

Agenda Item No:

Report To: Cabinet

Date of Meeting: November 2021

Report Title: Kent Music– Supporting relocation to Ashford

Report Author & Job Title: Ben Lockwood
Deputy Chief Executive

Portfolio Holder Cllr. N Shorter
Portfolio Holder for: Finance and IT



Summary: Kent Music (KM) is looking to consolidate its property assets and reduce its property costs through a proposed relocation to a new custom built facility on the new Javelin Way estate.

The KM board has approved the decision to move and they are seeking a loan from the council for the cost of the building. They propose to secure the loan on the building with a floating charge on the other assets of the charity.

Key Decision: YES

Significantly Affected Wards: All wards in Ashford

Recommendations: The Cabinet is recommended to:-

- I. Approve in principle loan funding for Kent Music to purchase a new facility in Ashford up to a value of £1.4m
- II. Delegate authority to finalise the terms loan agreement to (Officers) in conjunction with the relevant Portfolio Holder.

Policy Overview:

Financial Implications: The proposal would see the council advance a loan of up to £1,400,000 pounds to Kent Music the interest rate charged would be linked to the appropriate Public Works Loan Board (PWLB) interest rate (40 year) plus 1%. This would return approximately £14,000 in the first year on a reducing balance covering Council's funding risks.

Legal Implications: The council has loaned money to a number of bodies operating within the power before and has the legal power to do so.

Subject to member approval the council's legal team will need to work to draft the appropriate legal documents and agree them with the representatives from Kent Music.

Equalities Impact Assessment: Not applicable at this stage, the report deals with a financial transaction and not the creation of a new policy

Data Protection Impact Not required

Assessment: Risk Assessment (Risk Appetite Statement): The risks of this proposal are summarised in the report.

Sustainability Implications: Not applicable

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Introduction and Background

1. Kent Music was founded in 1948 and has been the leading provider of music education services in Kent ever since. Traditionally its work has focussed on three areas:
 - a. Teaching children, young people and adults to play musical instruments and to sing
 - b. Ensembles and choirs locally and at county level, working with top level professionals as teachers, tutors and music directors
 - c. An annual three-week summer school held at Benenden School.
2. Kent Music is a limited company with charitable status, teaching 4,000 students each week. Their main income streams are from parents, Arts Council England and Kent County Council.
3. They run out-of-school activities through a network of music centres across the county. At the centres, students have instrumental and vocal lessons, playing in groups of all sorts and sing in choirs.
4. The Kent County Youth Orchestra was founded in 1963. Since then KM has formed the Kent Youth Wind Orchestra and the county choirs and has plans to broaden provision for advanced level students over the coming years.
5. KM employs 80 instrumental and vocal teachers and engages approximately 50 tutors and pastoral staff on residential courses. This is supported by a core admin and management team of 30 full and part-time staff based at their existing headquarters in Maidstone and the musical instrument store in Aylesham. All the administration and management staff will work from Javelin Way. The staff have been consulted about the move and there is a good deal of optimism in the team about the benefits of this move to Kent Music and the possibilities it opens up for music education across the borough and county.
6. Kent Music own a stock of approximately 16,000 musical instruments as well as a library and technical, percussion and staging equipment.
7. As well as providing these services, Kent Music has a wider strategic role as the lead partner for the music education hub for Kent. This work is funded by the Department for Education via Arts Council England and supports children and young people aged between 5 and 18 across Kent.
8. Kent Music has a long history of working in Ashford:
 - a. Kent County Youth Orchestra and Kent Youth Choirs have held residential courses at Ashford School for many years
 - b. Kent Youth Choirs have given Christmas concerts at St. Mary's church on numerous occasions

- c. delivering or funding the delivery of whole class instrumental teaching in 80% of primary schools in the district
 - d. having good relations with the secondary schools in the district, particularly Highworth Grammar School where we have run out-of-school activities for many years.
 - e. bringing together a network of classroom teachers across the district for regular meetings and professional development sessions
9. Kent Music is planning to move to the new development at Javelin Way and will be located adjacent to the new Jasmin Vardimon Company's Creation Centre. Kent Music has a strong relationship with JVC.
10. The move will
 - a. mean that all staff and equipment will be located on one site for the first time in over 30 years.
 - b. enable Kent Music to reduce its premises costs, making an important contribution to their long-term financial security, settling the organisation and enabling them to plan for a long-term future.
 - c. enable Kent Music to reduce its carbon footprint. The plan is for the building to be run on solar energy and Kent Music is applying for grants to add electric vehicle charging points, to have wi-fi throughout the building to eliminate the need for an air conditioned server room and to purchase an electric van for its instrument delivery service.
11. The move is seen as more than a move of premises; it is the opening of a new chapter in the history of Kent Music, with an opportunity to be part of the exciting cultural developments that are taking place in Ashford.

Proposal

12. Kent Music is seeking to purchase the freehold of a building in Javelin way for a fully fitted price in the region of £1.4m and is seeking a loan from the borough council of £1.4m payable over a period of 40 years.
13. The Loan will be on an annuity basis matching any repayment of capital with the Council's statutory requirement to provide for the repayment of debt (Minimum Revenue Provision - MRP).
14. The Loan will include an option for early repayment or capital bullet repayment, to give KM the ability to take advantage of any opportunities to reduce their level of debt.
15. In line with the Councils loans to the property Company the loan will be offered at the equivalent of the Public Works Loans Board rate plus a margin of 1%.
16. The Loan will be secured on the assets of Kent Music .
17. A copy of the proposed heads of terms for the loan are attached at **Appendix A. It is recommended that Cabinet delegate authority to the S151 officer and in conjunction with the Portfolio Holder for Finance and IT to make minor amendments to the proposed HoT's.**

Financial Position of Kent Music

18. Kent Music is a registered Company and registered charity. A copy of the most recent filed accounts can be accessed at Companies House searching under company number 0546855.
19. They have funding from a number of sources; primarily this funding comes from three main sources parents/students, Arts Council England and KCC. Kent Music has a strong track record of securing funding from KCC and Arts Council England and is seen as a good partner for delivering education services.
20. KM has net current assets in the region of £3m and it has a variety of assets against which the council could seek further security in terms of a floating charge against them. A copy of most recent Balance Sheet and Profit and Loss Account is attached at **appendix B**

The proposed site

21. A plan of the proposed location of KM is attached to this report at **Appendix C**. The proposal is to purchase 2 units and create a single unit next to the proposed location of the Jasmin Vardamon Company.
22. Any loan will need to be subject to the completion of a suitable title check and site valuation report.

PWLB reforms

23. There has been considerable speculation over how government would respond to the increased level of borrowing by Local Authorities for investments, as they seek to purchase income generating investments to bridge funding gaps. The PWLB has subsequently published some guidance to Authorities about the categories of Lending that are appropriate for authorities to undertake to access borrowing from them.
24. The main features of the new lending terms are:
 - a. As a condition of accessing the PWLB, Local Authorities (LA) will be asked to submit a high-level description of their capital spending and financing plans for the following three years
 - b. As part of this, the PWLB will ask the finance director of the LA to confirm that there is no intention to buy investment assets primarily for yield at any point in the next three years. This assessment is based on the finance director's professional interpretation of guidance issued alongside these lending terms.
 - c. the PWLB will not lend to a LA that plans to buy investment assets primarily for yield anywhere in their capital plans

- d. When applying for a new loan, the local authority will be required to confirm that the plans they have submitted remain current
25. Guidance is high level, rather than a set of strict definitions, due to the diversity and complexity of local government finance. It deliberately avoids providing precise answers, leaving the onus on Section 151 officers to categorise borrowing activity and certify the authority is not planning to “purchase investment assets primarily for yield” (PIAPY) over the next three years.
 26. The primary purpose of Kent Music is to provide education services for the people of Kent. This project would sit within the definition of Service expenditure and the S151 Officer is comfortable that this project conforms with the guidance and is not a PIAPY.

Risk assessment

27. There are six key risks that need to be highlighted for this agreement;
 - a. The purchase stalls - this is not in the Council’s control but if the land deal does not progress, then the mortgage agreement falls away as it is conditional on the land being purchased.
 - b. The land owner requests a higher price – Kent Music would need to firstly consider this additional impact and find the additional funds. Ashford Borough Council’s exposure would be capped at the level of the Council’s valuation of land value.
 - c. Repayments are not forthcoming – this risk would primarily be triggered by KM not securing adequate revenue funding to support its operation and ultimately this would be as a result of the failure of its 3 main income streams. Ultimately, there is a risk here Kent Music is funded through KCC and grants from Arts Council England and so there is a level of uncertainty over whether or not grant funding will be renewed at the end of each funding cycle. The Council can only look at the track record of Kent Music in securing funding and the longevity of the organisation shows that they have a strong record of bid for and securing funding. Ultimately, the Council would then seek to recover the balance on any loan outstanding through the charge on the property. The property was originally designed to be 2 separate units and so if needed they could be separated and sold.
 - d. Reputation – Should the Council seek to enforce its loan covenants it would be taking action against a well know local charity and this could have reputational impacts for the Council.
 - e. Governance failure leads to events that effect the continuation of the Kent Music – This transaction would be a long term relationship with Kent Music and during this period they will understandably change and evolve with the times. There is a risk that these changes bring about a change in key personnel and this could ultimately affect the strength of the governance of the organisation that could either place the security of the loan at risk or the reputation of the council could be harmed. To mitigate

this Kent Music are investigating whether its constitution would allow the council to nominate a member to observe on their board.

- f. Change of legislation and regulation. There is a consultation underway concerning the regulations that manage the activities of the PWLB. This has the potential to impact upon the council's ability to use this form of funding for the loan. In addition to this any loan to Kent Music will need to comply with state aid regulations, the terms proposed have been tested for compliance with state aid in relation to the loans made to the property company and are on commercial terms.

Equalities Impact Assessment

28. Not applicable this is stage as the report relates to a loan and not a policy.

Consultation Planned or Undertaken

29. None

Other Options Considered

30. Do nothing and risk that the charity does not relocate to Ashford.

Reasons for Supporting Option Recommended

31. This is an opportunity for the council to promote the arts within the borough through its support of Kent Music. This will help deliver upon the council's long held ambition to improve the cultural offer of the borough.
32. The proposal has adequate security for the loan and will generate a small revenue return to the council to cover its risk and support the general fund budget.

Next Steps in Process

33. If this proposal was supported by cabinet the loan would need to be built into the council's budget framework, and any decision would be subject to full council approval.
34. Whilst the report has proposed heads of terms appended to it. It is necessary to agree the final heads of terms with Kent Music. Any material variation of these terms would need to be reported back to cabinet for approval.
35. A full valuation would need to be completed of the proposed site and the council would need to get comfort that the value of the site is proportionate to the loan secured upon it.
36. The actual loan agreement would need to be drafted and agreed with Kent Music.

Conclusion

37. Kent Music is a body of long standing operating in Kent since 1948. The charity has a strong financial standing relying on income streams from parents Kent County Council and Arts Council England
38. The proposal is not without risks, which are summarised above, but the relocation of Kent Music to the proposed site at Javelin Way is an exciting opportunity for the council to promote arts and culture within the Borough.
39. The proposal presents an opportunity for the council to support this organisation whilst making a modest revenue return.

Portfolio Holder's Views

I acknowledge that this report covers a broad number of portfolios – particularly Culture and Tourism and other Cabinet Members may wish to contribute to the debate on this item.

This represents a significant step in strengthening the cultural industries that reside in the Borough delivering a long held ambition of the Council whilst managing the Councils risk through securing the loan against the property.

Contact and Email

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Appendix A – Proposed Heads of Terms

Heads of Terms

Date	November.2021
Borrower	Kent Music
Lender	Ashford Borough Council (Council).
Facilities	<ul style="list-style-type: none"> • Term loan facility on mortgage of up to £1,400,000 (or the purchase price of the site if less)
Fees	Each party bears own
Purpose	To fund the acquisition of a building at Javelin Way, Ashford
Availability Period	The period beginning with the date of the mortgage agreement for a period of one year
Maximum number of loans and advances	KMS may draw the loan in no more than [Two] advance.
Interest	1% above the relevant 40 year PWLB rate (at the date of Cabinet)
Interest Period and repayment	<p>Loan will be on a fixed rate fixed term annuity over 40 years and includes capital repayment and interest or such other interest rate to ensure no illegal State Aid is being provided. Commencement date of repayments to be on the [FIRST] anniversary of the loan.</p> <p>Interest will commence from date of Occupation</p>
Voluntary early repayment and cancellation	<ul style="list-style-type: none"> • Early repayment permitted with 25 business days' notice, in whole multiples of £10,000 • Cancellation permitted with 25 business days' notice, upon repayment in full of the loan balance outstanding subject to KM paying the Council's costs
Mandatory repayment	<ul style="list-style-type: none"> • Unacceptable Change of objects • Unacceptable change of use of the site for purposes other than the KM facility without the Council's consent • Proceeds of insurance.
Repayments: general	<p>Any amount of the term loan facility repaid may not be redrawn.</p> <p>Early repayments are to be made with accrued interest and breakage costs but otherwise without premium or penalty.</p>

Application of repayments of term loan facility	Repayments will be applied against repayment instalments in chronological order
Security	<p>First-ranking security over Javelin Way, Ashford registered at the Land Registry under title number []</p> <p>In addition the Council will seek a floating charge over KM other assets.</p>
Conditions precedent	<p>Standard conditions precedent for a transaction of this nature, in a form and substance satisfactory to the Council, including but not limited to:</p> <ul style="list-style-type: none"> • Execution of the mortgage agreement. • Execution of the security documents and delivery of all notices and title documents required to be delivered under the security documents. • Payment of fees, costs and expenses.(if required by the Council's Head of Finance) • Certified copies of constitutional documents for KMS. • Certified copies of board resolutions of KMS. • Certificate in relation to borrowing and granting security for KMS. • Certified copies of all material insurance policies. • Due diligence reports. • The latest available audited financial statements and unaudited financial statements for the most recent trading period • Satisfactory title to the Site • Satisfactory valuation of the Site • A satisfactory business plan to include a funding statement to demonstrate how the whole capital costs of the project (including the building and the highway works) will be funded and to include key milestones for the project. • A copy of any other document, authorisation, opinion or assurance reasonably specified by the Council.
Representations and warranties	<p>Standard representations and warranties for a transaction of this nature, including but not limited to:</p> <ul style="list-style-type: none"> • Due incorporation.

	<ul style="list-style-type: none"> • Power and authority. • Non-conflict with other documents and obligations. • Authorisations. • Binding obligations. • Registration, filing and stamp taxes. • Choice of law. • No withholding tax. • No default. • No misleading information. • Financial statements. • No material adverse change. • No litigation. • No breach of law. • Ownership of assets. • <i>Pari passu</i> ranking. • Material contracts.
<p>Covenants</p>	<p>To use reasonable endeavours to deliver the project in line with key milestones set out in the approved business plan or any amended business plan which may be approved from time to time (milestones to include to commence and complete construction of the KM facility within periods to be agreed).</p> <p>Standard covenants for a transaction of this nature, including but not limited to:</p> <ul style="list-style-type: none"> • Authorisations. • Negative pledge. • Restrictions on other borrowings and guarantees. • Restrictions on disposals, acquisitions, joint ventures and mergers. • Restrictions on loans and credit.

	<ul style="list-style-type: none"> • Restriction on Site not to be used for purposes other than the KMS facility without the Lenders consent. • Compliance with laws. • <i>Pari passu</i> ranking. • Insurance. • Access to books of accounts and records of the business.
Information covenants	<p>Standard information covenants for a transaction of this nature, including but not limited to:</p> <ul style="list-style-type: none"> • Audited financial statements within [10 months – to coincide with Charities Commission Deadlines] after the end of each financial year. • Compliance certificate to be delivered with audited and unaudited financial statements used for the purposes of testing the financial covenants, signed by two directors and, in the case of each compliance certificate to be delivered with the audited financial statements, by KMS auditors. • Details of disposals, claims under material contracts and insurance claims. • Such other information as the Council may reasonably request.
Financial covenants	<p>The facility agreement will contain the financial covenants below at levels (and with inclusions and exclusions) to be agreed:</p> <ul style="list-style-type: none"> • The mortgage is restricted to costs incurred for the purchase of the Site only.
Events of default.	<p>Standard events of default for a transaction of this nature, including but not limited to:</p> <ul style="list-style-type: none"> • Non-payment. • Breach of covenant. • Misrepresentation. • Cross-default. • Insolvency, insolvency proceedings and creditors' process. • Unlawfulness and invalidity. • Cessation of business.

	<ul style="list-style-type: none"> • Material adverse change.
Costs	Each party to bear own costs
Taxes	All payments to be made by KM must be made free of withholding and any other taxes.
Governing law	Laws of England and Wales.
Jurisdiction	Courts of England.
Other	All other terms and conditions standard for a transaction of this nature shall be included in the finance documents.
Expiry	The terms of this offer will be valid until [one] year after the Council's Full Council on 9th December 2021

The above terms do not constitute or imply a commitment to provide funding by the Council, nor a representation that such funding will be made available. Any such commitment is subject to contract, formal Council approval and satisfactory due diligence and documentation.

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Appendix B – Kent Music School Accounts

A couple of points to note:

- The annual grant from Arts Council England was awarded for the financial years 2018/19 and 2019/20 but because the funding was guaranteed in the second year the auditors accounted for it all in the first year which means that our grant income in 2019 looks very high. This will even out in the 2020 accounts.
- Kent Music left the LGPS in 2010 but have potential liabilities on the scheme depending on its performance. LGPS liabilities are not all realised at the same time.

KENT MUSIC						
(A company limited by guarantee)						
STATEMENT OF FINANCIAL ACTIVITIES INCORPORATING INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31 AUGUST 2020						
	Note	Unrestricted funds 2020 £	Restricted funds 2020 £	Endowment funds 2020 £	Total funds 2020 £	Total funds 2019 £
Income and endowments from:						
Donations and legacies	2	259	1,214	-	1,473	8,397
Charitable activities	4	746,721	2,138,658	-	2,885,379	1,079,927
Investments	3	635	4,496	-	5,131	4,719
Total income and endowments		747,615	2,144,368	-	2,891,983	1,093,043
Expenditure on:						
Charitable activities	5	666,508	2,310,266	-	2,976,774	3,270,185
Total expenditure		666,508	2,310,266	-	2,976,774	3,270,185
Net income / (expenditure) before other recognised gains and losses						
		81,107	(165,898)	-	(84,791)	(2,177,142)
Actuarial losses on defined benefit pension schemes	21	(53,000)	-	-	(53,000)	(130,000)
Net movement in funds		28,107	(165,898)	-	(137,791)	(2,307,142)
Reconciliation of funds:						
Total funds brought forward		510,569	1,534,112	333,694	2,378,375	4,685,517
Total funds carried forward		538,676	1,368,214	333,694	2,240,584	2,378,375

The notes on pages 16 to 34 form part of these financial statements.

KENT MUSIC
(A company limited by guarantee)
REGISTERED NUMBER: 05464855

BALANCE SHEET
AS AT 31 AUGUST 2020

	Note	£	2020 £	£	2019 £
Fixed assets					
Intangible assets	10		-		16
Tangible assets	11		154,380		169,030
			<u>154,380</u>		<u>169,046</u>
Current assets					
Stocks	12	2,964		<i>13,581</i>	
Debtors	13	1,129,297		<i>1,333,984</i>	
Investments	14	333,694		<i>333,694</i>	
Cash at bank and in hand			1,533,988		<i>1,609,617</i>
			<u>2,999,943</u>		<u>3,290,876</u>
Creditors: amounts falling due within one year	15		(174,739)		<i>(395,547)</i>
			<u>2,825,204</u>		<u>2,895,329</u>
Net current assets			2,825,204		2,895,329
Total assets less current liabilities			2,979,584		3,064,375
Defined benefit pension scheme liability	21		(739,000)		<i>(686,000)</i>
			<u>2,240,584</u>		<u>2,378,375</u>
Net assets including pension scheme liabilities			2,240,584		2,378,375
Charity Funds					
Endowment funds	17		333,694		<i>333,694</i>
Restricted funds	17		1,368,214		<i>1,534,112</i>
Unrestricted funds:					
Unrestricted funds excluding pension liability			1,277,676		<i>1,196,569</i>
Pension reserve			(739,000)		<i>(686,000)</i>
			<u>538,676</u>		<u>510,569</u>
Total unrestricted funds			538,676		510,569
Total funds			2,240,584		2,378,375

Appendix C – Proposed Location

