



An
Bord
Pleanála

Inspector's Report

ABP-314665-22

Development	Compulsory Acquisition of Lands for the development of schools
Location	Lisheens, Ballincollig, Co. Cork
Planning Authority	Cork City Council
Applicant(s)	Cork City Council
Type of Application	Notice of Compulsory Purchase Order under the provisions of the Local Government (No. 2) Act 1960, the Housing Act 1966 (as amended by the Residential Tenancies Act 2004), the Roads Acts 1993-2015, Local Government Acts 1925-2019, the Planning and Development Act 2000, (as amended).
Objector	Executors of the Estate of the Late Merle Tanner.
Date of Site Inspection	17 th January 2023
Inspector	Jimmy Green

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1.0 Introduction

1.1. Overview

- 1.1.1. Cork City Council (CCC) is seeking confirmation by An Bord Pleanála (“the Board”) of a Compulsory Purchase Order (CPO) cited as “Lisheens, Ballincollig, Acquisition Order No.4 of 2022”.
- 1.1.2. The CPO relates to the compulsory and permanent acquisition of lands for the purposes of the provision of a site suitable for the development of a school campus to accommodate both a primary and post-primary school. Cork City Council (CCC) has made the CPO and submitted the request for confirmation pursuant to the powers conferred on it which are variously quoted in the public notices by CCC as the Housing Act, 1966, the Residential Tenancies Act 2004, the Local Government (No. 2) Act, 1960, Roads Act 1993, Planning and Development Acts 2000-2021, Local Government Acts 1925-2019, Roads Acts 1993-2015 and the Planning and Development Act 2000 (as amended) (“the Act”).
- 1.1.3. One objection was received in respect to the CPO from Michael Brady, Brady Group Agricultural Consultants/Land Agents, on behalf of the Executors of the Estate of the late Merle Tanner c/o Frank O’Connell & Company, Solicitors. This report considers the issues raised in the objection submitted to the Board as well as the overall application to acquire the lands for the stated purpose.

1.2. Purpose of the CPO

- 1.2.1. According to the documentation submitted with the application, the purpose of the CPO is to provide a site suitable for the development of a two-school campus. The two schools are currently operating from temporary buildings/accommodation in Ballincollig.

1.3. Accompanying Documents

- 1.3.1. The application is accompanied by the following documentation:

- Chief Executive Order dated 24th August 2022, signed, and sealed by the Executive Officer, authorising Cork City Council to acquire compulsorily for the purposes stated the relevant lands.
- Copies of public notices from the Irish Examiner dated 26th August 2022.
- An A1 CPO map at a scale of 1:1,000 setting out the extent of the subject lands delineated in green and with area no. 1 (1,230m²) shaded pink and area no. 2 (59,623m²) shaded grey (both of which are subject to the current permanent compulsory acquisition order).
- Copies of notice of the making of the CPO which was served on owners/reputed owners as well as a certificate from An Post in relation to service of the notice.
- Letter from Director of Service (DoS) Corporate Affairs and International Relations stating:
 - CCC has been requested by the Department of Education's (DoE) to compulsorily acquire a 15-acre plot for the development of a new school campus in Ballincollig.
 - Due to the urgent need for schools it is necessary to seek the commencement of the CPO process to accommodate.
 - The Department carried out an extensive site identification and assessment exercise in Ballincollig with CCC. The subject site was deemed suitable and best meets the objectives of the Development Plan. All alternative site options were either unavailable or unsuitable.
 - (At time of writing the letter – 2nd June 2022) The Cork County Development Plan 2014 and the Ballincollig Carrigaline MD Local Area Plan 2017 were the operative plans.
- Letter from DoS Strategic and Economic Development dated June 20th, 2022, noting:
 - Ballincollig has been identified by Cork City Council as a key growth area and has significant demand for school places in the town.
 - Alternative sites were all either unavailable or unsuitable.

- ICPO proposals align well with all relevant plans and policy documents.
- The site is in an area of residential development and will address a deficiency in school facilities and promote active school travel.
- Letter from DoS, Roads, and Environment Operations dated 2nd June 2022 notes that the site of the CPO satisfies the objectives of the soon to be adopted (at the time of writing of the letter) City Development Plan, alternative sites are unavailable or unsuitable, the site is adjacent to large existing residential developments thus promoting active school travel, and the urgent requirement to develop permanent school facilities in Ballincollig. Letter concludes that the acquisition is necessary to progress the City Council's strategic population growth goals and supports the CPO.
- Letter from DoS Housing dated 17th June 2022, noting that the Housing Directorate have no objection to the proposed CPO and is supportive of it and the provision of educational facilities in Ballincollig.
- Letter from DoS Infrastructure Development dated 17th June stating that the land as set out in the CPO is necessary for the provision of improved educational facilities the provision of which is in keeping with the NPF and local policy. The DoS fully supports and agrees with the proposed CPO.
- Report from DoS Community, Culture and Placemaking dated June 2022 which makes the following points in relation to the proposed CPO.
 - The zoning of a portion of the CPO lands in the north-western section is “existing built-up area”, and specific objective BG-C-05 is relevant for this plot which provides for a primary school. The remainder (majority) of the CPO lands is zoned as BG-R-01 in the 2017 Local Area Plan.
 - While residential zoning would allow for some associated community uses an entire educational use/school campus on the residential zoned lands would not accord with the 2017 LAP.
 - The following elements of the Draft Cork City Development Plan (2022-2028) were noted:

- Table 3.7 of the Draft [Table 3.8 of the adopted]¹ Plan sets out the Department of Education's Preliminary Assessment of Additional School Capacity and identifies the need in Ballincollig for 2 new or expanded primary schools and 1 new expanded secondary school for the Ballincollig school planning area (including Maglin).
- Objective 3.23 (School Facilities) of the Draft [Objective 3.24 of the Adopted]² Plan refers to the need to work closely with the DoE in planning for the delivery of new schools and to encourage co-location to facilitate sharing halls and playing fields/courts where possible.
- Section 10.220 (Education) notes that Ballincollig as a growing town requires additional educational facilities and identifies the Maglin Urban Expansion Area (UEA) as the optimum location.
- The Draft plan zones most of the CPO site as "Education" with the exception of an area in the northwest corner which is zoned as "ZO1 - Sustainable Residential Neighbourhoods".
 - o Subject to the adoption of the Cork City Development Plan the Community, Culture & Placemaking Directorate support and have no objection to the compulsory purchase of the land for educational purposes.
- Memo from a Senior Engineer in Housing in relation to the extant small bungalow that is located on the northwest portion of the CPO lands. Memo concludes that the bungalow is structurally unfit for human habitation and cannot be made fit for such at a reasonable expense for reasons including several serious structural issues with the property particularly with the roof, windows and doors being in a ruinous condition, significant cracking, and water penetration throughout external walls.

¹ Added by Author for clarity and ease of reference.

² Added by Author for clarity and ease of reference.

1.4. Format of CPO Schedule

- 1.4.1. There are two parts to the schedule attached to the notice of the CPO. The first Part relates to land consisting of a house stated to be unfit for human habitation and not capable of being rendered fit for such at a reasonable expense. The area of the first part is 1,230m² and relates to lands comprising of a dwelling house and garden. The second part of the schedule comprises lands of 59,623m² that are currently under agricultural use. The CPO intends to permanently acquire both parts.

2.0 Site Location, Context and Description

- 2.1. The site of the lands subject to this acquisition (the subject lands) are located in the western part of Ballincollig. Ballincollig is the largest urban town in Cork City and has experienced significant growth in recent times.
- 2.2. The subject lands are located in the west of Ballincollig between the N22 (which runs along its southern boundary) and the R608 regional road (which runs along its northern boundary). The site has generally flat topography although there is a gentle slope in a southerly direction before a rising embankment along the N22. The north-western corner of the subject lands is occupied by a disused/unoccupied/derelict dwelling (Area no. 1 as noted on Drawing No. LBCPO-001 submitted as part of the CPO documentation). The rest of the site (Area no.2 as noted on Drawing No. LBCPO-001 submitted as part of the CPO documentation) is under agricultural use with mature hedgerows and trees along the field boundaries within the site.
- 2.3. The subject lands form part of a larger agricultural landbank at this location. To the immediate east of the subject lands lies another agricultural field which is zoned as "ZO 12 - Education". Further east lies the Lisheen Woods residential development, to the northwest there is a cluster of one-off detached dwellings with some agricultural sheds, further west lies the interchange of the N22/R608.
- 2.4. Along the northern frontage of the subject CPO lands is a dilapidated and unoccupied dwelling house, as well as the hard shoulder of the R608. There are no footpaths along the site frontage although there is one on the opposite side of the regional road. The CPO boundary does not include the entirety of the agricultural land's frontage onto the R608, an approximate 10m wide corridor has been left to

facilitate access to the residual area of agricultural lands to the east not subject to the CPO. There are two one-off dwellings to the north fronting onto the regional road which are separated from the subject CPO lands by an approx. band of 50-60m of agricultural lands to the south and has a 10m separation at its closest point (along the site frontage).

3.0 Existing Educational Facilities

3.1. Ballincollig has 5 no. primary and 3 no. secondary schools as well as a special needs school (Our Lady of Good Counsel, Innishmore, Ballincollig). The latest available enrolment figures from the Department of Education (“DoE”) for the primary and secondary schools in Ballincollig (excluding Our Lady of Good Counsel) are set out below in Table 1.

Table 1: List of Primary and Secondary Schools in Ballincollig.

School	Level	Enrolment ³
Scoil Barra	Primary	442
Scoil Mhuire	Primary	441
Soil Naomh Eoin Buachailli	Primary	438
Gaelscoil Ui Riordan	Primary	760
Gaelscoil an Chaisleáin	Primary	148
Colaiste Colm	Secondary	1,349
Ballincollig Community School	Secondary	941
Le Chéile Secondary School	Secondary	64

Of the above, two schools, Le Chéile Secondary School and Gaelscoil an Chaisleáin are currently operating out of temporary facilities.

4.0 The Proposal

4.1. The stated purpose of the CPO is to provide a site to facilitate the relocation of two schools (one primary and one secondary school – each of which are currently operating from separate temporary accommodations within Ballincollig) to their own

³ Department of Education Post-Primary Provisional Post-Primary and Primary data for 2022/2023 academic year

permanent educational facilities (buildings and playing areas). The two schools which are intended to be accommodated on the subject CPO lands are the Gaelscoil an Chaisleáin primary school and the Le Chéile Secondary School. Gaelscoil an Chaisleáin is currently operating from temporary accommodation at Tanner Park (Ballincollig RFC Rugby Grounds) c.500m northeast of the subject lands, while Le Chéile Secondary School is operating from temporary accommodation at Inishcarra adjacent to Ballincollig Community School c. 2km northeast of the subject lands.

4.2. While there are no definitive plans or application details set out as part of the CPO process, during the oral hearing process Mr. Frank Lewis (Senior Architect in the Professional and Technical Section of the Planning and Building Unit in the DoE) clarified that additional school accommodation is required for approximately 1,600 pupils across the primary and post-primary sectors. The proposed use of the land and the development to be carried out once acquired by the Council and made available to the Department will consists of:

- One primary school with 24 mainstream classrooms, special education needs class-bases, ancillary accommodation, outdoor school amenities (ballcourts and junior play areas) and school specific infrastructure.
- One Post-Primary school with a long-term projected enrolment of 1,000 pupils incorporating mainstream and specialist teaching classrooms and spaces, special needs accommodation, a general-purpose area (for assembly and dining), a Physical Education Hall, ancillary accommodation, outdoor school amenities and play areas.

5.0 Policy Context

5.1. National Planning Framework (NPF)

5.1.1. Access to quality Childcare, Education, and Health Services is identified as one of the 10 no. Strategic Investment Priorities, in the NPF as is Compact Growth.

5.1.2. The NPF recognises that the continued provision and enhancement of facilities and amenities for children and young people such as childcare, schools, playgrounds,

parks and sportsgrounds, remains necessary and will need to be maintained at similar levels for the foreseeable future⁴.

5.1.3. National Policy Objective 31 aims to: *“Prioritise the alignment of targeted and planned population and employment growth with investment in... 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...”*

5.1.4. The NPF also recognises that the co-location of schools and sports facilities is an example of increasing the efficiency of land use which can ultimately contribute to resource efficiency and the transition of the country to a low carbon economy.

5.2. Regional Spatial and Economic Strategy

5.2.1. RPO177 of the Regional Spatial and Economic Strategy for the Southern Region (RSES) states it is an objective to improve access to quality childcare, education, and health services through initiatives under the National Development Plan.

5.2.2. RSES RPO 185 relates to new school facilities and states *“It is an objective to support a planned approach to location of school facilities in accordance with the DoHPLG Guidance document ‘The Provision of Schools and the Planning System’, such that both proposed locations and existing schools are accessible by cycling/walking from the main catchment areas and accessible by public transport with appropriate safe facilities within reasonable access of public transport and active travel modes..... Local authorities should ensure that a robust site selection process is followed in the selection of new school locations New educational development/infrastructure should be informed by anticipation of demand for student capacity and Local Authorities should ensure that decision- making is informed by an appropriate level of environmental assessment.”* The RSES also describes Ballincollig as the largest and fastest growing town in Cork.

5.3. Cork City Development Plan 2022

5.3.1. The relevant Development Plan policy document is the Cork City Development Plan 2022-2028 (CCDP). The CCDP was adopted by the City Council on the 10th of June

⁴ NPF page 88 refers.

2022 and took effect from the 8th of August 2022 subject to a Ministerial Direction issued on the 2nd of December 2022 (relating to reinstatement of seven zoning objectives from the Draft Plan and to delete a zoning objective at Carrigrohane). It should be noted that at the time of the lodgement of the CPO documentation the provisions of the previous Cork County Development Plan 2014 were in place in relation to Ballincollig and the CCDP was in Draft form.

5.4. In relation to the current CPO the following are the most relevant CDP provisions.

- Ballincollig is the largest urban town in Cork City and has experienced significant economic growth in recent times. The Core Strategy in the CDP sets a baseline population of 18,159 (2016) for Ballincollig and targets a future population of 28,679 for 2028 (representing an increase of 10,520 or 57.9%⁵). Future housing and population growth in Ballincollig is proposed to be concentrated in the Maglin Area to the south of the town and other zoned lands to the west and in infill and brownfield lands within the existing built-up area of the town.
- Table 3.8 of the CCDP contains the Department of Education’s Preliminary Assessment of Additional Education Capacity for Cork City and identifies the need for 2. no. new or expanded primary schools, and 1 no. new or expanded secondary school in the Ballincollig School Planning Area (including the growth area of Maglin).
- The CCDP states the following as an objective (Objective 3.24) of the City Council in relation to School Facilities:
 - a) *“To work closely with the Department of Education in planning for the delivery of new schools in-step with new housing development within the city;*
 - b) *To ensure that new school sites are made available in accordance with the requirements of the Department of Education;*
 - c) *To encourage the co-location of schools as part of education campuses and with other community uses to create community hubs. This could facilitate the sharing of halls, playing fields and courts where feasible;*

⁵ Table 2.2 of the CCDP “Core Strategy 2028: Compact Liveable Growth” refers.

d) *Work closely with the Department of Education and Skills and landowners to ensure that new schools are provided to meet the needs of new residential neighbourhoods at: City Docks; Tivoli Docks; Ballincollig Maglin; Ballyvolane; South Glanmire; Blarney (Stoneview); Kilbarry / Blackpool Neighbourhood; and Douglas (Castletreasure)."*

- In relation to the cycle network the CCDP envisages in excess of 110km of new and upgraded cycle facilities including a primary route along the R608 in Ballincollig which runs along the northern frontage of the subject lands. The CCDP states that Ballincollig is also to be serviced by the upcoming Busconnects project for Cork and envisions a light rail transport connection to Cork City.
- Section 10.203 of the CCDP notes that the Maglin Area has drainage constraints that have been assessed as part of the South Ballincollig Drainage Study. In addition, there are deficiencies with the town water and wastewater network which require upgrades to accommodate additional growth.
- No part of the urban area of Ballincollig has experienced flooding however some northern parts of the town along the back of the Lee have been subject to recurring flood events. The Strategic Flood Risk Assessment carried out during the CCDP preparation process did not identify the subject lands as being within either floodzone A or B.
- The site is subject to two zoning provisions, Area 1 –which is currently occupied by the existing derelict site - is zoned as ZO 01, Sustainable Residential Neighbourhoods, while the remainder of the subject lands is referred to as Area 2 and is zoned as ZO 12 – Education.
 - The zoning objective for ZO 01 – Sustainable Residential Neighbourhoods, is *“To protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.”* The CCDP notes that schools represent a primary use within this zone⁶.

⁶ Paragraph ZO 1.3, Page 542 of the CCDP refers.

- The zoning objective for ZO 12 – Education, is *“To provide for schools and educational facilities and related development.”* The main purpose of this zone is to provide for the wide range of educational facilities (primary, post-primary and third level) and all ancillary accommodation and facilities serving such facilities.
- The CPO lands are not subject to any other specific objectives in the CCDP in terms of protected structures, proximity to scenic routes, strategic linear views or viewing location of special amenity value.
- The subject site is not proximate to any Natura 2000 sites, the closest being the Cork Harbour SPA (Site code 004030) located approximately 13 kilometres to the east. The most proximate Natural Heritage Area is approx. 21 kilometres northwest (Boggeragh Mountains NHA) while the closest proposed Natural Heritage Area (Lee Valley – Site Code 000094) is approximately 1.2km northeast of the subject lands.
- The subject lands do not contain any recorded archaeological features or sites, the most proximate recordings relate to sites that were excavated in advance of the provision of the N22 works which runs generally east west along the southern boundary.
- Section 10.220 of the Plan notes that the future development of the Maglin/South Ballincollig area is dependent on the design of a distributor road, some of which has been built, the route alignment capacity and function of this road is currently being appraised and it is envisioned that the road will be selected during the lifetime of the current CCDP. The CCDP also notes that some areas of land at Maglin present difficulties in terms of topography, archaeology and flooding and require more detailed appraisal.
- Section 10.221 of the CCDP notes that *“Ballincollig as a growing town requires additional educational facilities. The Maglin Urban Expansion Area in the south of the town is considered the optimum location for these schools.”* Objective 10.61 states that development in Ballincollig will only be permitted in areas not identified as being at risk of flooding. Objective 10.57 states that it is an objective to support the compact growth of the south Ballincollig Expansion Area. Objective 10.62 of the CCDP, entitled “Ballincollig Education” states:

“Cork City Council will work with the Department of Education and landowners to identify new school sites for the town and its wider catchment.”

5.5. Provision of Schools and the Planning System (DoEHLG 2008)

5.5.1. This is a code of practice for Planning Authorities, the Department of Education and Science, and the Department of the Environment, Heritage and Local Government. It sets out best practice approaches that should be followed by planning authorities in ensuring the planning system plays its full part in facilitating the timely and cost-effective roll-out of school facilities by the Department in line with proper planning and sustainable development. It states that the provision of new schools (both primary and post-primary) should be driven by and emerge from an integrated approach between the planning functions of the Local Authorities and the Department. Furthermore, it states that Local Authorities will support and assist the Department in ensuring the timely provision of school sites. Towards this end, the document states:

- The Department will identify future primary school demands based on populations trends. The procedure for establishing demand for new second-level schools may be more complex as population growth, capacity of existing schools, and enrolment patterns are all considerations. The Department will also consider the use of multi-campus schools in appropriate cases, two or three schools' side by side, a primary and post-primary sharing a site or schools anchoring wider social/community facilities.
- Planning Authorities will anticipate the demand for new school infrastructure that arise from new development within the drafting process for the development as well as other plans, and through these plans will facilitate the identification of suitable lands to meet the need for new schools or expansion of existing facilities.
- Planning Authorities will ensure that school sites are fit for purpose (in terms of location, access to services and provision of space), ensure locations aid ease of access from surrounding areas encouraging modal mobility, are close to areas of greatest residential expansion. Once sites are identified immediate

contact with the Department must be initiated in order to clarify the suitability of the site and its timeframe for acquisition. Planning Authorities must generally base their approach in assessing school site requirements on the Departments standards as well as considering urban design and sustainable development considerations.

5.6. Technical Guidance Documents (Department of Education and Skills)

5.6.1. There are two relevant Technical Guidance Documents of note in relation to the provision of school sites these are:

- Technical Guidance Document TGD-027 – Identification and Suitability Assessment of sites for Post Primary Schools (Revised September 2019)
- Technical Guidance Document TGD-025 – Identification and Suitability Assessment of Sites for Primary Schools (Revised September 2019)

5.6.2. TGD-027 relates to secondary schools, it lists a number of criteria to be considered in terms of site selection including zoning, development plan objectives for the site, flooding/wetland issues, natura 2000 sites, archaeological features, architectural heritage, landscape (/protected vistas), contamination potential, abnormal development costs, and noise. Table 1 of the TGD outlines a School Site Area Analysis and quantifies the elements which should form part of a school site. Table 1 sets out the school site area analysis and all the elements which form part of a post primary school site and provides a recommended site area for a 2-storey school with an enrolment of 500, 750, and 1000 pupils as 3.13, 3.82 and 4.57 hectares respectively. TGD-027 notes that the provision of playing pitches has a significant impact on overall site area and acknowledges that if such facilities can be provided on a permanent basis at a convenient location near the school, then consideration can be given to the reduction in overall recommended area. TGD-027 acknowledges that, due to the scarcity of land in urban areas and other constraints, it is not always possible to achieve the ideal site size.

5.6.3. TGD-025 relates to the provision of primary schools and provides for consideration of the same broad constraints as set out previously above in relation to site selection for post-primary facilities. Table 1 of TGD-025 also sets out recommended site areas for two storey and single storey schools dependent on the required school size in

terms of the number of classrooms. The recommended site areas range from 0.71ha (for a 2-storey, 4-8 classroom school) to 2.2ha (for a single storey, 24-32 classroom school).

5.7. Development Plans, Guidelines for Planning Authorities (DoEHLG, 2007)

- 5.7.1. These guidelines outline that consideration must be given to the future provision of supporting infrastructure, including schools, when allocating land for development as part of the Development Plan process. They go on to state that *“there should be a reasonable expectation that these can be delivered in the lifespan of the plan”*.
- 5.7.2. In the guidelines the provision of school facilities is dealt with under the heading “Mandatory Objective 11: Community Services, under which it is stated that *“With regard to school provision, development plans must facilitate the provision of sufficient land to meet the need for new schools or expansion of existing schools in accordance with the requirements of the community and of the relevant education authorities.”*

6.0 Planning History

- 6.1. There have been no recent previous planning applications (last 10-years) on the lands subject to the proposed CPO. There have, however, been two previous applications to provide agricultural entrances at separate locations from the R608 to the overall holding at this location, PI. Ref.’s 08/8211 and 04/9478 refer, both applications were granted permission by the Planning Authority. Further east there are a number of planning applications relating to the provision of the Lisheen Woods and Lisheen Fields residential development and numerous alterations throughout to individual dwellings.

7.0 Objections to the Compulsory Acquisition of Lands

- 7.1. There has been one objection lodged in relation to the Compulsory Acquisition of the subject lands. This has been submitted by the Estate of Merle Tanner and the following are the main issues raised in the initial objection letter are as follows:

- Concerned that Cork City Council does not have the right to serve a CPO on land for Schools.
- Considers that the Cork City Council are abusing their authority by re-zoning the lands from Residential to Educational in the County Development Plan and then pursuing a CPO on the same lands.
- The land-take subject to the CPO is excessive of what is needed for the construction of two schools.
- The CPO process has been unsatisfactory as the landowner advises they first learned of it through newspaper articles.
- The late Merle Tanner had agreed to sell the lands to a property developer for residential use, when she passed this process was delayed and Cork City Council used the impasse to rezone the lands.

During the oral hearing process further points were made by the objectors, these have been set out in full in Appendix 1, however, for ease these are summarised below:

- The optimum location for the provision of schools for Ballincollig is in the Maglin Urban Expansion Area (Maglin UEA) and not the subject lands.
- The extent of the landholding being made subject to compulsory acquisition is excessive and the City Council have not established the need for the lands. Given the urban location accommodation for both schools could be provided on a reduced site area, therefore the CPO is disproportionate, examples/precedents of other urban school developments are cited.
- The excessive extent of the lands being made subject to compulsory acquisition is being justified based on inappropriate design and layout standards that are not compliant with Development Plan requirements.
- The Council/Department did not carry out a sufficient site selection process.
- The Council is acting ultra vires by making the CPO based on a site size justified by use of underlying design assumptions and standards that are not in compliance with the development plan. It would therefore be unlawful for the Board to facilitate a breach by the City Council of its statutory obligation

under section 15 of the Act to give effect to the objectives of its development plan.

8.0 Oral Hearing

8.1. Background

8.1.1. By way of clarification/explanation in relation to the various letters and dates on file in relation to the oral hearing please note that the date for the oral hearing had initially been set for the 31st of January 2023, however, this was rescheduled to the 28th of February to facilitate the preparation of the parties and to assure a full hearing would be held. That hearing had to be cancelled due to a last minute technical/operational issue on the part of external contractors engaged by the Board, and so the oral hearing was then held on March 9th, 2023. Both the Estate of Merle Tanner (objector) and Cork City Council were represented at the hearing and oral submissions were heard by, or on behalf of, all parties. The proceedings of the oral hearing are summarised in **Appendix 1**. The entire proceedings were also recorded and are available to the Board.

8.1.2. It should also be noted that written submissions/briefs of evidence were supplied by, and circulated to, participants in advance of the hearing. These written submissions/briefs of evidence have been attached to the file to inform the Boards consideration, and are listed below:

- Letter of Response to Objector from Cork City Council dated 25th January 2023.
- Brief of Evidence of Ronan McKernan, Senior Executive Planner (SEP), Cork City Council.
- Brief of Evidence of Murty Hanly, a/Principal Officer, Department of Education,
- Brief of Evidence of Frank Lewis, Senior Architect, Department of Education (including: TGD-025: Identification and Suitability Assessment of Sites for Primary Schools, 2nd Edition, January 2012 (Revision 1, September 2019), TGD-027: Identification and Suitability Assessment of Sites for Post Primary Schools, 1st Edition, January

2012 (Revision 1, September 2019), Appendix 1 - Indicative Site Layout Plan, Schedule of Overall Accommodation (Primary), and Appendix 2, Schedule of Overall Accommodation (Post-Primary).

- Outline Legal Submission of Eamon Galligan SC on behalf of landowner.
- Statement of Evidence, HWP Planning including maps, precedent layouts of other school schemes and an indicative layout showing the provision of schools on a smaller portion of the subject lands.

8.2. Modifications

8.2.1. One modification was sought to the CPO during the oral hearing. The applicant amended Schedule Part 1 to include Michael and Gerard Hallissey as a lessee or reputed Lessee. A copy of the amended schedule was received as well as a copy of a signed agreement (dated 21st January 2023) from Gerard and Michael Hallissey confirming:

- That their reputed leasehold interest in the lands and premises referred to at plot 1 in the Schedule be included in the CPO and that it be amended accordingly by An Bord Pleanála in confirming the CPO with or without modifications.
- Each confirmed that they were happy with (a) the adequacy of the notice given by the making of CPO and (b) for the Oral Hearing to proceed as scheduled.

9.0 Assessment

9.1. Overview

9.1.1. The relevant statutory powers of a Planning Authority to acquire land are set out in Section 213 of the Planning and Development Act 2000, as amended (“the Act”). Under its provisions the local authority may acquire land compulsorily for the purpose of performing any of its functions including giving effect to or facilitating the implementation of its development plan or its housing strategy. Section 212 of the

Act provides that a Planning Authority may provide, secure, or facilitate the provision of areas of convenient shape and size for development (Section 212(1)(d) of the Act refers) or secure, facilitate or carry out the development and renewal of areas in need of physical, social or economic regeneration and provide open spaces or other public amenities (Section 212(1)(e) of the Act refers). Section 212(2) (a) of the Act goes on to state that a Planning Authority may provide or arrange for the provision of sites for the establishment of inter-alia schools and other community facilities. Furthermore, 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 (Section 212(4) of the Act refers). In this regard, please note that I am satisfied that the Planning Authority have the right to CPO the lands for the stated purposes of providing a school campus.

9.1.2. The CPO is in relation to two adjoining areas of land, Area 1 is 1,230m² and includes a house. Following site inspection and review of the CPO documentation I am satisfied that this house is unfit for human habitation and is not capable of being rendered fit for human habitation at reasonable cost. Area 2 of the CPO is 59,623m² and is under agricultural use. In total the CPO provides for the acquisition of 6.0853 ha (60,853m²/15.0371 acres) of land for the purposes of providing a school campus to accommodate a primary school (c. 500 pupils) and a (c. 1,000 student) post-primary school. Facilities for children with additional needs will also be provided for in the form of a 2-classroom base primary Special Educational Needs (SEN) facility and a 4-classroom base post-primary SEN facility.

9.1.3. For the Board to confirm the subject CPO, it must be satisfied that, Cork City Council as the acquiring authority has clearly demonstrated that the CPO *“is clearly justified by the exigencies of the common good”*⁷. This has been interpreted by legal commentators⁸ and broadly accepted as a requirement to satisfy the following criteria:

- That there is a community need that is to be met by the acquisition of the site in question.

⁷ Set out in the judgment of Geoghegan J. in *Clinton v An Bord Pleanála* (No. 2) (2007) 4 IR 701.

⁸ As per ‘Compulsory Purchase and Compensation in Ireland: Law and Practice, Second Edition, by James Macken, Eamon Galligan, and Michael McGrath, published by Bloomsbury Professional (2013)’,

- That the particular site is suitable to meet the community need.
- Any alternative methods of meeting the community need have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate), and
- The works to be carried out should accord or at least not be in material contravention of the provisions of the statutory development plan.

Another test set out in “Planning and Development Law” (Garrett Simons – Second Edition) requires consideration of whether the proposed CPO measures will have a disproportionate or excessive effect on the interests of the affected persons. This issue of proportionality, along with other issues arising from the matters raised by the Estate of the Later Merle Tanner who is the objector to the compulsory acquisition are all discussed in order in the following sections.

9.2. **Community Need.**

- 9.2.1. The CPO is being sought to accommodate two schools in Ballincollig which are currently operating from temporary accommodation on separate sites which are not ideally suited for their current purposes, continued development and/or expansion.
- 9.2.2. The need for additional schools in Ballincollig has been identified in the adopted CCDP 2022-2028. Table 3.8 of the CCDP sets out the Department of Education’s preliminary assessment of additional education capacity, and states for the Ballincollig School Planning Area (including the growth area of Maglin) 2 no. new or expanded primary schools are required and 1 no. new or expanded secondary school is required. As discussed in the oral hearing this requirement is based on a calculation of the existing throughput of students through primary schools in the area and the recent and future development plan lead population growth envisioned for Ballincollig. I also note that during the oral hearing and in all submissions lodged in relation to this acquisition, the overall need for additional and improved educational facilities for the Ballincollig area was not questioned or queried by the objector.
- 9.2.3. Section 10.221 of the CCDP notes that Ballincollig is a growing town that requires additional educational facilities, while objective 10.62 states that the City Council will work with the Department of Education and landowners to identify new school sites for the town and its wider catchment.

- 9.2.4. Of the schools currently operating in Ballincollig there are two that are accommodated within temporary facilities, Le Chéile Secondary School and Gaelscoil an Chaisleáin. These schools were opened in 2017 (Gaelscoil an Chaisleáin) and 2021 (Le Chéile Secondary School) and have been serving the community since, albeit that their buildings are temporary in nature and supporting facilities (such as playing fields etc.) are shared with other schools and/or clubs.
- 9.2.5. The Gaelscoil is located within the grounds of the Ballincollig Rugby Club in single storey modern prefabricated structures on lands which are zoned as “ZO 16 – Sports Grounds and Facilities”. The latest DoE enrolment figures available show that this school currently caters for approximately 150 students. The school currently has access to its own fenced-in play area. All these facilities are on the grounds of the local rugby club with vehicular access and car parking shared. The school is located adjacent to the main rugby pitch and to the north of the existing rugby clubhouse.
- 9.2.6. The Le Chéile Secondary school is located adjacent to the Ballincollig Community School pitches and is accommodated in a modern two-storey prefabricated structure on lands that are zoned as “ZO 01 – Sustainable Residential Neighbourhoods”. The school does not have significant grounds and the existing site is quite restrictive with the school building footprint taking up the majority of the site area, vehicular access to the school is provided via a long straight private driveway set back off the public road network. The latest DoE figures available show that the school currently caters for an enrolment of c. 60 no. students. The site is limited and restrictive and does not lend itself to expansion.
- 9.2.7. The existing operations of the schools have clearly emerged from necessity to provide for the educational needs of existing pupils in Ballincollig, and while the locations are innovative in terms of making use of available space, neither site presents a viable permanent solution for the provision of permanent school accommodation and facilities for the student numbers required by the needs assessment of the Department which shows a requirement to provide a 1,000 student secondary school and a 500 pupil primary school. The existing sites are not suitable as permanent schools due to their restricted size, nature of the accommodation, and the existing tenure over the sites.

9.2.8. In recognising the requirement for additional school facilities in Ballincollig the CCDP is being consistent with previous plans (Macroom Electoral Area Plan 2011 and Ballincollig Carrigaline Electoral Area Plan 2017) which also recognised the need for additional school facilities. There is therefore a long-standing requirement for additional educational facilities for Ballincollig which has not yet been satisfactorily or sustainably met.

Conclusion in Relation to Community Need:

9.2.9. Based on the above, having reviewed the information submitted and conducted an oral hearing, I am satisfied that there is an immediate, demonstrated and unquestionable need for additional schools' facilities in Ballincollig. I am therefore satisfied that a clear and pressing community need to provide for additional permanent and dedicated school facilities in Ballincollig exists. Furthermore, I note that all relevant statutory plans since 2011 have referenced and recognised this need and while the two schools that are proposed to be accommodated have been founded and are operational, I fully accept that the sites, buildings and facilities from which they are operating (while offering sufficient and innovative interim/temporary solutions) are deficient to cater for the pupil numbers that are required/projected. Notwithstanding the acknowledged need for additional school facilities as set out in the relevant plans for the area for over a decade a site for additional required permanent school facilities has not been forthcoming and accordingly, I am also of the opinion that it is appropriate for the provision of same to be facilitated through the compulsory acquisition process.

9.3. Suitability of Lands to Serve Community Need

The suitability of the lands to serve the community need is a critical issue in determining whether to confirm the CPO. I propose to discuss this matter under several key headings set out below.

9.3.1. Location:

9.3.1.1. The site of the CPO is in the western part of Ballincollig, with the N22 running along its southern boundary. The site is located to the east of the junction between the N22 and R608 with the latter running along the subject land's northern boundary. The site

is located proximate to the large concentration of residential development in West Ballincollig and is located approximately 2.5km from the designated down centre (by road).

9.3.1.2. The CPO site lies to the south of the R608 and fronts onto this regional road. There is no footpath present along the site frontage on the southern side of the R608, however, there is a footpath present along the northern side of the road which connects with the centre of Ballincollig. There are also proximate bus stops in place. The lands are zoned and are very much constitute part of the Ballincollig Settlement.

9.3.1.3. I note the provisions of the NPF and Ministerial guidelines which support the provision of compact development and sustainable transport patterns through the provision of schools and residential development within or close to existing built-up areas. While I note that the CPO site is located on the western periphery of Ballincollig, it is very much located within the town and near existing significant residential developments as well as its wider services and facilities. I am, therefore, satisfied that the provision of a school campus at this location would support the broad principles of compact development as well as those of proper planning and sustainable development. The subject site is located within the established community and represents an appropriate location for a school campus such as that being facilitated by the CPO.

9.3.2. Size:

9.3.2.1. The size of the site subject to CPO has been subject to significant debate and argument throughout the oral hearing. In relation to this issue the objector noted the urban location of the subject lands and cited recent examples/precedents of other schools which had been provided on smaller urban site areas than that currently proposed and that for this reason the land-take associated with the current CPO was inappropriately large.

9.3.2.2. In setting out and justifying the suitability of the site size subject to CPO the Department of Education submitted an indicative layout (Appendix 1, of the Brief of Evidence of Frank Lewis refers). In relation to this issue the objector noted that the

car-parking provisions set out in the indicative layout were not appropriate nor in line with the requirements of the CCDP, furthermore that due to the location of the site in an urban area that it would be incumbent on the Department (and in keeping with the requirements of the CCDP and compact growth) to bring forward a development that was more urban in nature with a design ethos more in keeping with the urban context. In this regard it was also noted that it is incumbent on the proposers of the scheme to ensure maximum use is made of readily serviced urban lands in the interests of compact growth and sustainability. Mr. Galligan on behalf of the objector also asserted that the indicative layout must be considered as it has been directly used to inform and justify the land-take associated with the CPO.

9.3.2.3. I note the contents of both the indicative layout supplied by the City Council as part of their submission showing the provision of a school campus for both a primary and secondary school on the site of the subject lands (6.0853ha) as well as the indicative layout provided by the objectors in the submission by HWP showing a differing indicative layout on a revised site size of 4.26ha, both of which were received and circulated in advance of the oral hearing and after the initial CPO documentation was lodged. The current CPO process is being brought forward to facilitate the provision of a school campus site to accommodate both a primary and a post-primary school. There has been no formal planning application or other consent process undertaken in relation to any future proposed development of these lands, and the CPO process if confirmed by the Board does not indicate any form of approval of any indicative layouts that have been presented. The confirmation or otherwise of the CPO relates purely to the principle of the acquisition of the lands to serve the purpose for which they are being acquired under the relevant criteria.

9.3.2.4. Matters of design, access (including car parking and pick-up/drop off), facilities provision (outdoor play areas, pitches etc.) and layout will all be subject to the rigours and requirements of the relevant development plan design and policy standards through the future consenting process that will be required. Approval of any future consent process will necessitate compliance with the relevant development plan, and therefore these matters can only be adequately assured at that time.

9.3.2.5. I note that the objector’s argument that the indicative layout submitted by the City Council/Department of Education was used to inform the scale of the site subject to the acquisition. While noting this point I do not agree with it, due to the following:

- The indicative layout plan supplied as part of the CPO process was submitted in advance of the first scheduled oral hearing date, after the date that the CPO documentation was lodged.
- The drawing date on the indicative layout drawing is January 2023.
- No reference is made to an indicative design in the initial CPO documentation, and no party has indicated or presented any evidence that an indicative layout was available prior to the oral hearing, and the objector did not make any further enquiries at the Oral Hearing in relation to the date of the indicative layout.

Taking the above into consideration I am satisfied that the indicative layout was produced to inform the oral hearing process and to present how a future school campus such as that for which the acquisition is proposed could potentially look on these lands.

9.3.2.6. In terms of informing the size of the lands required to accommodate a two-school campus, I refer to the relevant technical guidance documents – TGD-25: Identification and Suitability of Sites for Primary Schools, and TGD-27 Identification and Suitability of Sites for Post-Primary Schools. Both these documents contain school site area analyses in relation to the respective school site requirements. Table 2, below sets out the site sizes recommended in relation to schools of the nature currently proposed and sets out the total area requirement that would be available:

Table 2: Summary of Recommended site area in school buildings

School Type	Size of School	Recommended Area (Ha)
Primary (TDG-25)	24 classroom	1.5ha (two-storey, 16-24 Classroom)
		1.6ha (single-storey, 16-24 Classroom)
		2.025ha (two-storey 24-32 Classroom)
		2.2ha (single-storey 24-32 Classroom)
Post Primary (TDG-27)	1,000 pupil	4.57 (two storey)
Totals:		

6.07 to 6.17 ha (16-24 classroom primary with range arising from considering two storey or single storey primary respectively), or

6.595 to 6.77 (24-32 classroom primary with range arising from considering two storey or single storey primary respectively)

The recommended site areas for school buildings from both TGD documents include several notes including the following:

- Building footprint can be reduced where 3-storey buildings are appropriate.
- Where additional accommodation, including special needs accommodation (which is the case in the current case with SEN facilities being proposed in both primary and post-primary schools) is required the figures should be adjusted accordingly.
- Noting that due to scarcity of land in urban areas it may not be possible to achieve “...the ideal site size for school buildings...”, in such instances certain elements/facilities can be provided off-site and smaller sized sites can be considered.
- Constraints in site sizes in urban areas may mean that the full suite of external accommodation may not be achievable.
- The inclusion of playing pitches may be subject to space availability and school requirements.
- An area adjoining the school building should be allowed for expansion.
- Separation areas represent the total unused landscaped areas on site, and a figure of 35% is used based on a well-arranged site located in a rural town. The figure may be adjusted; however, it should not be reduced below 27%.

9.3.2.7. Both TGD documents note that the DoE is in the process of developing an urban site area calculator, (in response to Inspectors questioning at the oral hearing it was confirmed that this document/calculator has not yet been produced). In this regard the TGD documents state that pending the provision of the urban site calculator “... *in higher density urban developments where the optimum site area set out above cannot be identified the Planning and Building Unit should be consulted at the earliest stage.*”

9.3.2.8. The recommended site sizes referred to in both TGD documents are frequently referenced as the “optimum” or “ideal” site areas. I also note that generally for the optimum location for schools are proximate to population centres and transport networks and are accordingly within urban areas of a variety of densities. The current CPO relates to lands with an area of 6.0853ha which compares favourably to the range of ideal/optimum site areas set out in the TGD documents which varies from 6.07ha to 6.77ha dependent on whether single- or two- storey buildings are considered or which size classification for the primary school is used from TGD 25 (which uses both 16-24 classroom and 24-32 classroom classifications). In this regard I note that the documentation provided states that the predicted requirement is for “up to 24 classrooms” at primary school level but with an additional 3 classroom Special Educational Needs (SEN) base requirement, similarly the post-primary school predicted requirements will need an additional 4-classroom SEN unit. In this regard, I note that it could be argued that a larger site size than the upper range set out in the TGD documents (6.77ha) could be appropriate to consider as well as allowing for potential future expansion of the educational facilities. In my opinion the fact that a two-school campus is being provided at the same location will allow for a certain amount of synergies to arise in terms of site uses and shared access arrangements and facilities would allow for the 6.0853ha site of the currently proposed CPO to cater for an appropriate range of facilities within the campus.

9.3.3. For clarity I wish to state that I also note the provisions of the Climate Action and Low Carbon Development (Amendment) Act 2021 (Climate Act, 2021), which requires the Board must, in so far as practicable, perform its functions in a manner that is consistent with the most recent approved climate action plan, most recent approved national long term climate action strategy, national adaptation framework, sectoral plans, furtherance of the national climate objective and the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State⁹. The Climate Action Plan 2023 (CAP 23) supports the implementation of the National Planning Framework to deliver compact growth and action no. CP/23/10 is to *“Plan for and progress the regeneration and development of underutilised and centrally located sites to provide compact sustainable development, jobs, amenities and services.”* I consider that the proposed CPO, to facilitate the provision of a

⁹ Section 15(1) of the Climate Action and Low Carbon Development Act 2015 (as amended) refers.

shared school campus on zoned and accessible lands within Ballincollig to accord with the provisions of compact growth, the CAP 23 and Climate Act, 2021.

9.3.3.1. Having regard to the above, I consider that the site size of the proposed CPO is sufficient to serve the identified community need for two schools and attendant facilities. The site sizes being provided for the schools are consistent with (albeit slightly smaller than) the optimum and ideal site size recommendations from the relevant TGD documents for the provision of school facilities and matters such as detailed layout and compliance with development plan standards and design requirements can be achieved through the future consent process that must be undertaken.

9.3.4. Use:

9.3.4.1. The site of the CPO is located within predominantly agricultural land in Ballincollig. The lands are in the vicinity of significant existing residential development with ease of access between existing and future residential concentrations and the site. The site of the CPO is subject to two separate zoning provisions, area 1 is zoned as ZO 01, Sustainable Residential Neighbourhoods, while the remainder of the subject land is zoned as Z0 12 – Education. Educational facilities are identified a primary use within ZO 1 lands and as the main purpose of ZO 12 lands. These lands were zoned under the 2022 CCDP which was adopted in August 2022.

9.3.4.2. I consider that the CPO which seeks to facilitate the provision of a school campus at this location is consistent with the zoning provisions in the CCDP and represents an appropriate land use at this location.

9.3.5. Traffic/Access:

9.3.5.1. The subject lands are in the west of Ballincollig between the N22 (which runs along its southern boundary) and the R608 regional road (which runs along its northern boundary). While there are no definitive plans or consent in place in relation to the final layout or future development, the R608 regional road is a wide, straight road at this location which has a footpath along its northern side and generous layby along

the CPO lands frontage. The R608 offers ample opportunity to afford safe and efficient access to the site within the speed limits of Ballincollig. Furthermore, the R608 forms part of the existing high frequency bus network for Cork with existing stops in the vicinity of the subject lands. The R608 at this location is also on one of the Cork busconnects routes which is currently engaged in public consultation.

9.3.5.2. I consider that the CPO lands are well serviced in terms of potential access provisions and that the size and shape of the lands and the extent of frontage access available will facilitate the provision of safe access/egress and traffic management arrangements through any future development consent process that will be undertaken.

9.3.6. Floodrisk:

9.3.6.1. I note that a Strategic Flood Risk Assessment (SFRA) and Strategic Environmental Assessment (SEA) was carried out as part of the recent CCDP process. The SFRA did not identify the subject lands as being in either Flood zones A or B, nor was the issue of potential flooding raised in relation to these lands throughout the CPO process. I note that the lands have been zoned as part of the recent Development Plan process and accordingly I do not consider that flooding is an issue in relation to the CPO lands.

9.3.7. Conclusion in Relation to Suitability of the Lands to Serve the Community Need

9.3.8. I consider that the CPO lands are entirely suitable to serve the identified community need for the provision of a school campus, having particular regard to the location, neighbouring landuses, site size and ease of access/connectivity as well as the lack of floodrisk implications. As set out in the preceding paragraphs, I have no objection to the proposed compulsory acquisition on any of these grounds and I am fully satisfied that the lands subject to the CPO is suitable to meet the community need in this case.

9.4. Consideration of Alternatives.

9.4.1. The objector has raised concerns in relation to alternatives on a number of grounds, which can be summarised as follows:

- The lands subject to the CPO do not represent the optimum location for the provision of new school facilities to cater for the identified needs of Ballincollig.
- The land-take arising from the CPO is too large and a reduced area of land should be considered.
- The indicative design submitted is inappropriate and not consistent with CCDP policy.

9.4.2. The objector has raised the argument that the CPO lands do not represent the optimum location to provide educational facilities for Ballincollig. In this regard the objector points to other lands within Ballincollig that have been zoned for educational use (specifically a 7.7 ha site in the Maglin Urban Expansion Area – UEA). The objector also references the CCDP which at paragraph 10.221 notes in relation to the need for additional schools in Ballincollig that the Maglin UEA in the south of the town “... is considered the optimum location for these schools”.

9.4.3. In relation to the alternative sites available - I note the following:

- There are three separate areas zoned as educational within Ballincollig in the CCDP. Starting from the west there is a c. 11.5ha site including and surrounding the subject CPO lands, a c. 7.7Ha site located centrally within the Maglin UEA, and another c. 1.5Ha site located in the east of the UEA.
- The evidence presented by the City Council (Mr. McKernan) during the oral hearing stated that the Maglin UEA is subject to transport and drainage infrastructural constraints. In relation to transport the route, design and implementation of a new distributor road remains to be agreed in order to provide access to the full extent of the Maglin UEA area. In relation to drainage Mr. McKernan confirmed that the drainage study for the Maglin area had been completed but that it sets out a number of issues which need to be addressed in relation to future development and access for this area including

compensatory flood storage that may have knock-on design implications for the road line.

- The City Council confirmed their estimation of the timeframe within which access and drainage infrastructure constraints will be addressed to be approximately 5-6 years.
- The SFRA included with the CCDP identifies indicative floodzone A, and floodzone B areas surrounding the 7Ha educationally zoned site in the Maglin UEA to the north, south and west. The 1.5Ha school site within the UEA is also located adjacent to the river with an indicative floodzone B neighbouring to the west.
- The existing characteristics of the road network servicing the educationally zoned lands in Maglin. In this regard the 7.7ha site is accessible via the existing Maglin road which runs north-south along its frontage. The northern part of the Maglin Road will be subject to some upgrade as part of the consented SHD permission (ABP-308111-20), however, in the vicinity of the 7.7Ha site the Maglin road remains a narrow local road of a rural character, with a narrow bridge and no footpaths or street lighting in place. At the oral hearing no evidence was presented of any further short-term upgrades to be carried out to this road to increase safety/capacity beyond those being incorporated into the northern portion to service the permitted SHD. During the oral hearing the objectors team presented arguments that the 7.7Ha educationally zoned site in Maglin could be rendered accessible through innovative design approaches and with additional design input from the relevant authorities, however, these are not presently in place and would require further consideration of drainage and road design requirements. The other (1.5ha) educationally zoned site in Maglin is not presently serviced by an access road and will require the provision of the new distributor road.
- The Maglin UEA educationally zoned sites are located at further remove from any existing bus stops and routes than the CPO lands.
- Section 10.220 of the CCDP notes that the development of the Maglin/South Ballincollig area is dependent on the design of the distributor road, and the first part of this has been provided from the north through the Heathfield

development. It is envisaged that the road will be selected during the lifetime of the CCDP, and there is an allowance that *“Residential development with the potential for access onto the local and regional road network including in the western portion will be considered at an early stage during the lifetime of this plan”*. In this regard I note that some recent consents (albeit predating the current CCDP) have issued in the UEA area to developments that have a means of access other than the Maglin road.

- The two sites in the Maglin UEA as well as the northwest corner portion of the CPO lands have been zoned for educational use for in excess of 6 years (having been designated as such in the 2017 Ballincollig Carrigaline Electoral Area Local Area Plan).
- There has been a long-term identified need for additional school facilities in Ballincollig for in excess of a decade with evidence presented at the oral hearing noting that the need for an additional primary and secondary school being set out in the Macroom Electoral Area Local Area Plan 2011.
- I note that all three sites (the current CPO lands as well as both the educationally zoned sites in the Maglin UEA), are subject to the same zoning provisions in the current CCDP, the zoning provisions do not assign any priority or hierarchy between the sites.
- Finally, I note that due to their location, restricted size, form of tenure, nature of existing and permitted uses in the vicinity, in combination with their extant zoning the current sites which are occupied by temporary buildings to accommodate the two schools do not represent suitable, sustainable or viable sites for the permanent provision and expansion of the existing schools to cater for the current pupil projections/needs of Ballincollig.
- During the oral hearing the Department of Education stated that the site selection process identified the current site of the CPO as being the optimum through consulting with Cork County Council (prior to the boundary change) then Cork City Council, across several headings (Zoning, viability, access/egress, cost of infrastructural works, obtaining vacant possession, and economic valuation). I note the objectors argument that prior to the adoption of the current CCDP that the CPO lands were not entirely zoned for

educational use (with only the north western corner being so designated in the previous plan), however, the entirety of the CPO lands have been zoned education in the current plan and in my opinion it is clear that an on-going site identification process has been undertaken as part of both this CPO and the CCDP preparation processes in order to secure appropriate lands to cater for the educational needs of Ballincollig.

- 9.4.4. As part of the consideration of alternatives the objectors to the scheme have raised concerns in relation to the future design alternatives. I note the points raised in this regard and have previously set out my consideration of the relevant issues (insofar as they relate to site size in section 9.3.2 above). At this stage there is no specific design proposal in place and/or under consideration as part of the CPO process. Any future design presented and brought through a consenting process will have to comply with the relevant design standards, policies and objectives of the development plan as well as respecting established amenities. It is not therefore in my opinion appropriate to consider specific design or layout issues as part of this CPO process over and above that which has already been discussed in relation to the size of the CPO lands.

Conclusion in Relation to Suitability of the Lands to Serve the Community Need

- 9.4.5. The test to carry out in considering alternatives in relation to the CPO is whether alternative methods of meeting the community need have been considered and whether these are not demonstrably preferable (taking into account environmental effects, where appropriate) to the option being proposed. I note that the demand and need for additional school places in Ballincollig has been long identified throughout the various development and local area plans that have been in place since 2011, however, no viable or sustainable alternative has been brought forward. Two schools have been founded and are currently operating from facilities and sites that are inappropriate to accommodate permanent school facilities (I also note that there were no arguments presented by any parties during the oral hearing setting out the suitability of the current sites for permanent schools). The Maglin UEA might present an optimum location in the future, however, at present due to the identified infrastructure constraints and the likely timeframes within which these will be addressed these alternative sites do not present viable alternatives that are demonstrably better than the site being brought forward as part of the current CPO.

Furthermore, despite the Maglin UEA lands being specifically designated for educational use for in excess of 6 years, and the overall need for additional schools for over a decade no alternative permanent sites have been brought forward or developed.

- 9.4.6. Having regard to the above, I accept that the acquiring authority and the Department has considered alternative methods of meeting the community need. For the reasons outlined previously in this section I am satisfied that the lands subject to this CPO are appropriate and that there is no alternative site which is demonstrably preferable to the proposed CPO site.

9.5. The Development Plan

- 9.5.1. I consider that the proposed CPO contributes to the core strategy aims for the growth of Ballincollig as an Urban Town by facilitating additional educational facilities to cater for the needs of the settlement. The CCDP at 10.221 references the need for additional education facilities in Ballincollig and references the Maglin UEA in the south of the town as being considered the optimum location for these. This section of the CCDP does not contain any presumption or statement that precludes or excludes the development of schools at other suitable locations. I note that the majority of the lands subject to the CPO are zoned identically to the educationally zoned lands in the Maglin UEA (with the remainder of the lands zoned as ZO 01, Sustainable Residential Neighbourhoods to reflect the existing derelict dwelling in place). I am satisfied that the proposed use of the CPO lands for the provision of schools would be compatible with the existing and planned use of surrounding lands.
- 9.5.2. In terms of the specific provisions relating to Ballincollig, I am satisfied that the proposal is in accordance the 'ZO 12 Education' zoning objective in place for the majority (5.9623 ha – CPO Area 2) of the lands (as this is the main purpose of this zoning) as well as the ZO1 Sustainable Residential Neighbourhood zoning in place for the other 1.23ha (CPO Area 1) of the lands (as schools represent a primary use within this zone). Furthermore, the City Plan fully acknowledges and supports the need for additional educational facilities in Ballincollig. The CPO site is within the zoned boundaries of Ballincollig and is currently well serviced in terms of public transport.

9.5.3. Having regard to the above, I consider that the CPO which is being brought forward to facilitate the provision of schools for Ballincollig on lands that have been zoned “ZO 12 Education” and “ZO 1 Sustainable Residential Neighbourhood” in the current Cork City Development Plan accords with the provisions of the CCDP and would not constitute a material contravention of the Plan. In reaching this conclusion I have noted the concerns raised by the objectors that the Planning Authority/An Bord Pleanála would be acting ultra vires in bringing the CPO forward/confirming it having regard to specific design considerations such as parking, streetscape, access, and density of development. In this regard there is no specific design or works being considered as part of this CPO at this stage. I have previously stated my opinion that the size of the site subject to the CPO to be appropriate as set out in section 9.3.2 above and note that any specific proposals for a layout/design of this site will be subject to a future consenting process. It is at that stage that all the specific design and development management provisions of the CCDP must be considered. The principle of the suitability of these lands for the provision of educational facilities has been confirmed throughout the development plan process which has identified the subject lands location as a suitable location for same under the adopted zoning provisions.

9.6. Proportionality and Necessity for the Level of Acquisition Proposed

9.6.1. One of the tests as set out in ‘Planning and Development Law’ (Garrett Simons – Second Edition) requires consideration of whether the measures proposed under a Compulsory Purchase Order will have an excessive or disproportionate effect on the interests of the affected persons.

9.6.2. I have already set out my opinion on the size of the proposed site with reference to the requirements of the TGDs. Given that the proposed site area is in line with the lower end of the range of site sizes recommended in the TGDs for this proposal, which is acceptable under the circumstances previously discussed, I consider that there can be no argument that the extent of land-take in the CPO is excessive in this case. Further I note that the extent of lands that have been zoned as educational in the current plan in the vicinity is larger than the land area which is subject to the current CPO. In this regard the Planning Authority has stated that the extent of the CPO has been limited to cater for the currently identified needs of Ballincollig. I am

satisfied that the full extent of the CPO is necessary and proportionate to the community need and, accordingly, I have no objection to the CPO in this regard.

9.7. **Additional issues Raised by the Objector.**

9.7.1. Right to Compulsorily Purchase the land for schools:

9.7.1.1. As stated previously in Section 9.1, I am satisfied that the provisions of the Planning and Development Act, 2000 provides the legislative framework and power to allow the Planning Authority to use compulsory acquisition in relation to its functions and in particular in order to facilitate the assembly of sites for the purposes of the orderly development of land for the provisions of Schools.

9.7.2. Alleged Abuse of Authority:

9.7.2.1. This issue was raised initially by the objector but not pursued in detail in the oral hearing. From review of the CPO documentation and planning policy context I note that the current CCDP is in place and has been fully adopted, and no third-party challenge has been made in relation to the development plan. The CCDP has therefore been adopted in accordance with the relevant legislation. As set out above the CPO has also been presented in accordance with the relevant legislation. Therefore, as the lands have been zoned by the Local Authority as part of the statutory development plan process and as the CPO is proposed in accordance with the relevant legislation, in my opinion, there has been no abuse of authority and the Planning Authority has followed the relevant and required statutory procedures.

9.7.3. Over-zoning of educational lands:

9.7.3.1. The objector has expressed the opinion that there has been an over-zoning of education lands within Ballincollig. This is a matter which was considered as part of the development plan process which the planning authority undertook last year. I note that as part of that process the objector made a submission to the Draft Plan seeking that the subject lands revert from their proposed education zoning back to their former residential status. At that time the matter was considered by the

Planning Authority and the Chief Executive in her report to the members of Cork City Council stated as follows (as contained in the submission of Mr. McKernan to the oral hearing):

“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 two new schools and potentially three 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 the zoning on the lands subject to the CPO was adopted as “Education”. The matter of the education zoned lands was therefore fully considered by the Planning Authority in carrying out its functions, no change was carried out to the plan and no challenge to the finally adopted plan was made. I also note that during the oral hearing it was made clear that the objector is not challenging the plan, and is in fact, reliant on certain aspects of it in presenting their own arguments (in relation to site extent, car parking and layout etc.). I do not consider it appropriate to argue that there has been an over-zoning of educational lands at this stage as this matter was fully considered as part of the statutory development plan process. The issue of zoning and alternative sites zoned education in Ballincollig have been considered in the assessment of the CPO previously above.

9.7.4. Material Contravention of the Development Plan

- 9.7.4.1. The objectors have argued that the proposed CPO represents a material contravention of the Development plan, arising from two broad factors. The first being that the extent of the CPO area has been justified relying on an indicative layout that does not comply with the relevant development plan design standards and specifically car parking standards. The second issue raised relates to the

general requirement to make the most sustainable use of these urban lands by minimising the extent of land-take to provide for compact growth.

9.7.4.2. In relation to these issues the indicative layout that has been provided at the Oral hearing by the acquiring authority represents an indication of how a school campus might be arranged on this site. The final layout, orientation, design and development standards presented will have to satisfy the requirements of the development plan in place at that time and this will be assured through the future consent process that will of necessity be undertaken. It is not the purpose of the CPO to deal with detailed matters in relation to the future design. I have discussed the issue of the size of the CPO lands previously above and have noted that the site of the CPO is not excessive nor disproportionate as it is comparable to the optimum/ideal site standards recommended in the TGD documents in order to achieve adequate accommodation and facilities for schools of the nature proposed.

9.7.5. Future requirements

9.7.5.1. The objectors have stated that the acquiring authority have proffered differing statements in relation to the proposed use of the land and raises a question as to whether there is an element of land-banking being included in the current CPO. This concern is raised arising from the varying descriptions and narratives used in the CPO documentation and at the oral hearing. In my opinion the CPO is clear in that it is being brought about to facilitate the provision of a school campus (primary and secondary schools) to cater for the existing and predicted needs of Ballincollig. The two schools to be accommodated are currently in operation from temporary accommodation which is inappropriate for the sustainable provision of permanent schools. Having regard to the extent of recommended site areas set out in the two TGDs for school facilities I do not consider that the CPO extent is excessive to provide the range of facilities to cater for the identified educational needs for Ballincollig. I do note that there are other education zoned lands in the immediate vicinity of the CPO lands which have not been included as the Council have stated that the extent of the land-take has been kept to that required to cater for the identified need.

9.7.6. An Bord Pleanála should not facilitate a material contravention of the Plan.

9.7.6.1. The objector states that the Board should not confirm the CPO as to do so would represent a material contravention of the Plan and facilitate the Planning Authority carrying out development which contravenes their own plan. In doing so both the Board and Planning Authority would be acting unlawfully. This issue arises from the indicative design submitted by the acquiring authority at the oral hearing stage, and the argument presented that the indicative design (a) has been used to justify the extent of the CPO lands, and (b) does not comply with the design standards (including car parking) set out in the CCDP. I do not agree with this argument as I consider (a) the size of the CPO site acceptable (having regard to the TGD recommendations and the nature of the schools to be accommodated), and (b) that the detailed design of any future proposed development at this location will have to adhere to the relevant CCDP standards and requirements which will be assured through the future consent process which must be undertaken successfully prior to any works being able to be carried out.

10.0 **Conclusions and Recommendations**

10.1. Having regard to the above, I conclude that:

- The acquisition of lands under the CPO would serve a community need that advances the common good,
- The particular land is suitable to meet that need,
- Alternatives have been considered and that there is no alternative which is demonstrably preferable,
- The proposal does not materially contravene the development plan, and
- The proposed acquisition is proportionate and necessary.

I recommend that the Board CONFIRM the Compulsory Purchase Order, with the modifications proposed by the acquiring authority, based on the reasons and considerations set out below.

11.0 Reasons and Considerations

Having considered the written objections made to the Compulsory Purchase Order, the report and recommendation of the Inspector who conducted the oral hearing into the objections, and having regard to the following:

- (a) The purpose for which the lands are to be acquired as set out in the Compulsory Purchase Order,
- (b) The deficiencies in the existing educational facilities in Ballincollig,
- (c) The community need, public interest served and overall benefits to be achieved from the proposed school campus,
- (d) The provisions of the National Planning Framework and the Section 28 guidelines on 'The Provision of Schools and the Planning System (2008)',
- (e) The Climate Act 2021 and Climate Action Plan 2023,
- (f) The policies and objectives of the Cork City Council Development Plan 2022-2028, which are not materially contravened, and
- (g) The submissions and observations made at the oral hearing,

It is considered that, the acquisition permanently of the lands in question, as set out in the CPO and on the deposited map, are necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Jimmy Green
Planning Inspector

26th June 2023

Appendix 1: Proceedings of Oral Hearing

An oral hearing was held in relation to the proposed compulsory acquisition of lands on Thursday the 9th of March 2023. It was held remotely at the offices of An Bord Pleanála using Microsoft Teams Software. The proceedings were recorded, and the recording is available on the Board's network. What follows is a brief outline of the proceedings. The outline is proposed to function as an aid in following the recording.

The following were in attendance and made submissions at the oral hearing:

- **Cork City Council**
 - Mr. Esmonde Keane S.C. (instructed by Brid Flynn Cork City Council Legal Department).
 - Mr. Ronan McKernan, Senior Executive Planner Cork City Council.
 - Mr. Murty Hanly, Forward Planning Section Department of Education.
 - Mr. Frank Lewis, Senior Architect Department of Education.
- **Representatives of the Estate of the Late Earl Tanner**
 - Mr. Eamon Galligan S.C. (instructed by Frank O'Connell Solicitor acting for the Estate – also present at the Hearing)
 - Mr. Harry Walsh HWP Planning Consultant.

The inspector formally opened the hearing at 10.30.

Submissions on behalf of Cork City Council

Mr. Keane set out the proposed amendment to the Schedule of the CPO to include Gerard and Michael Hallesy, provided an overall description of the CPO and noted that the CCC briefs of evidence have been circulated to all, before inviting the submission of Mr. Ronan McKernan.

Mr. Ronan McKernan (SEP Cork City Council),

- Provided a description of Ballincollig and its significant recent growth, noting that the expected future growth would be accommodated to the south of the settlement (Maglin Area) and other lands in the west.

- Intention is to facilitate the development of a primary and secondary campus and all ancillary facilities in compliance with the current City Development Plan.
- The proposed CPO aligns with the National Planning Framework, the Southern RSES 2020 and Cork Metropolitan Area Strategic Plan, as well as being in accordance with “The provision of Schools and the Planning System, a Code of Practice for Planning Authorities”.
- CPO lands are zoned as ZO-12 Education and ZO-01 Sustainable Residential Neighbourhoods, both of which provide for educational uses.
- 10.221 of the CCDP identifies the Maglin area as the optimum location for the provision of educational facilities, however, this area is currently subject to significant infrastructural constraint in relation to drainage and access/transportation which needs to be addressed prior to development occurring. These constraints are not envisaged to be fully addressed within short term.
- In relation to the objections raised Mr. McKernan noted:

Landowner questions the right to make a CPO.

Section 212 and 213 of the Planning and Development Act 2000 (as amended) (“the Act”), provides the legal framework within which the City Councils rights in relation to the CPO of lands is established.

Abuse of Authority.

The planning authority is empowered to CPO lands under the provisions of the Act and in relation to the zoning of the lands this was also carried out in accordance with the relevant provisions of the Planning and Development Act.

The Education zoning of the lands was set out in the Draft Cork City Development Plan 2022-2028 (28th July 2021) and the landowner subsequently lodged a submission as part of the plan process to have the land revert back to its previous (predominantly residential) zoning. The submission was properly considered and responded to as part of the Development Plan process. The Chief Executives Report in relation to the re-zoning submission noted that a portion of the lands was already zoned for education, the acute need for new school sites in Ballincollig and that population requirements indicate that a

minimum of 2 and potentially 3 new schools will be needed in the short to medium term. Furthermore, it was noted that given the site's location in an established residential area with access to transport links and the potential to serve a wide catchment it is 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 15th, 2022, who went on to adopt the zoning of these lands for education.

The zoning of lands is a reserved function of the elected representatives of the City Council and no challenge to the adoption of the CCDP made and the zoning of the lands which has been carried out in accordance with all relevant procedures.

Land requirement for the CPO is excessive.

The land area subject to the CPO is in accordance with the requirements of the Department, and it is noted that the subject CPO lands is in fact smaller than the overall educational zoning at this location as the Council have restricted the extent of the CPO to those lands which are needed at present. The Council have not sought to acquire any further lands at this time.

- In response to the submission by Harry Walsh HWP planning consultants on behalf of the objector Mr. Kernan stated:

That Cork City Councils identification of the lands for educational purposes is in accordance with the provisions of Objective 10.6.2 of the CCDP and the Council will continue to identify and allocate lands for the current and futures needs of Ballincollig.

The constraints of the Maglin Urban Expansion Area (UEA) are unlikely to be resolved in the short/medium term, section 10.220 of the CCDP allows for limited residential development with the potential for access onto the local and regional road which can be considered at an early stage of the current plan subject to further agreements with the Planning Authority.

The drainage strategy has been completed and a preliminary route selection for the required distributor road is underway, which will take a minimum of 12 months. Following this a route design will need to be undertaken, once the road

location has been agreed additional works/agreements and potential CPO of lands will need to take place. All of which suggests that it will be 5-6 years before substantial development can take place in this area.

The layout of any future schools will have to adhere to Planning Authority and CCDP requirements and will be determined at development management stage.

Murty Hanly (Principal Officer, Forward Planning Section DoE),

- Ballincollig is a key growth area with a projected growth from 18,159 to 28,679 over the plan period. The two schools proposed to be accommodated are currently in rented sub-optimal accommodation, temporary buildings with limited access to general purpose/specialist rooms and sports facilities which are largely dependent on third parties. Current arrangements mean that there is uncertainty around their continued occupation of the properties, and expansion is hindered at their current locations.
- Based on current data the growth in school goes is 1200 at primary and 750 at post primary level. These figures result in the need to provide a 24-classroom primary school and a post-primary school of 1,000 students with additional facilities for students with special educational needs in the form of an additional 2 classroom primary and 4 classroom secondary special needs facilities.
- An extensive site identification process was carried out assisted by Cork City Council and Cork County Council, based on zoning, viability, access/egress, costs, obtaining vacant possession, and economic viability the subject site was deemed suitable to accommodate the 2-school campus facility.
- The lands subject to the CPO are suitable and sufficient to meet the predicted educational needs of Ballincollig.
- In response to the submission by HWP:

All community and education zoned lands in Ballincollig were considered using the factors as set out previously (zoning, access etc.). The suitably zoned lands within the Maglin Urban Area were not considered viable due to the lack of required road infrastructure to serve the lands. The current CPO is to accommodate schools for existing demand for new facilities and allows for future

expansion. The CPO is urgent to cater for existing demand and cannot wait for the provision of access road infrastructure.

Frank Lewis (Senior Architect, Professional and Technical Section DoE),

- With projections for increasing population and reversal of normal outward migration demand for school places was immediate and new school sites had to be identified as a priority very quickly.
- A multi-agency approach was needed, and this was formalised, managed and implemented through “The Memorandum of Understanding (MoU) between the Department of Education and Skills and the County and City Managers Associated (CCMA) on acquisition of sites for school planning purposes (2012)”. It was also considered necessary to codify school design and operation through the development of two Departmental Technical Guidance Documents TGD 25 and TGD 27 (primary and secondary schools respectively).
- Following completion of the CCDP the Department has reconfirmed the enrolment requirements for Ballincollig, and the requirement for a shared campus facility for a primary and secondary school. The Gross Floor Area (GFA) of the primary school will be in the order of 4,500sqm, and a post primary school for 1,000 pupils, GFA in the order of 10,500sqm.
- An indicative site layout has been provided to outline a typical school project. All design components are indicative of engagement with a local authority and based on Mr. Lewis’ own 26 years, experience in delivery of school capital projects. Notes it will be difficult to accommodate a full GAA pitch in the context of the site size available. The site is the best currently available, and the land acquisition is not for anything more than what is required to deliver the required accommodation for the two schools.
- In relation to issues raised by HWP planning consultants, Mr Lewis stated:

The DoE engaged with the Planning Authority through the statutory plan making process and to achieve national and local policy objectives.

The functions of Forward Planning will always have some inbuilt optimism bias, however, at implementation stage of a project designs must be agile and capable of responding to development management requirements.

The site plan is indicative only, is not a complete design solution and sets out normal traffic and access requirements, while only indicative it does in his opinion set out an appropriate, probable, and realistic design that would give the greatest degree of confidence for a successful outcome for a planning permission.

In relation to design issues raised by HWP, it is noted that the other examples provided as precedents by HWP are not relevant or equivalent scenarios to the Ballincollig situation. Also, the effective usable school site area includes other ancillary items being considered i.e., sports fields etc. within the CPO area.

Submissions on behalf of Objector – Representatives of the Estate of the Late Earl Tanner

Harry Walsh HWP Planning Consultant

- The requirement of the expansion of educational facilities was first identified in the Macroom Electoral Area Plan 2011, with a need for an additional primary school and a secondary school. The 2011 plan zoned approximately 180Ha to the south of Ballincollig as a Special Policy Area (later becoming known as the Maglin Urban Expansion Area). As part of the development of these lands it was a requirement that a masterplan would be required to provide an educational campus (two primary and one secondary school) within this special policy area Objective X-01 of the Macroom Electoral Area Plan 2011 referred. This general objective was replaced with specific zoning provisions in the 2017 Ballincollig Carrigaline Electoral Area Local Area Plan which also outlined that a 24-32 classroom primary school was required along with a secondary school to cater for 500 pupils.
- The Draft City Development Plan 2022-2028 identified the need for 2 new or expanded primary schools and 1 secondary school for Ballincollig, it also stated that the Maglin Urban Expansion Area (UEA) is considered the optimum location. Three sites were zoned as Education, the landholding of which the subject CPO lands are in, as well as two others within the Maglin UEA, all of which amounted to 20.63 Ha of educationally zoned lands. The increase in educationally zoned land of approximately 7 Ha to cater for the increased need

of 1 no. primary school over the 2017 assessment, is excessive to cater for future needs.

- It is considered that the educational requirements for two primary schools and one secondary school could be accommodated entirely within the Maglin UEA which is stated as being the optimum location (10.221 of the CCDP refers).
- It is noted that the site selection process commenced in 2018, and zoning is considered as a primary criterion, however, the subject lands were not zoned for educational use until August 2022. No evidence or detail in relation to how the site was selected, nor how a robust site selection process was undertaken has been presented.
- The 7.7 Ha education zoned site in the Maglin UEA is served by the existing Maglin Rd. which has capacity to facilitate a schools development (and will in the future be on the line of the distributor road which is currently undergoing route selection process), further there has been a recent grant of permission for a Strategic Housing Development of 113 units on lands within the UEA (ABP-308111-20 refers) just north of the larger tract of educationally zoned lands at Maglin. The SHD application determined that the Maglin Road and its associated junctions have the capacity to accommodate additional development and permission was granted on that basis.
- Notes that the drainage study in Maglin has been completed, and that the distributor road has been designed and disputes the timelines set out for delivery of the road. The timing of 5-6 years is unnecessarily pessimistic, however, notwithstanding this, the provisions of section 10.220 of the Draft plan (which allows for limited development within Maglin) could be relied upon to provide for the delivery of a school campus serviced by the Maglin Road on the 7.7Ha site.
- In relation to the indicative layout, it is noted that while this is indicative it is being used to provide justification for the size of the land-take required under the current CPO. The indicative layout does not have regard to Planning Authority plan provisions in relation to parking requirements, building lines, place making and managing development etc.
- Several precedent recent school development projects are noted (Harolds Cross, Sandymount, and Saggart), which present urban typologies with efficient

use of lands. This is the approach which should be taken for the current CPO lands which are set within an urban environment and well serviced by public transport.

- The design provides for too many car parking spaces for the size of the schools proposed, with a total of 141 car parking spaces shown on the indicative layout while the car parking standards of the CCDP allows a maximum of 45 spaces. There is no justification for the car parking provision shown on the plan.
- It is contended that the school campus could be accommodated on a site of 4.26 Ha, which constitutes 2 fields within the overall holding. Parking and set-down area should be reduced, and the smaller site would comfortably accommodate the school and an indicative layout demonstrating same was presented.
- In relation to Mr/ Lewis's indicative layout plan it was noted there are sufficient GAA and Rugby grounds available for schools' use, as the club's facilities are open to use for schools and there are no scheduling conflicts with club requirements.

Legal Submission by Eamon Galligan S.C. (instructed by Frank O'Connell Solicitor acting for the Estate of Merle Tanner)

- Extent of the proposed CPO is excessive, the evidence presented by Mr. Lewis speaks towards meeting the present and future demands of the Ballincollig Community, this future demand is unspecified and goes beyond the primary and secondary school that is mentioned. This was also reflected in Mr. McKernan's evidence who has stated that they have confined the CPO to the lands required for community purposes at this time, but his evidence goes on to state "*...and it is considered necessary to have a supply of suitably zoned lands should future land for schools be required in Ballincollig in the short to medium term or during the lifetime of the City Development Plan.*" This appears to provide for a contingency which is not acceptable in the context of CPO.
- Client is owner of 11.43 Ha of lands and 6.08 ha of which are subject of the acquisition order. Reference is made to previous precedent case at Harolds Cross cited by HWP providing a primary and secondary school campus on a reduced site area, and HWP's previous assertion that the facilities could be provided on a site of 4.26Ha. The acquisition of lands is therefore unnecessary

and disproportionate in terms of the size of the lands subject to acquisition. In this regard reference is made to *Heaney v Ireland*, and the proportionality test set out therein. *Reid v. Industrial Development Agency* is also cited in relation to the principles that have been established in determining the outcome of any challenge to the invocation of such a CPO power which include:

- The impact on the right to private property, must be justified or necessitated by the exigencies of the common good, which will of course have regard to the principles of social justice.
 - The conferring and exercise of CPO power must be granted and carried out in such a way that the impairment of the individual's rights must not exceed that which is necessary to attain the legitimate object to be pursued. Here, the point is made that the lands subject to the CPO as set out in the indicative layout submitted accommodate car parking at three times the rate permissible under the City Development Plan.
- o It is a requirement that the Council must act in accordance with its development plan. Sizing the CPO lands to accommodate 3 times the amount of car parking that would be permissible under its own plan, essentially results in CCC acting ultra vires in terms of the amount of car parking that it is proposed.
 - o In relation to the assertion that the objection constitutes a collateral attack on the zoning of the lands, the objector has and does not challenge the validity of the Development Plan and is in fact reliant on it in relation to the application of the correct car parking standards.
 - o The Council is obliged to take steps which are not contrary to the provisions of the Development plan and the argument is presented that in pursuing a CPO site of the size proposed that the Council are taking such steps contrary to the Development plan. The Board should not facilitate the breach of the law as proposed in this CPO which is based in part at least of taking an excessive amount of land based on an inefficient layout using inappropriate car parking standards. The Board would therefore be acting unlawfully if it were to confirm the CPO as the Council is acting in breach of its statutory obligation to give effect to the objectives of its development plan under Section 15 of the Act.

- There has been no evidence presented that there has been a robust site selection process undertaken and no details have been presented in this regard. The site selection process should not have ruled out the 7.7ha site in the Maglin UEA.
- Mr. Galligan confirmed that he had no questions for the City Council team.

City Council Questions to Objectors Team

Mr. E. Keane placed several questions to Mr. H. Walsh as follows,

- When queried in relation to the proposed variation no. 1 of the City Development Plan, in relation to education it was noted and agreed that a change was being proposed in relation to Educational Car Parking which is proposed to be raised to 1 car parking space per classroom under the variation. This was confirmed by Mr. Walsh who, however, also noted that the variation has not been formally adopted.
- In questioning it was accepted that the CPO lands are located closer to an existing bus route than the Maglin 7.7ha site.
- Mr. Keane stated that the indicative layout submitted show approx. 122 car parking spaces. When queried Mr. Walsh clarified that the car parking figures quoted by HWP are those set out in the schedules attached to the Brief of Evidence of Mr. Frank Lewis which states in Appendix 2, (Primary School schedule of overall accommodation) a requirement of 49 car parking spaces for all staff (including SEN Staff) and Visitors, and in Appendix 3 (referring to the Schedule of accommodation for the post-primary school) a requirement of 92 car parking spaces giving a total of 141 spaces.
- It was agreed that the provision of school buildings and ancillary sports facilities is in the common good, however, it was disputed as to what level of ancillary facilities are adequate or proportionate.
- It was agreed that the objector is not questioning or challenging the validity of the zoning of the lands or the County Development Plan.

Inspectors Questions to City Council:

- How the extent of lands subject to CPO perform/relate in relation to the site size requirements for such facilities set out in TGD-025 and -027? Mr. Lewis

confirmed that the TGD documents are separate, and they do not relate to shared campus', however, the recommended site area for a primary school facility such as that proposed is 1.6Ha while the post-primary school would be 4.6Ha, totalling an area of 6.2Ha which is broadly in line with the CPO requirements.

- Department confirmed when questioned that further guidance has not been provided for development on urban sites.
- When questioned in relation to the site selection process that was undertaken in selecting the CPO lands, the Council confirmed:
 - Maglin was identified as optimum, however, the infrastructural difficulties persist, particularly in relation to access. The Maglin alternative site is 1.2km from the nearest bus there is no footpath or street lighting currently on the Maglin road, there is a Bridge which is only a single carriageway in width. Flooding and drainage are issues which must also be addressed, and as such the Council is not in a position to consider the Maglin Road site as a viable school site at this time.
 - A number of sites within Ballincollig have been considered in the past and the CPO lands remain the most viable in Ballincollig at this time.
- When questioned in terms of choosing the extent of the CPO lands within the overall holding / zoned area why the western portion was selected.
 - The size of the site was determined by the relevant TGD documents. The access points to the lands then determined the extent and location of the red line boundary, while also leaving an alternative access available to cater for the residual educational facilities.
- While noting that all layouts were indicative, the inspector questioned if there were any issues identifiable in relation to the suitability of the objectors revised indicative layout design that was presented to show how the schools could be accommodated on a smaller overall site (Figure 11 of HWP submission).
 - Mr. F. Lewis answered that potential issues arose from:

- Proximity of the primary school area to eastern boundary of the site in terms of privacy and spatial separation, as well as incurring a fire load risk transferring to the property on the east.
 - The Post-Primary school is located too proximate to the primary school, and this would not be feasible.
 - While acknowledging that it is indicative it was questioned whether presenting two large two-storey buildings in proximity to each other may be considered inappropriate, (potential Development management issue).
 - In relation to parking Mr. Lewis noted that static parking is for teachers and staff (and are subject to CCDP standards), the other significant part which universally requires significant land-usage requirements relates to the dynamic parking, parent drop-off, bus access loading and unloading. Any schools site area requires this to be dealt with at detailed design stage through mobility management plans, road safety audits and traffic impact assessments, which hasn't been considered in discussions today or set out in the indicative HWP layout presented beyond providing a set-back along the entirety of the R608, which under development management considerations would not work.
- When questioned in relation to the stated enrolment figures/projections that are stated, Mr. Murty Hanley clarified that these projections are based on two elements. The first in relation to enrolment figures that the Department has to hand and the second relates to the proposed future population requirements, which come from the County Development Plan. There is a requirement for an additional 400 spaces over the next 8 years based on the pupils coming through primary schools, with the additional projected demand for an additional 750 spaces on the basis of the development of the residential population growth identified for Ballincollig as lands are developed.
 - In relation to the constraints in place for the Maglin UEA site, when questioned about the timeframes in relation to roads and drainage constraints that were mentioned.

- Mr. McKernan confirmed that the Drainage study for the Maglin area has been completed and set out a number of issues which need to be addressed in relation to route selection and design of the road.
- In relation to access the road it is at route selection stage with consultants being appointed at the end of January, this should take 12 months. This will be followed by route design, it is anticipated that more compensatory flood storage will be required, structure design will need to be considered, and should take a further 12 months. The Council are prepared for the fact that the route design may recommend a revised drainage study and may require further investigation of lands to the east of the area. Then the Council will have to decide an implementation program, and whether phasing would occur.
- City Council confirmed when questioned that the maps and outlined area is accurate and the total area to be acquired is 6.0853Ha, which is actually less than the 6.2Ha that the TGD documents would state.
- In relation to the amendment/alteration to the schedule of the CPO the additional parties maintain/allege a leasehold interest in the property, however, this is a matter for the parties to set out and prove their title. They are parties that are reputed to have an interest in the lands.

Inspectors Questions to the Objector:

- When questioned in relation to the probate situation it was confirmed (by Mr. F. O'Connell that Probate has issued on the 1st of February 2023, so this issue has been resolved, however, there have been no further negotiations in the interim.
- When questioned as to when the dwelling within the CPO property was last occupied, it was stated that it was last occupied approximately 20 years ago and has been vacant since then.
- When questioned if HWP had any further comment on the answers to queries that had been provided by the City Council in response to Inspector's questions, the following was stated:

- Extremely disappointed that the infrastructure in Maglin is so far distant.
- The landholding of the 7.7Ha site in Maglin UEA extends to the north, the recently permitted SHD development provides for significant road improvements close to the educationally zoned site, and this site did not receive proper and serious consideration. There are alternatives and opportunities which could result in the Maglin site being developed in a safe and proper manner. The distributor road line is completed to the southern end of the Heathfield development, a line has been provided in previous plans as set out in the HWP submission (Figure 1) and in strategic terms the road line has been defined. To the east the Heathfield development has provided the first part, and there is only one point where the road can cross the Maglin Road.
- Not satisfied that the City Council put sufficient or significant effort into securing the proposed school development at the optimum site in the Maglin Road.

Mr. E. Keane Closing Statement on Behalf of Cork City Council

- The lands are required, their acquisition is proportionate, the Council is not seeking to acquire any more land than is required by the Common Good. It does not appear that the Common Good is disputed in this case. The provision of additional school facilities is an undisputed requirement, the relevant schools are on short-term leases with great uncertainty in terms of their continuation of operations in their current locations.
- Objector's submission is that you can go elsewhere i.e., the Maglin 7.7Ha site, however, there are deficiencies in that site which would restrict the ability to cater for the urgent need for school facilities.
- The Council have established the need for the school, the supreme and high courts has made clear that in establishing the CPO that the least amount of land that is reasonably necessary for the statutory purpose, i.e., pursuant Section 213(3)(e) of the Act must be considered which is the case in the current situation. The need is immediate, and it is not accepted that as put forward by the objectors that future contingency lands have been included

within the CPO. The lands being sought are marginally less than those set out in the relevant TGD documents setting out standard site sizes for schools.

- The indicative layout is just that, indicative and the detailed design will be carried out as part of any future application or Part VIII process. It would be premature for the Council to bring forward any such process/application without first establishing an interest in the lands.
- The provision of schools is not restricted to the school buildings as the ancillary facilities, sports fields etc. are important parts of any educational campus.
- In relation to the reduced 4.2Ha site size set out by the objectors, the Council has made clear that this would be an over-restriction of the site and would not be proper provision for the educational purpose required. The indicative layout may have shown more car parking, but it is just an indicative layout.
- The objectors feeling that there has been an over-provision of educationally zoned lands within Ballincollig, does not affect the validity of the CCDP which has not been challenged by any party.
- It is hard to think of a more urgent need for the common good than to provide for the educational needs of the youth of Ballincollig.

Mr. E. Galligan Closing Statement on Behalf of the Estate of Merle Tanner

- The need for the extent of the lands proposed to be acquired has not been established by the Council, who bear the onus on this as evidenced in the case law.
- In relation to car parking their calculations are in contravention of the CCDP and appear to now be relying on a variation of the CCDP which has not yet been adopted and was not in place at the time the CPO was made. This is unsatisfactory and the Council are ultra vires to their own development plan in this regard.
- Objector is not challenging the validity of the Development plan in terms of zoning, but they are entitled to say that in their view excessive lands have been zoned for educational purposes. Zoning in and of itself does not entitle the Council to acquire the lands. If the Council will not get permission for what

is proposed it is certainly a consideration, which is the case in terms of the inappropriate car parking provisions shown which is contrary to proper plans.

- The Council have proffered differing statements in relation to the use of the lands there appears to be an element of land banking included in the current CPO having regard to the differing evidence presented.
- In circumstances where the Board should not facilitate a material contravention of the Development Plan and that the Council could have addressed the constraints with the Maglin UEA site for the purposes of bringing forward an educational campus it is contended that the CPO should not be confirmed.

Inspector closes the hearing at 1:36.