



# Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

25 January 2023

Michael Brady,  
Brady Group,  
The Lodge,  
Lee Road,  
Cork.  
T23KW88

By email to [info@bradygroup.ie](mailto:info@bradygroup.ie) and post  
Our Ref: 837,182/0939/GAV/BF

**Re: Cork City Council - Lisheens Ballincollig Acquisition Order No. 4 of 2022**

Dear Sirs,

I act on behalf of Cork City Council and I am instructed to respond on its behalf to the Objection/Observation sent to An Bord Pleanála on behalf of the Executors in the Estate of the late Merle Tanner by Michael Brady, Brady Group on the 6 October 2022.

I will use the numbering as set out in the said letter of Objection/Observation in my response: -

## **1. Right to Compulsorily Purchase Land for a School(s).**

Cork City Council, as the planning and local authority for the functional area of the City of Cork have an expressed statutory power to compulsorily acquire lands including the lands the subject matter of the CPO currently under consideration.

Part V of the Housing Act 1966 confers a general power of compulsory purchase on local authorities. Section 76 is the enabling section allowing housing authorities compulsorily to acquire property for the purposes of the Housing Act 1966.

The procedure under the Housing Act 1966, Part V and Schedule 3 may be used to acquire land for housing purposes and also any other purposes of the local authority, e.g. acquiring land for road building or implementing the City Development Plan, by virtue of Section 86 of the Act which amended by substitution Section 10 of the Local Government (No.2) Act 1960, so that Section 10 (1) now provides:



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*"(1) Where-*

- (a) a local authority intend to acquire compulsorily any land, whether situate within or outside their functional area for purposes for which they are capable of being authorised by law to acquire land compulsorily,*
- (b) those purposes are purposes other than the purposes of the Housing Act 1966, or are purposes some only of which are purposes of that Act, and*
- (c) the local authority consider that it would be convenient to effect the acquisition under that Act, the local authority may decide so to effect the acquisition.*

Section 10(1)(b) excludes the purposes of the Housing Act 1966 because Section 76 of that Act gives local authorities a power of compulsory purchase for those purposes. Section 10(3)(a) goes on to provide as follows.

*"Where a local authority make a decision under subsection (1) or (2) of this section, they may be authorised to acquire the land compulsorily by means of a compulsory purchase order as provided for by Section 76 of the Housing Act 1966, and the third schedule thereto and for the purposes of this paragraph any reference to a housing authority in the said Section 76 or the said third schedule shall be construed as a reference to a local authority".*

The Planning and Development Acts 2000-2021 extends the general power of compulsory purchase by local authorities.

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

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

*...*

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

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

*...*



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

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

(b) ...,

(c) ..., and

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

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

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

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

...”

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

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

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

...

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



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

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

*(i) land, or*

*...*

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

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

*(b) ...*

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

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

While a matter for legal submission also, the acquisition of these lands is being proposed by the Council for the purpose of giving effect to and/or facilitating the implementation of the Cork City Development Plan 2022-2028. That development plan ("the Plan") has been properly and lawfully adopted and is in full force and effect and no challenge to same has been brought by any party whether the landowner in this case or anyone else. Any such challenge to the Plan is now well out of time in light of the provisions of the Planning and Development Act, 2000 as amended and the landowner



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is not entitled to seek to raise a collateral challenge to the Plan by means of the objection made in this case.

The evidence on behalf of the Council will be that the CPO herein is for the purpose of obtaining title to the lands so that same can be conveyed to the Department of Education for the purposes of constructing and operating schools. Such development is entirely in accordance with and secures the express objectives of the Development Plan as expressed both in the zoning objective of the said lands and arising from Objective 10.62 of same, such lands being acquired to facilitate and secure the objectives of the development plan by the provision of educational facilities on same. In circumstances such as here where the lands are being purchased for purposes other than the Council's functions under the Housing Act, Section 10 of the Local Government (No. 2) Act of 1960 as amended by Section 86 of the Housing Act, 1966 as amended, permits the provisions of the Housing Act, 1966 to be used in connection with such purchase.

Section 213(1) of the Planning and Development Act, 2000, as amended, provides that the power conferred on a local authority under any enactment to acquire land shall be construed in accordance with that section. Most significantly Section 213(2) provides local authorities with powers of acquisition by agreement or compulsorily for the purposes of their statutory functions, including the implementation of their Development Plans which is the purpose recited by the CPO in this case. Section 213(4) construes the word "purpose" under Section 10 to include the purpose of performing any function of the local authority whether conferred by the Planning and Development Acts 2000-2021 or any other enactment passed before or after the passing of that Act.

The above express statutory powers of CPO in this case are in addition to the powers on the part of the Council pursuant to Section 57 of the Housing Act 1966 to provide such other services and to carry out such other works as may be necessary for or incidental to the development of lands for building purposes including works or services necessary for or incidental to the development of the land for schools.



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### 2. Allegation made by objector suggesting abuse of authority

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

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

These lands in their entirety were zoned Education in the Draft Cork City Development Plan 2021 which went on public display on 28<sup>th</sup> July 2021.

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

- The lands were zoned Residential in the 2017 Cork County Local Area Plan for Ballincollig & Carrigaline.
- The lands are now proposed for rezoning to ZO 13 Education in the Draft Cork City Development Plan 2022 – 2028.
- Submission stated that the landowner was in advanced talks with property developer to sell site for residential development and the proposed zoning will prevent this from happening.

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

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



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

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

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

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

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

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

### **3. Allegation that area of land being compulsorily purchased is excessive**

The land area proposed to be purchased is required for the provision of the schools in question as set out in the evidence of the Department of Education representative. No excess land is sought to be acquired herein over and above what is reasonably necessary for the provision of the sites for the intended and necessary schools.

The area of land the subject of the CPO is in fact less than the area zoned for Educational use as the Council have confined the CPO to the lands necessary at this time and it is considered necessary to have a supply of suitably zoned land should



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further land for schools be required for schools be required in Ballincollig in the short to medium term or during the lifetime of the City Development Plan. The Council have not however sought to acquire any more land than that necessary.

#### 4. Process

The urgency of the acquisition to facilitate the construction of the schools in question has made the CPO necessary.

#### 5. Owners Wishes

The wishes of the owner cannot override the common good and the public necessity for the schools in question and the Council's CPO herein is necessary and in accordance with the proper planning and sustainable development of the area and in accordance with the specific objectives of the Development Plan and necessary to secure and facilitate such objectives and for the purposes as set out in the Planning and Development Act 2000 including Section 212. There is a statutory right to compensation to be determined in default of agreement by arbitration and it is noted that the wishes of the landowner were in any event to have the lands sold for development albeit of a residential rather than an educational nature. This educational development will facilitate the development of the residential parts of the area with proper educational facilities.

Yours faithfully,



BRID FLYNN

cc Frank O'Connell Solicitor, M/S C.F. O'Connell & Co 55 Grand Parade Cork via email and post.



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