCC will support any such application. If the Academy Trusts agree, the steps in the applicable significant change process for academies will be followed, and a decision will be taken by the Secretary of State for Education. If the change is approved, KCC will also request that the Academy Trusts amend their admission guidance for these Academies to reflect the change in type of SEN.

3. School-to-school support model

KCC will introduce a school-to-school support model for mainstream and special schools in Kent to collaborate through outreach and/or in-reach arrangements.

Background:

The review of Kent's 24 state-funded special schools has been focused on the areas of accountability that relate to the Local Authority's statutory responsibilities to secure efficient primary and secondary education to meet the needs of the population of KCC's area and to ensure that sufficient school places for primary and secondary education are available for their area. KCC must also keep under review the educational provision made in its area for children and young people who have special educational needs or a disability and must consider the extent to which the provision is sufficient to meet the educational needs of the children and young people concerned. KCC must secure suitable education for children and young people for whom an EHCP is maintained, and is under a duty to make placements that are an efficient use of resources.

To fulfil its duty in planning sufficient provision for children and young people with SEN, KCC aims to ensure that all children and young people with SEN are educated in suitable and appropriate settings. KCC's aim is that, as far as possible, local state-funded special school provision is to be available for children and young people with severe and complex special educational needs, that is within or near their local community. This approach seeks to improve outcomes and promote independence in adulthood. The special school review focussed on developing recommendations which aim:

- To propose options for the future that foster collaboration towards building a more equitable, efficient and effective educational landscape for all children in Kent.
- To identify opportunities for strategic system change to improve SEN provision, enhance educational outcomes, and promote inclusivity for children and young people with SEN in their local communities.
- To inform the planning of special school places over the medium to long-term for children with SEN for whom KCC maintains an EHCP in which a special school need is identified and a placement is named.
- To inform the designation and admission guidance for special schools so that there is clarity about the type of SEN of children and young people for whom KCC has planned special school provision as well as equity of access for children and young people with SEND.
- To inform the principles of funding to ensure a financially sustainable approach to funding state-funded special schools, with funding matched to the level of adaptation and resources needed to provide suitable education for the children placed by KCC.

It is intended that SEN system transformation across mainstream schools and SRPs, alongside a revised special schools model will help Kent County Council reduce its dependence on the private sector special schools by approximately 44%. This shift is essential to ensure the most effective and appropriate use of the High Needs Funding Budget. The revised model would ensure equitable access to special school places for children and young people with severe and complex SEND in or near to

their local communities, which helps them to develop the skills and strategies needed for independence in adulthood.

Before a final decision can be made in relation to changes to the SEN designation of affected special schools in line with the revised model proposed (by KCC, or the Secretary of State in relation to academies) the specific processes set out in this document be followed, which it is recommended that KCC proceed with.

Financial Implications

Funding for special schools is provided by the Department of Education through the High Needs Block of Dedicated Schools Grant. The Council is responsible for both the setting and payment of the Special Schools budgets. In 2023- 24, Kent spent approximately £152m on special school places. This is the largest expense in the High Needs block, accounting for just over 40% of total spend. This includes approximately £9m on exceptional pupil need (additional funding requests outside the standard funding rates).

The proposed decisions at this stage relating to changes in the designation of particular special schools do not have a significant revenue impact. If a decision is made to proceed with the changes following the applicable alteration/change process, any additional revenue costs of delivering those changes would be met from within the overall High Needs Budget.

With regard to potential capital costs, the High Needs Capital Programme totals £61m as agreed in the County Council Budget for 2024-25. This is funded from the Department of Education specific grant.

Legal Implications

KCC is subject to statutory sufficiency duties under the Education Act 1996 (the “1996 Act”), including to secure that efficient primary education and secondary education are available to meet the needs of the population in its area. This includes ensuring that sufficient school placements, in number, character and equipment are available in Kent to provide all pupils the opportunity of appropriate education.

KCC is also subject to duties under the Children and Families Act 2014 (the “2014 Act”), to keep under review the educational provision for children and young people with special educational needs or disability, and consider the extent to which its provision is sufficient to meet the educational needs of its population. If an education, health and care needs assessment identifies a need for SEN provision to be made, an EHCP must specify the SEN provision required. A parent or young person has the right to request the authority to secure that a particular school or other institution is named in the EHCP.

If a particular school or institution is requested by a parent then KCC is required, under the 2014 Act, to secure that the school or institution requested is named in the EHCP unless either: (i) the school or institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned; or (ii) the attendance of the child or young person concerned at the requested school or institution would be incompatible with the provision of efficient education for others or the efficient use of resources. A parent of a child with an EHCP may appeal to the First-tier Tribunal against matters including: (i) the school or institution, or type of school or institution, named in an EHCP; and (ii) if no school or institution is named in an EHCP plan, that fact.

Changes to the type of SEN provision made at a local authority maintained school must be made via the statutory ‘Prescribed Alterations process’, set out in sections 18-24 of the Education and Inspections Act 2006 (the “2006 Act”), and the School Organisation (Prescribed Alterations to

Maintained Schools) (England) Regulations 2013 (the “Prescribed Alterations Regulations”). The proposed decision would trigger the first step under the Prescribed Alterations Regulations, to publish a statutory notice setting out the prescribed alteration proposed for each of the affected special schools that are maintained by KCC. KCC does not have the power to change the type of SEN provision made at a special Academy which is part of an Academy Trust. Any change to the designation of a special academy can only be made through a separate Academy Trust process for making significant changes to an academy, by an application to the Secretary of State. The Secretary of State will be the ultimate decision-maker as to whether changes to the designation and type of SEN provision that is made at special Academies should proceed.

The proposed changes to the designation of the special schools above, if approved pursuant to the prescribed alterations procedure (or significant change procedure for special Academies), do not displace KCC’s statutory duties under either the 1996 Act or the 2014 Act. KCC is still required to identify a child/young person’s special educational needs, identify the SEN provision required, and secure that provision. Where a parent requests a particular school, KCC will be under a duty to give effect to that parental preference unless one of the statutory exceptions applies. Every child will continue to have their needs met in accordance with the statutory scheme if the recommendations are adopted. Further, children already enrolled in a special school would continue to attend that special school. The process for their continued attendance would remain the same as it currently stands, with their needs and the suitability of their school placement being reviewed and considered through the annual or phase transfer review of their EHCP.

Equalities implications

KCC is under a duty to have due regard to the three equality needs set out in section 149(1) of the Equality Act 2010, being: (a) the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act; (b) the need to promote equality of opportunity; and (c) the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

An EQIA has been undertaken and was subject to the public consultation with the responses received used to further develop the document. Equalities implications have been identified in the EQIA in relation to age, disability and sex alongside mitigating actions required. The changes proposed should also be considered alongside other systemic changes affecting children with SEN, including the introduction of an accessibility strategy and steps to make mainstream schools more inclusive.

The special school review EQIA will continue to be regularly reviewed throughout further decision-making stages.

Cabinet Committee recommendations and other consultation:

The proposed decision was considered and endorsed by the Children’s Young People and Education Cabinet Committee on 21 November 2024.

Any alternatives considered and rejected:

The option of retaining the current special school model in Kent in the short, medium, or long term, has been discounted as it would risk perpetuating inequalities in access to state-funded special school placements, continue barriers for some children and young people with SEN in accessing appropriate support, and ongoing financial challenges due to reliance on costly-out of county and private school placements. The status quo would continue to prevent some children with the most severe and complex special educational needs, including those with dysregulated behaviours, in accessing special school places. It would also hinder progress toward Kent’s strategic goals of inclusion and improved outcomes for children and young people.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

.....
signed

.....
date