

CABINET

9 APRIL 2019

SECONDARY FREE SCHOOL IN STROOD - UPDATE

Portfolio Holders:	Councillor Andrew Mackness, Children's Services (Lead Member) Councillor Adrian Gulvin, Resources
Report from:	Ian Sutherland, Director of People - Children and Adults Services
Author:	Paul Clarke, Programme Lead School Organisation and Capital Services

Summary

This report updates Cabinet with regard to the acquisition of land for a secondary Free School in Strood.

1. Budget and Policy Framework

- 1.1 Cabinet has responsibility, pursuant to a statutory duty, to provide sufficient school places.

2. Background

- 2.1 Cabinet at its meeting on 5 March 2019, approved the underwriting of an 'overage' provision on the terms set out below:

Decision: 44/2019

The Cabinet approved the underwriting of the overage held against the Manor Barn land in Strood, as set out in the Exempt Appendix.

Decision: 45/2019

The Cabinet agreed that the legal agreement is in a format agreed by the Chief Legal Officer, in consultation with the Leader and Portfolio Holders for Children's Services (Lead Member) and Resources.

Reasons:

Approving the underwriting of the overage will enable the Department for Education (DFE) to agree a land acquisition with the owners of the Manor Barn site, and is a low risk high reward strategy which will provide a site for the construction of a secondary Free School, to help meet increasing demand in Medway, with all construction costs met by the DFE.

2.2 After the Chief Legal Officer had consulted the Leader and Portfolio Holders for Children's Services (Lead Member) and Resources, who had confirmed their support for the completion of the relevant agreement but before actual completion, a material fact came to light.

2.3 Lawyers representing the DfE confirmed late on the afternoon of 27 March 2019, the day before the proposed completion of the legal agreements, that the period of the overage was not in fact operational until 2033, but 2043.

3. Options

3.1 The Chief Legal Officer re-consulted the three named Cabinet Members. He advised that the Council had agreed a right of pre-emption which had now been extended to 2043. He further advised that on that basis the longer date did not materially impact on the risks associated with this decision.

3.2 Members considered the option of not proceeding to underwrite the overage but recommended that completion could proceed, therefore, the Chief Legal Officer completed the agreement in accordance with decision no. 45/2019 set out above, on 28 March 2019.

4. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Longer overage period increases the likelihood of the Council having to pay the overage amount.	The overage will only become payable if the land is subsequently sold by the DfE for residential purposes up until 2043 when the condition falls away.	The Council has a right of pre-emption until 2043. Should the DfE wish to sell the land before 2043 the Council will have the first option to buy the land.	F2

By not agreeing to underwrite the overage, the Council would have been at risk of not providing sufficient school places.	If the project for the Maritime Free School was withdrawn, the Council would become responsible for creating the additional places required in the area. This will result in the need for significant funding to be made available to either build a new school or expand a number of current schools.	Underwrite the overage	F2
---	--	------------------------	----

5. Financial implications

5.1 There are no financial implications for this report which is for noting.

6. Legal implications

6.1 There are no legal implications for this report which is for noting.

7. Recommendation

7.1 Cabinet is requested to note this update report.

8. Suggested reasons for decision

8.1 To understand fully the basis for approving the overage agreement.

Lead officer contact

Paul Clarke – Programme Lead, School Organisation and Capital Services ext 1031
Paul.clarke@medway.gov.uk

Appendices

None

Background papers

Cabinet report 5 March 2019 – Secondary Free School in Strood
<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=4140>