



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315571-23

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<b>Development</b>	Installation of telecommunications structures
<b>Location</b>	Bayside Shopping Centre, Bayside Square, Sutton, Dublin 13.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F22A/0447
<b>Applicant</b>	Eircom Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Eircom Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	03 June 2023
<b>Inspector</b>	Rachel Gleave O'Connor

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## 1.0 Site Location and Description

- 1.1. The appeal site is situated on Bayside Square and comprises the Bayside Shopping Centre. The area is characterised by residential uses, with the primary character being formed of 2 storey housing. Bayside Shopping Centre is a 4 storey building, with set-back upper levels, occupied by both commercial, childcare and residential uses and includes a large surface car park area. The appeal site is located approximately 1.5m west of Sutton Village.

## 2.0 Proposed Development

- 2.1. Permission is sought to erect three sets of shrouded antennas measuring 2.9m in height (above the roof parapet level), 1 no. equipment cabinet (measuring 735x735mm and height of 2.030m), 1 no. power distribution board, and 1 no. 300mm diameter dish together with associated telecommunication equipment on the building rooftop of Bayside Shopping Centre.
- 2.2. The shrouded antennas will be secured to the roof using poles on ballast supported steel frames bringing the total height of the antennas to 22.24m above ground level.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.2. The planning authority decided to refuse permission for the reason below:
  - The proposed development as a standalone development or in conjunction with the other applications on the site would result in a proliferation of such structures in an obtrusive and incongruous way, contrary to the Local Objective 111 which requires new developments to be integrated with the existing residential character and scale for the area. Having regard to the nature and height of the proposed communication infrastructure and its proximity to existing residential properties at a visible location, the proposed telecommunication equipment would result in a negative visual impact which would be detrimental to the visual amenities of the area, would be contrary to objectives of the Fingal Development Plan 2017-2023, in particular Objectives

IT07 and IT08 and would be contrary to the proper planning and sustainable development of the area.

### 3.3. Planning Authority Reports

#### 3.3.1. Planning Reports

The following comments are included in the planner's report:

- The proposed development is located on lands zoned 'LC – Local Centre' where telecommunications structures are permitted in principle.
- Small telecommunication structures (less than 3m) erected on the roof of a public or commercial building are generally exempted development under Planning and Development Regulations 2001, as amended, Schedule 2, Part 1, Exempted Development Class 31(K). However, the extent permission on the site (Reg. Ref. F15A/0436) restricts any additional roof plant or equipment from being erected on the rooftop of the existing building unless by way of a separate planning permission.
- Objective DMS 143 of the Fingal County Development Plan seeks co-location of telecommunication antenna support structures.
- Application reg. ref. F22A/0418 was recently refused at the site for 6no. antennas, 1 microwave dish and associated telecommunications equipment. The applicant was request to consult with other applicants seeking telecommunications equipment at the site, with a view to co-locating the equipment to reduce proliferation of telecommunications antennas. By way of further information. Another application reg. ref. F22A/0447 also sought telecommunications at the site.
- Permitting these three applications within the same site would lead to a proliferation of telecommunications structure and equipment on the subject building contrary to Objective 111.
- The applicant was requested to address the following matters by way of further information:

- Enter into discussions with the applicant of F22A/0418 aiming to reduce the number of structures proposed on the roof of Bayside Shopping Centre. Applicant response: Letter submitted stating that it is not viable to share antennas at this location.
- The applicant is requested to provide computer generated images of the proposed development from viewpoints round the Shopping Centre. Applicant response: Images provided.
- There are three applications proposing telecommunications structures on the rooftop of the Shopping Centre. The applicant refers to a similar application granted by Dublin City Council for the installation of 9 shrouds on the rooftop of an apartment building (DCC Reg. Ref. 2748/20). However, the application had a single applicant and the design was uniform in nature matching the building cladding and appearance.
- The submitted CGIs demonstrate that the proposal is very visible. The planning officer commends the non-conventional approach the applicant has proposed by hiding the telecommunications within shrouds on the roof top. However, the telecommunication masts are located on a highly visible site and within a sensitive locality, and is contrary to objective 111.
- It is considered that the proposed development is not acceptable and will contribute to an unacceptable precedent.

#### 3.3.2. Other Technical Reports

- The application was not referred to any internal departments.

#### 3.4. **Prescribed Bodies**

- None.

#### 3.5. **Third Party Observations**

- No objections received.

## 4.0 Planning History

- 4.1. F22A/0418: Planning Permission REFUSED by Fingal County Council on 1<sup>st</sup> December 2022, currently subject to appeal (Reg. Ref. ABP-315370-22), for the erection of 6 no. antennas, 1 no. microwave dish together with associated telecommunications equipment. Permission refused for one reason as follows:

The proposed development as a standalone development or in conjunction with the other applications on the site would result in a proliferation of such structures in an obtrusive and incongruous way, contrary to the Local Objective 111 which requires new developments to be integrated with the existing residential character and scale for the area. Having regard to the nature and height of the proposed communication infrastructure and its proximity to existing residential properties at a visible location, the proposed telecommunication equipment would result in a negative visual impact which would be detrimental to the visual amenities of the area, would be contrary to objectives of the Fingal Development Plan 2017-2023, in particular Objectives IT07 and IT08 and would be contrary to the proper planning and sustainable development of the area.

- 4.2. F22A/0577: Planning Permission REFUSED by Fingal County Council on 12<sup>th</sup> December 2022, currently subject to appeal (Reg. Ref. ABP-315533-23), for the installation of telecommunications antennas, dishes, safety barriers, cabinet and all other associated site development works on the building rooftop. The development will provide high speed wireless data and broadband services. Permission refused for one reason as follows:

The proposed development as a standalone development or in conjunction with the other applications on the site would result in a proliferation of such structures in an obtrusive and incongruous way, contrary to the Local Objective 111 which requires new developments to be integrated with the existing residential character and scale for the area. Having regard to the nature and height of the proposed communication infrastructure and its proximity to existing residential properties at a visible location, the proposed telecommunication equipment would result in a negative visual impact which would be detrimental to the visual amenities of the area, would be contrary to objectives of the Fingal Development Plan 2017-2023, in particular Objectives IT07

and IT08 and would be contrary to the proper planning and sustainable development of the area.

- 4.3. A number of other applications relate to the shopping centre and other uses permitted at the site, but are not of relevance to this current appeal.

## 5.0 Policy Context

### 5.1. National

#### 5.2. The National Planning Framework – Project Ireland 2040, (2018).

- 5.3. This document sets out the Government's strategic national plan for shaping the future growth and development of Ireland for the period up to 2040. Of note is National Strategic Outcome 5 'A Strong Economy Supported by Enterprise, Innovation and Skills' and specifically 'Digital and Data Innovation'.

#### 5.4. Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities

- 5.5. Published in 1996 this document was clarified by Circular Letter PL07/12 in October 2012. The guidance promotes the sharing and clustering of telecommunications facilities. Visual impact is stated to be among the more important considerations which have to be taken into account in arriving at a decision on a particular application. The applicant will have limited flexibility as regards location. Care will have to be taken when dealing with fragile sensitive landscapes or other designated areas. Proximity to listed buildings, archaeological sites and other monuments should be avoided.

- 5.6. Assessment criteria are set out relating to tourist routes in rural areas. There is no comparable assessment presented for urban areas. In larger towns and city suburbs operators should endeavour to locate in industrial estates or in industrially zoned lands and the options of rooftop locations or disguised masts should be explored. The use of tall buildings or existing structures is preferable to the construction of an independent antennae support structure. Only as a last resort and if the alternatives suggested in the previous paragraph are unavailable or unsuitable should freestanding masts be located in a residential area or beside schools and if such

locations become necessary sites already developed for utilities should be considered and masts antennae designed and adapted for the specific location.

**5.7. Regional**

5.8. Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES). Extract from Table 3.1 ‘Asset/Potential Based Criteria Approach to Growth Strategy’ (page 28):

ASSET-BASED CRITERIA - aim is to enable places to fully realise their potential	As expressed in; Settlement Strategy	As expressed in; Economic Strategy
INFRASTRUCTURE Enabling infrastructure to drive regional growth.	Collaboration with providers to deliver key telecommunications, transport, utilities and social infrastructure.	Strategic employment locations enabled by physical, technology infrastructure, and supporting services.

5.9. In the information age, telecommunications networks play a crucial role in enabling social and economic activity. This RSES supports actions to strengthen communications links to develop a stable, innovative and secure digital communications and services infrastructure on an all-island basis in co-operation with relevant departments in Northern Ireland. This includes, subject to appropriate environmental assessment and the outcome of the planning process, support for further enhancement of links between the North American continent and the island of Ireland and Europe, direct access to international backbone data systems and the roll-out of appropriate public policy and investment interventions such as the National Broadband Plan. (Page 230).

**5.10. Local**

5.11. Local Planning Policy is set out in the Fingal County Development Plan 2023-2029 which supersedes the Fingal County Development Plan 2017-2023 under which the Local Planning Authority decision was made.



- 5.12. The appeal site is zoned LC – Local Centre with the associated objective to ‘Protect, provide for and/or improve local centre facilities’ in the Fingal County Development Plan 2023-2029. Telecommunications structures are permitted in principle under the zoning for the site.
- 5.13. Chapter 11 of the Plan concerns Infrastructure and Utilities. This states at 11.2 that ‘The availability of infrastructure such as water, wastewater, surface water drainage, energy and telecommunication networks will play a key role in securing economic investment.’
- 5.14. Page 402 states: ‘The provision of a good quality high speed broadband and telecommunications service is essential for supporting and attracting business and investment and we will continue to pursue opportunities to facilitate changes and advances in technology while also ensuring that the environment and visual amenities of the County are protected. The Council is committed to the continued development and improvement of the County’s digital infrastructure and services. The widespread availability of a high-quality ICT network within the County will be critical to the development of our economy while also supporting social development. The demand for super connectivity and the importance of secure and reliable communications networks will increase in the future and the transition to 5G use will require Local Authorities to play a greater role in supporting the rollout of digital connectivity infrastructure and telecoms networks.’
- 5.15. Section 11.8 states ‘Fingal County Council is committed to the continued development and improvement of the County’s digital infrastructure and services. This Plan supports the provisions contained within the Fingal Digital Strategy 2020–2023 which provides a wider strategy with respect to the development of information and communication technologies within the County. The Council therefore will support the provision of ICT infrastructure such as broadband, telecommunication infrastructure, mobile phone coverage and future technologies which may arise which will assist in the economic development of the County.’
- 5.16. Section 11.8.4 states ‘The provision of telecommunications information is important in terms of the economic development of the County. To ensure appropriate telecommunications infrastructure is provided within the County, the Council will have regard to the Guidelines issued by the Department of the Environment,

Heritage and Local Government, Planning Guidelines for Telecommunications Antennae and Support Structures 1996 and Circular Letter PL 07/12. The assessment of individual proposals will be governed by the Guidelines and the controls scheduled in Chapter 14 Development Management Standards of this Plan.’

- 5.17. Policy IUP36 – Provision of Telecommunications / Digital Connectivity Infrastructure - Facilitate the coordinated provision of telecommunications / digital connectivity infrastructure at appropriate locations throughout the County and extension of telecommunications infrastructure including broadband connectivity as a means of improving economic competitiveness and enabling more flexible work practices.
- 5.18. Objective IUO53 – High-quality Design of Telecommunications Infrastructure - Ensure a high-quality design of masts, towers, antennae and other such telecommunications infrastructure in the interests of visual amenity and the protection of sensitive landscapes in the County.
- 5.19. Objective IUO54 – Sharing and Co-location of Digital Connectivity Infrastructure - Support the appropriate use of existing assets (i.e. lighting, street furniture etc) for the deployment of telecoms equipment and to encourage the sharing and co-location of digital connectivity infrastructure in the interests of visual amenity and protection of the built heritage.
- 5.20. Objective DMSO17 – Location of New Utility Structures - Where possible, new utility structures such as electricity substations and telecommunication equipment cabinets should not be located adjacent or forward of the front building line of buildings or on areas of open space.
- 5.21. Objective DMSO18 – High Quality Design of New Utility Structures - Require new utility structures such as electricity substations and telecommunication equipment cabinets to be of a high-quality design and to be maintained to a high standard by the relevant service provider.
- 5.22. Section 14.20.9 of the Plan concerns Information and Communications Technology and includes Objectives DMSO222 requiring evidence where co-location of antennae is not possible, DMSO223 concerning the locating of antennae and telecommunications in sensitive locations and DMSO224 concerning information to be submitted for telecommunications applications.

### 5.23. **Natural Heritage Designations**

5.24. The subject site is situated to the north of North Bull Island Special Protection Area (4006) and North Dublin Bay Special Area of Conservation (0206). There is no connection to any European (Natura 2000) sites and no pathways.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The main points of the grounds of appeal are as follows:

- The site is in part residential use and it is also conditioned that no telecommunications equipment may be installed without a prior grant of planning permission. If this site had no residential aspect or the condition referred to, the proposed development would constitute exempt development in accordance with Planning and Development Regulations 2001 (as amended) SI No. 600, 2001, Schedule 2, Class 31(K), updated by SI No. 31, 2018(k) (i) (2) (5) and (6).
- The proposal, along with the other two submitted applications, are proposing to co-locate their small scale installations on top of the shopping centre rooftop in accordance with the Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, 1996.
- A comprehensive assessment of alternative existing telecommunications sites is provided as technical justification for the need for the proposed development.
- The site is proposed to provide mobile voice and data coverage to commercial and recreational users in Bayside and to improve voice and broadband access to nearby residents and business users in the wider surrounding area.
- The mobile operators are under an obligation to provide 100% coverage throughout the country, including at this location. The nearest existing sites are too far away for the newer technologies to work including 4G and 5G technologies and to a large extent 3G, due to the required data speeds for applications like social media, internet browsing and downloading, the

technology range which depends on the number of users any one time can be only several hundred metres.

- In compliance with the operators license, all attempts to utilise any existing telecommunications structures where they represent the optimum environmental solution have been employed. The ComReg Site Finder mast register was used. During the alternative sites assessment, there were no suitable existing telecommunications sites identified which would be capable of providing the coverage required in this instance.
- The proposal is suitably distanced from any heritage, landscape and ecological sensitive designated areas.
- Compliance with emission limits is regulated by ComReg and an ICNIRP Declaration was submitted as part of the license application as evidence of this compliance.
- A Visual Assessment in accordance with the Guidelines for Landscape and Visual Impact Assessment (3<sup>rd</sup> Edition) 2013 has been provided. The assessment of three viewpoints demonstrate that the visual impact is predicted to result in a moderate-low impact and there are no significant visual impacts predicted.
- The proposal supports the ten goals of the NPF in improving digital connectivity.
- The proposal complies with policies and objectives in the Development Plan.
- The proposed development would not seriously injure the visual and residential amenities of the area and would not be visually prominent and obtrusive at this location.
- Broadband is now considered an essential public service like water and electricity and the appellant urges the Board to assess the planning balance carefully here in terms of the public benefits associated with the proposal as opposed to the limited dis-benefits (limited visual impact) which are considered to be far outweighed in accordance with national and local policy.

## 6.2. Planning Authority Response

The Planning Authority provided a response to the appeal dated 9<sup>th</sup> February 2023 which is summarised below:

- Permitting this application would set a precedent for other similar development in the area.
- Permitting the proposed development as a standalone development or in conjunction with the other two applications would result in the proliferation of telecommunication structures on the subject building and present an inconsistent appearance due to the number and varying height of the proposed structures and their location and visibility with neighbouring houses.
- In the event that this appeal is successful, provision should be made in the determination for applying a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

## 6.3. Observations

None.

## 7.0 Assessment

7.1. I propose to assess the appeal under the following headings:

- Compliance with national and local planning policy; and
- Visual impact.

### 7.2. Compliance with national and local planning policy

7.3. National and local planning policy promotes telecommunication infrastructure in accordance with relevant guidance and planning policy considerations. The zoning of the appeal site permits the locating of telecommunication structures in principle. The site is not located in an architecturally or historically sensitive location, with no applicable conservation or built heritage designations on or close to the site. The site is also not located in a sensitive landscape and is urban in character.

- 7.4. I note that the planning authority's assessment was against the previous County Development Plan 2017-2023 which was in force at that time, and the reason for refusal includes reference to Local Objective 111 for the Shopping Centre site. The current Fingal County Development Plan 2023-2029, which is the relevant plan for the purposes of my assessment, does not include any Local Objectives for the site.
- 7.5. With respect to Objective IUO54 and DMSO222 in the Fingal County Development Plan 2023-2029 and the co-locating of equipment, I note that the Council considers that this has not been achieved and that the proposal, either standalone or in conjunction with other applications, would result in a proliferation of such structures in an obtrusive and incongruous way.
- 7.6. The appellant considers that co-location has been proposed with the provision of the proposed telecommunications equipment, as well as that proposed in applications F22A/0418 & F22A/0577 (currently subject to appeal ref. no's. ABP-315370-22 & ABP-315533-23), on the same building, rather than in a number of different locations. The appellant's statement of grounds states at para.2.19 that Three Ireland has a policy to co-locate on existing telecommunications structures where possible and no existing base station options were identified that could be shared or upgraded to provide the necessary coverage required, and this is the only location providing suitable radio coverage. Other locations considered are also described in the statement of grounds. The Council request that the applicants for all of the telecommunications equipment proposed on the roof of the Bayside Shopping Centre, seek a more uniform approach to the structures and design and finishes that would be more aesthetically consistent with the building.
- 7.7. Objectives IUO54 and DMSO22 requires the co-location of antennae, including that it be on existing support structures, with evidence provided as to the non-availability of this option. These objectives do not require that antenna be provided as a single piece of equipment/plant. I am satisfied that the appellant has set out a comprehensive assessment of existing telecommunication sites in the area and why these would not meet the purpose of the proposal. I am also satisfied that the appellants approach in terms of the co-locating of other equipment on the rooftop (with reference to other applications for the same), would not represent a proliferation of such equipment, but is a clustering of telecommunications structures, which would reduce the proliferation of such structures appearing on other sites

elsewhere in the area. I also do not agree with the Council that the proposal would be obtrusive and incongruous in this regard.

7.8. The applicant has also addressed the criteria under Objective DMSO224 of the Development Plan. The Grounds of Appeal and attached RT Justification Report, set out the compliance with the telecommunications guidelines, the importance of the equipment applied, the identification and description of alternative locations and why these are not appropriate, as well as a visual impact assessment of the proposal.

7.9. Visual impact

7.10. The Council recommend that the application be refused due to the nature and height of the proposal, proximate to existing residential properties at a visible location, resulting in negative visual impact to the detriment of visual amenities.

7.11. The appellant provides a visual impact assessment which concludes that the visual impact is predicted to result in a moderate-low impact and there are no significant visual impacts predicted.

7.12. As set out above, the appeal site is not located in a sensitive location with reference to architectural or heritage designations. The area is characterised by residential use, however the site itself is formed of a shopping centre and has a different character (scale and appearance) to the residential dwellings adjacent to it, appropriate to the commercial and mixed uses it accommodates. The proposed telecommunications equipment will be visible on top of the roof to the shopping centre; however, this visibility would not have a negative impact upon residential amenity in my view, and is in keeping with the urban and mixed use character of the site.

7.13. While there is a moderate visual impact, care has been taken in my view to reduce this impact with the consistent approach to the appearance of the equipment and shrouds, with a finish that is intended to reflect the finish of the existing upper/roof storey of the shopping centre in terms of colour. National and local planning policy support the provision of telecommunications infrastructure as a necessary utility that benefits both businesses and recreational uses. The appellant has set out a comprehensive justification for the equipment and taken a logical approach to its location and co-location with other proposals for equipment. There will be visual impact, but this is moderate, and should be considered alongside the need for

telecommunications infrastructure, the zoning that permits such equipment in principle in this location, and the attempt to reduce visual impact through design.

7.14. Overall, I am satisfied that the visual impact is not so significant or harmful that it would warrant refusal of planning permission.

## 8.0 Recommendation

8.1. Having regard to the above, I recommend that permission be GRANTED for the proposed development, subject to conditions, for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

Having regard to:

- (1) the national strategy regarding telecommunications infrastructure,
- (2) the guidelines relating to telecommunications antennae and support structures which were issued by the Department of the Environment and Local Government to planning authorities in July, 1996,
- (3) the location of the development within a zoned 'LC' site, wherein telecommunications masts are permitted in principle,
- (4) planning policies and objectives under the Fingal County Development Plan 2023-2029,
- (5) the existing pattern of development in the vicinity,
- (6) the planning history of the site including concurrent appeals under consideration by An Board Pleanála, and
- (7) the decision of the planning authority.

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously, or disproportionately, injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.



## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>In the event of the proposed structures becoming obsolete and being decommissioned, the developers shall, at their own expense remove the telecommunications structures and associated equipment.</p> <p><b>Reason:</b> In the interest of orderly development.</p>
3.	<p>The antennae type and mounting configuration shall be in accordance with the details submitted with this application, and notwithstanding the provisions of the Planning and Development Regulations 2001, and any statutory provision amending or replacing them, shall not be altered without a prior grant of planning permission.</p> <p><b>Reason:</b> To clarify the nature and extent of permitted development to which this permission relates and to facilitate a full assessment of any future alterations.</p>
4.	<p>Details of the proposed material finish/colour scheme for the telecommunications structure and ancillary structures (which shall closely reflect the existing appearance of the roof) shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the development.</p> <p><b>Reason:</b> In the interest of the visual amenities of the area.</p>

5.	<p>No advertisement or advertisement structure shall be erected or displayed on the proposed structure or its appendages without a prior grant of planning permission.</p> <p><b>Reason:</b> In the interest of the visual amenities of the area.</p>
6.	<p>Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.</p> <p><b>Reason:</b> In the interest of public health.</p>
7.	<p>The developer shall provide and make available of reasonable terms the proposed support structure for the provision of mobile telecommunications antenna of third party licenced telecommunications operators.</p> <p><b>Reason:</b> In the interest of avoidance of multiplicity of telecommunications structures in the area, in the interest of visual amenity and the proper planning and sustainable development of the area.</p>
8.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contributions Scheme made under section 48 of the Planning and Development Act 2000 as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer, or in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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.

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Rachel Gleave O'Connor  
Senior Planning Inspector

06 June 2023