



**In the matter of the Compulsory Purchase Order**

**Cork City Council – Lisheens Ballincollig Acquisition Order No.4 Of 2022**

**In the matter of an Oral Hearing before  
An Bord Pleanála on the 31<sup>st</sup> of January 2023**

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**EVIDENCE OF  
Ronan Mac Kernan  
Senior Executive Planner  
Strategic & Economic Development  
CORK CITY COUNCIL**

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I have a Bachelor of Arts in Urban Planning Degree and a Post Graduate Diploma in Town and Country Planning and I qualified in 1998. I have been employed by Cork City Council for 3.5 years. I hold the position of Senior Executive Planner in the Strategic and Economic Development Directorate of Cork City Council.

Before this I held the position of Senior Executive Planner with Cork County Council, having been employed by Cork County Council from February 2004 until May 2019.

I have overall responsibility for Planning Policy in Cork City Centre, Cork City Northwest and Cork City Southwest. I also have responsibility for Dereliction and Vacancy.

## **Context**

Ballincollig is the largest urban town in Cork City and one of the largest in the Southern Region. It is positioned between quarries and cave systems to the west, the N22 to the Southeast and the River Lee to the North. These local geographic factors have helped shape the town and it has retained much of its village character. Ballincollig experienced significant growth in recent economic times. Future housing and population growth in Ballincollig will be concentrated in the Maglin Area to the south of the town and other zoned lands to the west and on infill and brownfield lands within the existing built-up area of the town.

This population growth has led to significant demand for school places within the town. This demand cannot currently be met by the existing educational facilities. Ballincollig has 4 primary schools and 3 secondary schools. There is also a special needs school, Our Lady of Good Counsel, in Innishmore. Ballincollig as a growing town requires additional educational facilities.

## **Proposed Educational Site**

The site in question comprises a land bank generally between a regional road to the north and the N22 Ballincollig Bypass to the south, it is situated within the built up area of Ballincollig within an area of significant residential development. The lands are currently in agricultural use with mature hedgerows and trees visible across the site. The site is generally level sloping gently in a southerly direction towards the N22 Ballincollig Bypass which runs on an embankment above the site. The site is bordered in part by two single dwellings to the north, the Lisheen fields development to the east and by a number of single dwellings and a farm complex to the northwest.

### Primary and Secondary School Multicampus

The intention of Cork City Council is to facilitate the development of the Site as described above as a Primary and Secondary School Multicampus with ancillary facilities including car parking, bicycle parking and playing pitches. Same will operate to secure the objectives of the current Cork City Development Plan 2022-2028.

This site is located adjacent to a number of large-scale residential developments and the construction of schools on these lands will allow for educational facilities which are urgently required to serve the large population in the west of Ballincollig and surrounding area.

### Strategic Planning Policy Context

Ballincollig has been identified by Cork City Council as a key growth area and is central to national, regional and local strategic planning policy.

The **National Planning Framework (NPF)** envisages Cork City as the central driver of the region to act as a counterbalance to the greater Dublin area. It identifies the enablement of enhanced opportunities for existing communities as development and diversification occurs, particularly through employment, learning and education supports as a key future growth enabler for Cork City.

While setting ambitious growth targets for Cork City based on this vision of a regional strategy to counterbalance Dublin, the NPF sets out ten National Strategic Outcomes (NSOs) to guide development in the State. The proposed development of these lands for educational uses aligns with:

- NSO 1 Compact Growth
- NSO 5 A Strong Economy supported by Enterprise, Innovation and Skills
- NSO 10 Access to Quality Childcare, Education and Health Services.

The NPF aligns with the 17 Sustainable Development Goals (SDGs) set by the UN General Assembly in 2015 as a blueprint to achieve better and more sustainable development for all. Ireland has committed to achieving the SDGs as set out in the 'The Sustainable Development Goals National Implementation Plan 2018-2020' published by the Department of Communications, Climate Action and Environment. The proposed redevelopment of these lands as a school site aligns indirectly with several of the SDGs, but more specifically with the following two:

- SDG 4 Quality Education
- SDG 11 Sustainable Cities and Communities

In addition, National Planning Objective (NPO 31) sets out the following:

- Prioritise the alignment of targeted and planned population and employment growth with investment in:- A childcare/ECCE planning function, for monitoring, analysis and forecasting of investment needs, including identification of regional priorities;
- The provision of childcare facilities and new and refurbished schools on well-located sites within or close to existing built-up areas, that meet the diverse needs of local populations.

- The expansion and consolidation of Higher Education facilities, particularly where this will contribute to wider regional development, and Programmes for life-long learning, especially in areas of higher education and further education and training where skills gaps are identified.

**The Southern Regional Spatial and Economic Strategy (RSES) (2020) and the Cork Metropolitan Area Strategic Plan (MASP) containing MASP Policy Objective 20 (a) supports Lifelong Learning and Skills. Supports Cork as a Learning City and seek investment in initiatives which supports the Cork Learning City initiative, support Cork's role in the UNESCO Global Network of Learning Cities and support the spread of such initiatives throughout the metropolitan area and wider region (b) Support initiatives under the Learning City Key Strategic Actions 2017-2021.**

**The Provision of Schools and the Planning System, a Code of Practice for Planning Authorities (Department of Education and Science, and Department of the Environment, Heritage, and Local Government, 2008).**

This document outlines that the effective integration of schools and the planning systems has core objectives relating to compact sustainable urban development and an integrated approach between the planning functions of planning authorities and the Department of Education.

The Code of Practice states that the Department will identify future primary school demands based on current and anticipated population trends. The procedure for establishing demand for new second-level schools may be more complex as it also involves an appraisal of the capacity of existing post-primary schools, coupled with an assessment of the enrolment patterns in existing and anticipated 'feeder' national schools.

Planning authorities will anticipate the demand for new schools' infrastructure arising from new development within the drafting process for development plans and local area plans, and through these plans, facilitate the identification of suitable lands to meet the need for new schools or expansion of existing schools. Planning authorities are also advised to consult with the Department at an early stage of plan-making and in relation to specific land requirements and suitability, and to engage with landowners / developers to identify suitable sites for new schools.

With regard to the location of new schools, it is stated that planning authorities will

- Ensure that school sites are fit for purpose in terms of their location, access to services and the provision of space for recreational and sports activities.
- Seek to situate new schools within the existing/proposed catchment in a manner that aids ease of access and encourages sustainable mobility.
- Insofar as possible, reserve lands for educational purposes in locations close to the areas of greatest residential expansion and adjacent to community developments so that facilities can be shared.

- Following the identification / reservation of suitable sites, initiate immediate contact with the Department to clarify the suitability of the site and the specific timeframe for acquisition of the site.
- Generally, base their approach in assessing school site requirements on the Department's site standards, as well as considering other urban design and sustainable development considerations.

The Department will consider the use of multi-campus schooling arrangements in appropriate cases, e.g., 2 or 3 schools' side by side; a primary and a post-primary school sharing a site; schools anchoring wider social and community facilities required in the same area.

### **Technical Guidance Documents (Department of Education and Skills)**

Technical Guidance Documents (Department of Education and Skills). TGD-025 (revised 1 September 2019) outlines the Identification and Suitability Assessment of Sites for Primary Schools. It acknowledges that, due to the scarcity of land in urban areas, it is not always possible to achieve the ideal site size and that allowances can be made for particular site characteristics and design proposals. The guidance outlines a range of criteria to be considered relating to zoning and planning policy; environmental constraints; and site conditions. Table 1 of the TGD outlines a School Site Area Analysis and quantifies the elements which form part of a site. TGD-027 (also revised 1 September 2019) sets out similar criteria for the assessment of sites for post-primary schools and includes similar allowances for smaller sites subject to suitable circumstances.

### **Local Planning Policy**

The current principal strategic planning policy document pertinent to this site is the **Cork City Development Plan 2022**, which sets the framework for considering the appropriate development strategy for these lands .

The City Development Plan 2022 was adopted by the members of Cork City Council on June 10<sup>th</sup> 2022 and came into effect on August 8<sup>th</sup> 2022.

Within the City Development Plan, these lands are zoned Z0-12 Educational, the lands to the east and north are zoned ZO-01 Sustainable Residential Neighbourhoods whilst the adjoining lands to the west are zoned ZO-20 City Hinterland.

The lands to the south are within the functional area of Cork County Council and are zoned Metropolitan Greenbelt

An explanation of the City Development Plan zonings and the permitted land uses is set out in the table below,

Zoning Objective	Title	Description
ZO-01	Sustainable Residential Neighbourhoods	To protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.
ZO-12	Education	To provide for schools and educational facilities and related development.
ZO-20	City Hinterland	To protect and improve rural amenity and provide for the development of agriculture.

Thus in respect of the lands zoned Educational it is the expressed objective of the Council in relation to such lands “(t)o provide for schools and educational facilities and related development.” In relation to the small portion of lands at the North-western corner of the site zoned residential, as set out above, such zoning also provides for same to be used, inter alia, for educational uses.

In addition to the site specific zoning objectives, **Objective 10.62 (Ballincollig Education)** states that Cork City Council will work with the Department of Education and landowners to identify new school sites for the town and its wider catchment.

While the text of the City Development plan (at Paragraph 10.221) identified the Maglin Urban Expansion Area in the south of the town as the optimum location for these new schools in Ballincollig, this area has significant infrastructural constraints at present, primarily relating to drainage and transportation which need to be addressed before any development can take place at this location. In consequence it is envisaged that very limited development will be able to commence within the next 5-6 years in the Maglin Urban Expansion Area which is in effect the lifetime of the current City Development Plan and it would not be suitable for the provision of new schools until those infrastructural defects have been addressed. In consequence the development of

the lands the subject of this CPO which are subject to the specific and expressed Objective of educational use comprises proper planning and sustainable development and accords with the specific objectives in the City Development Plan.

**Response to Objection made on behalf of estate of Merle Tanner.**

I have considered the objection raised by the executors of the estate of the late Merle Tanner which raises a number of planning issues which I propose to address.

In summary the submission raises the following issues.

1. The landowner questions the right to make a CPO of land for a school or schools.
2. It is suggested that since the Council have adopted the development plan which has zoned the lands for educational purposes and have now made the CPO that same in some way amounts to an abuse of authority.
3. It is suggested that the area of land required (6.0953 has.) is excessive.

I propose to deal with the issues raised in the order in which they arise

1. Right to compulsorily purchase land for a school

While a matter for legal submissions, specific statutory powers are conferred on the City Council to secure, if necessary by CPO, land for the provision of schools. Sections 212 and 213 of the Planning and Development Act 2000 (as amended) include the following:

*“212.—(1) A planning authority may develop or secure or facilitate the development of land and, in particular and without prejudice to the generality of the foregoing, may do one or more of the following:*

...

*(d) provide, secure or facilitate the provision of areas of convenient shape and size for development;*

*(e) secure, facilitate or carry out the development and renewal of areas in need of physical, social or economic regeneration and provide open spaces and other public amenities;*

...

*(2) A planning authority may provide or arrange for the provision of—*

*(a) sites for the establishment or relocation of industries, businesses (including hotels, motels and guesthouses), houses, offices, shops, schools, churches, leisure facilities and other community facilities and of such buildings, premises, houses, parks and structures as are referred to in paragraph (b),*

*(b) ...,*

*(c) ..., and*

*(d) any services which it considers ancillary to anything which is referred to in paragraph (a), (b) or (c),*

*and may maintain and manage any such site, building, premises, house, park, structure or service and may make any charges which it considers reasonable in relation to the provision, maintenance or management thereof.*

*(3) A planning authority may, in connection with any of its functions under this Act, make and carry out arrangements or enter into agreements with any person or body for the development or management of land, and may incorporate a company for those purposes.*

*(4) A planning authority may use any of the powers available to it under any enactment, including any powers in relation to the compulsory acquisition of land, in relation to its functions under this section and in particular in order to facilitate the assembly of sites for the purposes of the orderly development of land.*

*..."*

*213.— (1) The power conferred on a local authority under any enactment to acquire land shall be construed in accordance with this section.*

*(2) (a) A local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under section 94, do all or any of the following:*

*(i) acquire land, permanently or temporarily, by agreement or compulsorily,*

*...*

*and the performance of all or any of the functions referred to in subparagraphs (i), (ii) and (iii) are referred to in this Act as an "acquisition of land".*



*(b) A reference in paragraph (a) to acquisition by agreement shall include acquisition by way of purchase, lease, exchange or otherwise.*

*(c) The functions conferred on a local authority by paragraph (a) may be performed in relation to—*

*(i) land, or*

*...*

*whether situated or exercisable, as the case may be, inside or outside the functional area of the local authority concerned.*

*(3) (a) The acquisition may be effected by agreement or compulsorily in respect of land not immediately required for a particular purpose if, in the opinion of the local authority, the land will be required by the authority for that purpose in the future.*

*(b) ...*

*(c) Paragraphs (a) and (b) shall apply and have effect in relation to any power to acquire land conferred on a local authority by virtue of this Act or any other enactment whether enacted before or after this Act.*

*(4) A local authority may be authorised by compulsory purchase order to acquire land for any of the purposes referred to in subsection (2) of this section and section 10 (as amended by section 86 of the Housing Act, 1966 ) of the Local Government (No. 2) Act, 1960 , shall be construed so as to apply accordingly and the reference to “purposes” in section 10(1)(a) of that Act shall be construed as including purposes referred to in subsection (2) of this section.”*

While a matter for legal submission also, the acquisition of these lands is being proposed by the Council for the purpose of giving effect to and/or facilitating the implementation of the Cork City Development Plan 2022-2028. That development plan (“the Plan”) has been properly and lawfully adopted and is in full force and effect and no challenge to same has been brought by any party whether the landowner in this case or anyone else. Any such challenge to the Plan is now well out of time in light of the provisions of the Planning and Development Act, 2000 as amended and the landowner is not entitled to seek to raise a collateral challenge to the Plan by means of the objection made in this case.

It is my evidence that the CPO herein is for the purpose of obtaining title to the lands so that same can be conveyed to the Department of Education for the purposes of constructing and operating the schools as referred to in more detail in the brief of evidence of Murty Hanly of the Department. Such development is entirely in accordance with and secures the express objectives of the Development Plan as

expressed both in the zoning objective of the said lands and arising from Objective 10.62 of same, such lands being acquired to facilitate and secure the objectives of the development plan by the provision of educational facilities on same. In circumstances such as here where the lands are being purchased for purposes other than the Council's functions under the Housing Act, Section 10 of the Local Government (No. 2) Act of 1960 as amended by Section 86 of the Housing Act, 1966 as amended, permits the provisions of the Housing Act, 1966 to be used in connection with such purchase.

Having considered Section 213 of the Planning and Development Act 2000 as amended as set out above I am of the opinion that the Cork City Council's do have right to CPO lands for a school.

## 2. Suggestion of abuse of authority

As previously stated Sections 212 and 213 of the Planning and Development Act 2000 as amended clearly sets out the powers available to the Planning Authority to CPO land considered necessary to implement the Development Plan, along with the provisions of the Housing Act, 1966 as amended by the Local Government Act, (No. 2) 1960.

In relation to the assertion that lands were zoned residential in the County Development Plan 2014-20 ( 2017 Cork County Local Area Plan for Ballincollig and Carrigaline), the following is my response.

The 2014 Cork County Development Plan did not in fact contain any zonings for these lands, all zonings were contained in the Ballincollig Carrigaline Municipal District Local Area Plan 2017, where the majority of the lands were zoned residential save for a portion in the North-West corner which was zoned for community purposes with the objective for the provision of a school.

These lands in their entirety were zoned Education in the Draft Cork City Development Plan 2021 which went on public display on 28<sup>th</sup> July 2021. This objector was clearly aware of same by reason of the submission made as referred to below.

A submission on behalf of this landowner was received in relation to the draft zoning which requested that the proposed Education zoning revert back to Residential zoning, the reasons for this request were as follows,

- The lands were zoned Residential in the 2017 Cork County Local Area Plan for Ballincollig & Carrigaline.

- The lands are now proposed for rezoning to ZO 13 Education in the Draft Cork City Development Plan 2022 – 2028.
- Submission stated that the landowner was in advanced talks with property developer to sell site for residential development and the proposed zoning will prevent this from happening .

That submission was properly considered and was the subject of the following response and recommendation of the Chief Executive to this submission in her report to the members of Cork City Council,

*“A portion of these lands are currently zoned for Educational use in the 2017 Municipal District Local Area Plan.*

*There is an acute need for new school sites in Ballincollig as a number of schools are currently in temporary accommodation not ideally suited to educational use. In addition, population requirements for Ballincollig indicate that a minimum of 2 new schools and potentially 3 will be needed in the short to medium term.*

*Given this site’s location in an established residential area with access to transport links and the potential to serve a wide catchment, these lands are considered suitable for educational use.”*

No change to the proposed zoning was recommended and this was accepted by the Elected Members of Cork City Council on March 15<sup>th</sup> 2022 who went on to adopt the zoning of these lands for education without amendment.

No other submissions in relation to this parcel of land were received during the Development Plan process.

The adoption of the development plan is a reserved function of the members of the Council who are directly elected by the residents of the City and who perform a fundamentally democratic role in their capacity as members of the City Council which is recognised and given Constitutional protection by the Constitution.

No challenge (which can only be made by Judicial Review in accordance with Section 50(2) of the Planning and Development Act, 2000 as amended) has been made to the zoning of these lands in the Cork City Development Plan and the submission in this regard is not only entirely wrong but amounts to an impermissible collateral attack on the zoning of the lands by the members of the Council.

### 3. Area of land required being the area of the CPO

The land area proposed to be purchased is required for the provision of the schools in question as set out in the evidence of the Department of Education representative.

The area of land the subject of the CPO is in fact less than the area zoned for Educational use as the Council have confined the CPO to the lands necessary at this time and it is considered necessary to have a supply of suitably zoned land should further land for schools be required for schools be required in Ballincollig in the short to medium term or during the lifetime of the City Development Plan. The Council have not however sought to acquire any more land than that necessary.

## **Conclusion**

In considering planning applications within the settlement and the drafting of future planning policy for Ballincollig, careful consideration of the availability of Educational Facilities within the settlement is required. As previously alluded to in this precis, Ballincollig has experienced considerable population growth This population growth has led to significant demand for school places within the town. This demand cannot currently be met by the existing educational facilities

It is therefore considered that the proposal as presented will make a considerable contribution to the alleviation of pressure on existing school facilities in Ballincollig.

Furthermore, and having regard to compliance with the National Planning Framework and The Cork City Development Plan 2022,

I certify that the intention underlying the CPO herein is in accordance with the proper planning and sustainable development of the area and believe that the acquisition of the lands, the subject matter of the CPO herein is reasonably necessary for the development of educational facilities in Ballincollig

Ronan Mac Kernan  
Senior Executive Planner,  
Strategic & Economic Development,  
Cork City Council

16<sup>th</sup> day of January, 2023