

From: **Rory Love, Cabinet Member for Education and Skills**

Sarah Hammond, Corporate Director of Children, Young People and Education

To: **Children's and Young People's Cabinet Committee – 12 September 2023**

Decision Number and Title

23/00080 - Establishment of two new Special Free Schools on KCC owned sites. One to be in Swanley and the other in Whitstable.

Key decision: It involves expenditure or savings of more than £1m.

Classification: **Unrestricted**

Past Pathway of report: Safety Value Agreement

Future Pathway of report: Cabinet Member Decision Electoral Division:

Swanley – Perry Cole
Canterbury North- Robert Thomas

Whitstable East and Herne Bay West - Neil Baker
Whitstable West – Mark Dance

Summary:

As part of KCC's Safety Valve submission to the DfE, KCC has been successful in securing agreement to two new Special Free Schools. The new schools will enable KCC meet growing population need, reduce over-reliance on the independent and non-maintained sector and support the delivery of targets agreed as part of KCC's Safety Valve submission to the DfE.

Recommendation(s):

The Cabinet Committee is asked to:

- I. note the progress of the bids for the new special schools that were made as part of the Safety Valve submission and agreements entered into as set out in Annex A (at the end of the report) and
- II. consider and endorse or make recommendations to the Cabinet Member for Education and Skills on the proposed decision to approve arrangements to establish 2 new special free schools in Whitstable and Swanley in accordance with free school presumption process and relevant Safety Valve agreements.

1. Introduction

1.1 The Commissioning Plan for Education Provision in Kent 2023-2027 sets out KCC's commissioning intentions and identified the need for additional Special School capacity. The need to commission a new 250 place Special School for Profound, Severe and Complex needs (PSCN) to serve both Dartford,

Sevenoaks and surrounding areas was identified within the plan, as was the need to commission a 120 place PSCN (with ASD) special school to serve the coastal area of Canterbury district (Whitstable, Herne Bay) and surrounding areas. The applications for both schools are appended to this report.

- 1.2 KCC submitted bids for 3 new special schools as part of the Safety Valve submission to the DfE. The third Special School applied for was for a PSCN Special school to serve Sheppey. Whilst the bids for the schools to serve Dartford and Sevenoaks and the coastal areas of Herne Bay and Whitstable included KCC owned sites that could potentially be utilised for these schools, a KCC owned site was not submitted with the application for the school on Sheppey. KCC had previously secured a new SEMH Special School for Sheppey through an earlier DfE Wave programme. The Cabinet Member record of decision relating to the establishment of this school was signed on the 16th May 2019. The school is currently in the process of being built and will open in September 2019. KCC received provisional approval for two of the three schools where bids were submitted as part of the Safety Valve programme, one on a site in Swaley and one on a site in Whitstable subject to an initial feasibility of the sites and has subsequently received approval for both schools in a letter from the DfE dated 5 July 2023. Both schools will now progress to the next stage of the process – the Trust application stage.

2. The Proposal

- 2.1 This proposal will help to support Framing Kent's Future – Our Council Strategy (2022-2026) Priority 1 - Levelling up. 'To maintain KCC's strategic role in supporting schools in Kent to deliver accessible, high quality education provision for all families.'
- 2.2 Kent's ambitions for children and young people with Special Educational Needs (SEN) is articulated through its SEND Strategy 2021-2024 which has been jointly developed by KCC and the NHS in conjunction with children, young people, parents and carers, Kent PACT (Kent Parents and Carers Together) and other key stakeholders.
https://www.kent.gov.uk/data/assets/pdf_file/0012/13323/Strategy-for-children-with-special-educational-needs-and-disabilities.pdf
- 2.3 The two new special schools will help to meet the growing population needs related to housing growth in the localities they will serve and will enable an increased number of children who require a special school place to be educated in a maintained special school. These two schools have been factored into Safety Valve calculations and are part of KCC's plans to ensure cost effective provision of high quality educational places for Kent learners with complex Special Educational (SEN) Needs.
- 2.4 The full applications (appended) set out the case for each school. The special school to serve Dartford and Sevenoaks is proposed to be sited at the former Birchwood site, near central Swaley. The school to serve the Canterbury coastal district and surrounding areas is proposed to be sited on the KCC owned (former detached playing field site) at Church Street, Whitstable.

- 2.5 KCC received confirmation of approval for the two special Free Schools in a letter from the DfE dated the 5 July 2023. The letter required KCC to agree to set conditions in order to secure both schools. The key conditions (set out in Annex A) related to the KCC owned sites and the development of both schools. KCC agreed to provide both sites with vacant possession on a 125-year peppercorn rent without premium leases, using the DfE model lease. As both schools are being fast-tracked to delivery for September 2026, KCC has also committed to facilitating and supporting the DfE in all the processes required to deliver the school and secure Trust sponsors to run them, although the DfE will project manage the delivery of both schools and is the ultimate decision maker in the appointment of Trusts to sponsor both schools.
- 2.6 The deadline set by the DfE to agree to the conditions as a requirement to securing both schools meant that the conditions had to be accepted by the 14 July 2023. KCC accepted the conditions following discussions with Finance and Infrastructure in order to establish any risks associated with acceptance. The acceptance letter from the DCS, Sarah Hammond is included for information.
- 2.7 The timetable for the appointment of Trusts to run both schools is set out below:

Date	Action
23 August 2023	Application window opens
23 August 2023	Mandatory pre-registration opens
22 September 2023	Mandatory pre-registration closes
3 November 2023	Application window closes at midday
6 November – 1 December 2023	DfE assesses applications
8 – 31 January 2024	Interviews take place
March 2024	Announcement

- 2.8 KCC is required to run “engagement” events to encourage Trusts to apply to sponsor the new schools and pre-register before the 22 September.
- 2.9 KCC will have representation at the interviews.

3. Financial Implications

- 3.1 Capital: the capital costs related to the building of both schools will be met by the DfE. Both schools will be built on KCC owned sites and both sites will be provided with vacant possession on 125-year peppercorn without premium leases, using the DfE model lease. KCC has agreed that it will meet site abnormal costs, including any section 278 costs should they be identified as required as the project progresses. KCC Infrastructure has carried out an initial assessment of risks associated with likely site abnormalities prior to KCC’s acceptance of the conditions related to the delivery of both schools and contingency funding of up to £4 million will be earmarked from the High Needs Capital budget.
- 3.2 Revenue: KCC expects to commission the majority of places in both schools. Current agreed rates are set out below:

Need	Rate
SLD	£17,336
PD and PMLD	£24,582
ASD	£20,065

The average cost of an independent special school place in the county is £41,448.

4. Legal implications

- 4.1 The provision of sufficient school places is a statutory duty and contributes to the Strategic Business Plan Priorities to ensure that “Children and Young People in Kent get the best start in life.

5. Equalities implications

- 5.1 An Equality Impact Assessment has been produced and the assessment identified the following positive impacts:
The aims and objectives of this proposal is to
- Ensure there are sufficient special school places available for children with complex needs, to include ASD
 - Ensure that there is sufficient local provision

No adverse impacts were identified during the assessment.

6. Other corporate implications

- 6.1 None identified.

7. Governance

- 7.1 Once a key decision is made, Kent County Council’s Constitution (Section 10, Executive Scheme of Officer Delegation), provides a clear and appropriate link between this decision and the actions required to implement it.

8. Conclusions

- 8.1 The two new Special Free Schools are required to meet the growing populations in the Districts of Dartford, Sevenoaks and Canterbury and enable an increased number of children who require a special school place to be educated in a maintained special school. These two schools have been factored into Safety Valve calculations and are part of KCC’s plans to ensure cost effective provision of high quality educational places for Kent learners with complex Special Educational (SEN) Needs.

9. Recommendation(s):

The Cabinet Committee is asked to:

- I. note the progress of the bids for the new special schools that were made as part of the Safety Valve submission and agreements entered into as set out in Annex A (at the end of the report) and;
- II. consider and endorse or make recommendations to the Cabinet Member for Education and Skills on the proposed decision to approve arrangements to establish 2 new special free schools in Whitstable and Swanley in accordance with free school presumption process and relevant Safety Valve agreements.

10. Background Documents

- 10.1 Kent Commissioning Plan for Education Provision
www.kent.gov.uk/educationprovision
- 10.2 Framing Kent's Future Our Councils Strategy 2022-2026
[Framing Kent's Future - Kent County Council](#)
- 10.3 SEND Strategy 2021-2024

https://www.kent.gov.uk/data/assets/pdf_file/0012/13323/Strategy-for-children-with-special-educational-needs-and-disabilities.pdf

11. Contact details

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Annex A – Conditions specified by the Department for Education

The approval of your applications is conditional upon:

i. Fair and open competition

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

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

It is also crucial that all proposer groups are given an equal chance – you cannot give information only to favoured proposers, or only to established providers. If we believe a competition is not treating all potential applicants equally, we may terminate the process. The information in the bid will form the basis of the information local authorities will need to publish.

ii. Deliverability

LA to provide sites on which we can construct and open schools of the size identified in their applications in a timely manner, with an acceptable level of risk and in a way that provides good value for money. These sites will be provided with vacant possession, on a 125-year peppercorn without premium leases using the DfE model lease. Heads of Terms to be agreed within 3 months and exchange within 6 months of projects entering pre-opening.

LA to meet abnormal site development costs, including (but not limited to):

- geochemical exceedances relative to guidelines for school use (including asbestos removal)
- geophysical conditions
- flooding and alleviation measures
- s278 costs
- new road provision from the adopted highway to the site boundary
- s106 costs
- retaining structures required as a function of topography
- ecological provision - reserves, species protection and relocation
- listed building and heritage community costs
- title consolidation and registration
- utility provision
- environmental conditions that may require specific mitigations such as acoustics or air pollution
- mitigation measures for constrained sites (such as rooftop playgrounds)
- other site-specific issues (including demolition)

The LA commits to work with the department and other relevant parties to ensure that it meets its obligations as part of the planning process. As part of this, the LA is to engage with the Local Planning Authority (LPA) to arrange a meeting between the Head of Planning (or equivalent), the Director of Children's Services (DCS), other LA and LPA representatives where appropriate, and a Department for Education (DfE) official, to be held within 6 weeks of the Secretary of State's formal approval of the projects. A minute of the meeting, setting out the strategy for, and prospects of,

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

If the sites include playing fields, the LA to engage with relevant parties to arrange a meeting with Sport England, a representative of the LPA and a DfE official, to be held within 12 weeks of the Secretary of State's formal approval of the project. A minute of the meeting, setting out the strategy for, and prospects of, securing Sport England's support in principle for a strategy to mitigate the loss of playing fields, to be circulated and agreed by all parties within two weeks of the meeting.

The conditions detailed above will continue to apply if an alternative site is subsequently brought forward for the school.

iii. New provision

The process is to establish a new special free school and not to replace or expand existing provision. This is not a mechanism to close a school and re-open it as a special free school in a new building. However, strong independent schools wishing to join the state sector may apply to become free schools on the condition that the new places that are created are all in addition to the number of existing places that they plan to convert.

iv. Financial viability

The school must be affordable and sustainable within your local authority's high needs block funding allocations, and the high needs funding of other local authorities commissioning places. To enable prospective proposers to develop realistic applications including robust financial plans, you must be able to state clearly in the specification the number of places your authority (and any other local authorities) will be commissioning, at a cost of £10,000 per place and the top-up funding rates your authority and other authorities will agree to pay in addition to the place funding to secure the required provision.

v. Eligible places

For special schools, the provision is only for pupils with an EHC plan, or, without an EHC plan in accordance with s34 of the Children and Families Act 2014.

vi. Impact assessment

As part of the planning process for new schools, local authorities must also undertake an assessment of the impact of the proposal, both on existing educational institutions locally and in terms of impact on particular groups of pupils from an equalities perspective. This is to enable the Secretary of State to meet her duties under section 9 of the Academies Act 2010 and under section 149 of the Equality Act 2010.

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

vii. SEND and AP Green Paper

All new special free schools approved in this wave are expected to maximise the department's commitments made in the SEND & AP Green Paper, expanding the range of good quality provision available to children and young people in line with

commissioning local authorities' needs. The provision offered by this new school should not only deliver good outcomes, but will be part of a local system which both meets local needs and is financially sustainable.