

# KENT COUNTY COUNCIL – URGENT RECORD OF DECISION

**DECISION TAKEN BY:**

Rory Love

Cabinet Member for Education and Skills

**DECISION NO:**

23/00057

**For Publication****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);

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

- 1) Allocate £2m of the Children's, Young People and Education capital budget to address the issues covered in the privileged legal advice considered.
- 2) Authorise the Director of Infrastructure in consultation with the Director of Education and SEND, the General Counsel and the Cabinet Member for Education and Skills to enter in to any negotiations, contracts or contract variations that may be required.
- 3) Authorise the Director of Infrastructure to be the nominated Authority Representative within the relevant agreements and to enter into variations as envisaged under any of these contracts.

**Reason(s) for decision:**

A new secondary school is due to be opened at Chilmington Green on land provided to KCC via a developer contribution. The Department for Education (DfE) is taking responsibility to build the school. Two issues have arisen which need to be resolved in order to ensure the new school building can be built and open as soon as possible. The legal responsibility for funding the resolution to the issues is a matter of contention and potential legal dispute.

**Financial implications:**

Detailed funding considerations and the wider financial impact is set out in the Exempt Appendix. The current Basic Need Capital Budget totals £160m (covering the period 2023-26) and will be impacted, at least in the short-term, whilst the legal responsibility for funding the additional costs is resolved and funds recovered. The Basic Need Capital Programme is managed as a series of projects and any additional funding requirement could require re-consideration of other planned activities. However, growing inflationary and other build cost increases including the increased risk of continued use of temporary accommodation supports the progression of this matter as quickly as possible to minimise greater financial costs being incurred.

**Legal implications:**

Detailed legal advice regarding the KCC liabilities and options for redress have been considered by the Decision-maker. The decision represents a recognition of relevant legal risks, balanced against the Policy choice to prioritise the progression of the school project to ensure successful delivery of the school and compliance with KCC's statutory duty to ensure sufficient school places. Key considerations are set out in the Exempt Report.

### **Equality Implications**

An equalities impact assessment was undertaken in September 2022 relating to the decision to provide forward funding for the infrastructure works. This identified that the need for the new school was significant, and it positively supported secondary school aged children in Ashford, regardless of any protected characteristic. This assessment has been reviewed and updated to confirm no substantive change when considering the programme as a whole. The decision to set resources aside to cover the cost of any claim brought against the County Council in respect of dealing with site contamination of the provision of an electrical sub-station does not raise any new equalities issues.

### **Data Protection implications:**

A DPIA was completed and was not necessary for this decision.

### **Reason for Urgency:**

To make provision to respond to contractual dispute and continue to support the opening of essential secondary school provision.

### **Member and other consultation:**

No Cabinet Committee consultation possible due to urgency process.

### **The Chair of the Scrutiny Committee, in addition to agreeing that the decision could not be reasonably deferred, provided the following comments:**

Mr Booth highlighted relevant technical concerns, alongside agreeing the need for the decision.

### **The Group Spokespeople of the Scrutiny Committee provided the following comments:**

To Follow

### **The Chair and Group Spokespeople of the Children, Young People and Education Cabinet Committee provided the following comments:**

No comments received.

### **Any alternatives considered and rejected:**

- Pause activity to fully resolve all disputes prior to progressing any development. This was rejected because it further delays the delivery of the School and also risks increased costs due to potential inflationary and other build cost increases during any delay.
- Abandon project – this was rejected due to the necessity of the School being in place to deliver against KCC's requirement to ensure sufficient school places.

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

None



17/05/2023

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signed

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date