



An
Coimisiún
Pleanála

Inspector's Report ACP322335-25

Question

Whether the assembly of a replacement support structure and the attachment of antennae and other telecommunications infrastructure is or is not development and, if development, whether or not the works are exempted development.

Location

EIR Exchange Site, Wellington Road, Cork City T23E302.

Declaration

Planning Authority

Cork City Council.

Planning Authority Reference.

R93125

Applicant for Declaration

Eugene Glendon, Sylvia Glendon, John Hegarty and Gemma Desmond
c/o Peter Thomson Planning Solutions

Planning Authority Decision

No declaration referred to an Bord Pleanála under Section 5(4) of the Planning and Development Act 2000 (as amended).

Owner

Trinity Presbyterian Church.

Occupier

Vodafone Ireland Limited

Date of Site Inspection

21st November 2025.

Inspector

Derek Daly.

1.0 Site Location and Description

1.1. The proposed site is located on Wellington Road to the north of the centre of Cork City.

1.2. The replacement support structure and the attachment of antennae is located on a site which is currently in use as a telephone exchange building with an associated parking area. The telecommunications pole is located in close proximity to the southeastern corner of the telephone exchange building. Approximately 3 metres to the northeast of the existing pole is a concrete base constructed to support the erection of a replacement telecommunications antenna.

1.3. The existing pole is also located in proximity to the southern boundary of telephone exchange building site which abuts the grounds of Trinity Presbyterian Church. The northern boundary of the telephone exchange building site fronts onto Wellington Road.

1.4. To the south of the telephone exchange building site is the grounds of Trinity Presbyterian Church a protected structure which is gothic-revival Presbyterian Church built circa 1861. Trinity Presbyterian Church is situated on a relatively elevated site having a stone plinth wall with railings on the front boundary of the site and which is a highly visible building in particular when viewed from the south owing to the significant rise in level from south to north across the site making it particularly visible when approached from Brian Boru Bridge and Brian Boru Street and a wider area to the south.

1.5. Also within the current grounds of the church is a single-storey detached formerly a school building, built circa 1865 and located the southwestern area of the grounds immediately adjoining the junction of Mc Curtain Street, Summerhill North and Brian Boru Street. There is also a single-storey church hall, built 1906, located to the northwest of the church and this building has limestone walls of similar construction to the Trinity Church and school and forms part of the church complex.

1.6. There is a pedestrian access to the church grounds from Summerhill North and vehicular access to the site is from Little William Street to the west of the site.

The area immediately surrounding the church and hall are in use for parking and the site level of the church, hall and parking area are significantly lower than the site of the telephone exchange building site.

1.7. To the west of the telephone exchange building site is a terrace of four three storied houses fronting onto Wellington Road and to the west of this terrace is a terraced four-bay two-storey building. To the east of the telephone exchange building is a terrace of four two-bay two-storey over basement houses (Connaught Place) which front onto the southern side of Wellington Road, To the east of Connaught Place is a row of three storied properties (York Terrace).

1.8. On the opposite side of Wellington Road to the telephone exchange building site is a terrace of three-bay three-storey houses set back from Wellington Road and there are further terraced properties to the west and east of this terrace fronting onto the northern side of Wellington Road.

2.0 The Question

2.1. The question before the Commission relates to whether the assembly of a replacement support structure and the attachment of antennae and other telecommunications infrastructure is or is not development and, if development, whether or not the works are exempted development.

2.2. This question was submitted to the Planning Authority in a submission dated the 15th April 2025 following a third party request for a declaration in relation to the question as outlined and that the Section 5 referral was lodged arising from legal proceedings to the High Court.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Cork City Council made no declaration and the question was referred to An Coimisiún Pleanála under Section 5(4) of the Planning and Development Act 2000 (as amended) on the 14th April 2025.

4.0 Referral

4.1. Documents Submitted by the Planning Authority in relation to the referral.

4.2. The planning authority in the referral to An Coimisiún Pleanála dated the 15th April 2025 made a submission which includes a cover letter and appendices. The cover letter outlines the background referring in summary to the appendices; outlines the planning history of the site; refers to provisions of the current city development plan; a screening for EIA and AA and a conclusion that EIA was not required and AA is not required.

4.3. **Documentation included as appendices.**

4.4. **Appendix 1**

4.4.1. The relevant legislative provisions are referred to in Appendix 1.

4.5. **Appendix 2**

4.5.1. The question as lodged by third parties to the planning authority on the 19th March 2025 is outlined and the background is outlined including that this section 5 referral was lodged as part of legal proceedings.

4.5.2. Appendix 2 includes a planning report on behalf of the third parties which in summary refers to;

- The proposed development is within the curtilage of Trinity Presbyterian Church.
- A conservation report prepared on behalf of the third parties has concluded that the proposed development would have a significant impact on protected structures and the occupiers cannot erect the development without the benefit of planning permission, that the development which is an urban development project for the purposes of the EIA Directive and requires EIA and the development cannot have the benefit of exempted development having regard to section 4(4) of the Planning and Development Act 2000 as amended.

- Reference is made to the original and existing antennae structures on the site and what is proposed as a replacement of an existing structure referring to the original mast location and proposed mast location.
- Reference is made to Towercom Limited undertaking these works and to the provisions of Section 4 (1)(g) of the Planning and Development Act 2001 as amended and Class 31 of Part 1 Schedule 2 of the Planning and Development Regulations 2001 as amended which refer to statutory undertaker. Section 2 of the Planning and Development Act 2000 as amended and that defines statutory undertaker and Towercom Limited are not a statutory undertaker and are contracted to carry out the upgrade of the pole on a site leased to another party and a private contractual arrangement does not bestow the status of statutory undertaker.
- Reference is made to protected structures in the area including Trinity Presbyterian Church and Connacht Place and the contention that the EIR Exchange is within the curtilage of the church based on the Architectural Heritage Protection Guidelines for Planning Authorities 2001. Reference is made to *North Great Georges Street Preservation Society v An Bord Pleanála* 2023 IEHC 24 regarding the definition of curtilage.
- The freehold of the Eir exchange site remains with the church and will revert back to the church at the expiry of the lease.
- It is also contended that that proposed structure will be on an open area used for parking and would adversely impact on the setting of the church and adjoining protected structures on Connacht Place.
- Reference is made to the site's location within an Architectural Conservation Area (ACA) and its impact on the ACA and that the mast is not a like for like replacement and is located in a different more exposed location and also bulkier and would have significant long term impact.
- Reference is made to the issue of EIA and *significance and the EU Guidance in 2024 on interpretation of a project is cited* and also *Monkstown Residents v An Bord Pleanála* 2022 IEHC 318 which addressed the question of significance in relation to EIA in the context of impacts on cultural heritage and it is contended that the proposed mast cannot avail of exemption having

regard to section 4(4) of the Planning and Development Act 2000 as amended.

- Reference is made to the question of the existing structure as unauthorised referring to sections 57 and 82(1) of the Planning and Development Act 2000 as amended and in particular the issue of a protected structure and if it is found that the existing support structure to be replaced is an authorised structure its replacement must conform with section 82(1) to be exempted development.
- Reference is made to the chronology of the existing pole structure on the site and the relevant provisions of the Planning and Development Regulations 2001 which applied since the pole was erected in 1999 and it is contended that the works which subsequently occurred were and remain unauthorised when the then current regulations were considered.
- The proposed mast is not in the location of the current mast and exemption cannot be applied to an unauthorised structure.
- In conclusion while the original pole erected in 1999 was erected as exempted development its extension to 15 metres around 2010 was unauthorised and likewise the additional antennae erected were not exempted and also unauthorised and Towercom as it is not a statutory undertaker cannot claim an exemption under the Act or Regulations for a replacement structure as the existing structure is unauthorised.

4.6. Appendix 3

- 4.6.1. Appendix 3 is An Architectural Impact Assessment Report submitted on behalf of the third party referrers and is a reference for the submission made in appendix 2 which assesses the impact of the replacement mast in the context of the immediate site and area and also outlines possible mitigation measures alternatives and recommendations.

4.7. Appendix 4

- 4.7.1. Appendix 4 is correspondence from the owner of the site Trinity Presbyterian Church indicating that they are owners of the lands which are leased to Eir.

4.8. Appendix 5

- 4.8.1. Appendix 5 is documentation fifteen in total relating to pleading and other related matters to High Court Proceedings John Hegarty and Eugene Glendon and Sylvia Glendon, and Gemma Desmond v Towercom Limited.
- 4.8.2. The submissions include affidavits and supporting documentation from all parties to the High Court proceedings including a copy of the interim order pursuant to Section 160 of the Planning and Development Act 2000 as amended to cease carrying out and continuing development at the Eir Exchange.

5.0 Planning History

5.1. The planning report refers to no planning history and refers to an enforcement file.

Planning Ref. No E8779 which relates to the construction of a second telecommunication mast and that in response to a warning notice a section 5 reference is to be made.

Documentation submitted by parties refers to

302441-18

Section 5 referral as to whether works consisting of the erection of a telecommunications mast on Monkstown Road is or is not development and is or is not exempted development. Issues raised included that of who is and is not a statutory undertaker and the declaration determined that that the attachment of telecommunications antennae to a lamppost supporting structure and erection of ancillary equipment is development and is exempted development.

312012-21

Section 5 referral as to whether the proposed development that will consist of the construction of a 12 metre pole with 1np. antenna attached, and equipment cabinets. the development will form part of Eircom Ltd existing telecommunications and broadband network within the existing Eircom Exchange Compound at Ballyclerihan, Co Tipperary, is or is not development or is or is not exempted development and the declaration determined that it is development and is exempted development.

310362-21

Section 5 referral as to whether the development of a telecommunications mast, associated telecommunications infrastructure, and an access route on an elevated site is development and is not exempted development and the declaration determined that it is development which is exempted development.

6.0 Policy Context

6.1. Local Planning Policy

- 6.1.1. The relevant statutory plan is the Cork City Development Plan 2022-2028.
- 6.1.2. The site is within an area zoned ZO 01 Sustainable Residential Neighbourhoods. The site is also located within the Wellington Road / St Lukes Architectural Conservation Area as indicated in Volume 2 - Mapped Objectives of the plan.
- Objectives in relation to the zoning include;
- ZO 1.2 Development in this zone should generally respect the character and scale of the neighbourhood in which it is situated. Development that does not support the primary objective of this zone will be resisted.
- 6.1.3. Objective 8.23 of the plan refers to Development in Architectural Conservation Areas and that development in Architectural Conservation Areas should have regard to the following:
- a. Works that impact negatively upon features within the public realm, such as stone setts, cobbles or other historic paving, railings, street furniture, stone kerbing etc. shall not be generally permitted;
 - b. Design and detailing that responds respectfully to the historic environment in a way that contributes new values from our own time. This can be achieved by considering layout, scale, materials and finishes and patterns such as plot divisions in the surrounding area;
 - c. Historic materials and methods of construction should be retained and repaired where this is reasonable, e.g. historic windows and doors, original roof coverings, metal rainwater goods should be retained along with original forms and locations of openings etc;

d. Repairs or the addition of new materials should be appropriate and in keeping with the character of the original structures.

Details in relation to Wellington Road / St Lukes Architectural Conservation Area are further outlined in Volume 3 of the plan.

6.1.4. In relation to protected structures Trinity Church is a protected structure and there are many other protected structures in the immediate area on both sides of Wellington Road including Connaught Place and the protected structures are listed in volume 3 of the plan.

Objective 8.19 refers to the Record of Protected Structures and to maintain a Record of Protected Structures (RPS) which shall include structures or parts of structures which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, and which it is an objective to protect.

a. Any changes or alterations to the character of a Protected Structure which would in the opinion of Cork City Council, have a material effect on the character of the structure, will require planning permission;

b. Cork City Council will have regard to the relevant statutory guidance issued by the central government department responsible for the built heritage, including the Architectural Heritage Protection Guidelines for Planning Authorities;

c. Proposals for demolition of a Protected Structure shall not be permitted except in exceptional circumstances and where it can be shown that a greater public interest will be served which outweighs the loss to the architectural heritage;

d. Any alteration or demolition of a Protected Structure shall require the preparation of a full drawn and photographic record to Best Conservation Practice;

g. Where a planning application is being granted for development within the curtilage of a Protected Structure, the conservation of the protected structure will be prioritised as the first phase of the development to prevent endangerment, abandonment and dereliction

6.1.5. The plan refers to a view management framework in relation to views within the city and paragraph 6.30 refers to strategic and local landmark buildings have been identified so that linear views of these buildings can be protected through the management of development. Strategic landmark buildings are those that are widely

appreciated due to their visual prominence and the role that they play in helping people to orientate themselves within the City. Local landmark buildings are important within the City's neighbourhoods due to their local visual prominence. While an illustrative list of local landmark buildings is provided, other local landmark buildings will emerge during the Plan period through the development management process, and where these are identified important linear views to these buildings will need to be taken into consideration. Trinity Church is identified as a Local Landmark Building.

Objective 6.14 Cork City View Management Framework and 6.14(e) indicates that strategic and local landmark buildings will need to be considered in the scoping of views to identify the potential impacts of development proposals.

- 6.1.6. In relation to Telecommunications paragraph 9.26 refers to an efficient telecommunications system is important in the development of the economy. Cork City 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 the Development Management section of this plan.
- 6.1.7. Chapter 11 refers to development management and paragraph 11.256 refers to the assessment of any application for telecommunications antennae and support structures

6.2. National Guidance.

- 6.2.1. Architectural Heritage Protection Guidelines for Planning Authorities 2001 with the overriding objective for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest, and for preserving the character of architectural conservation areas
- 6.2.2. Chapter 2 refers to Protected Structures and that each development plan must include policy objectives to protect structures or parts of structures of special interest and to preserve the character of architectural conservation areas within its functional area. A protected structure is defined as any structure or specified part of a structure, which is included in the Record of Protected Structure and a structure is defined by

the Act as 'any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure'. In relation to a protected structure or proposed protected structure, the meaning of the term 'structure' is expanded to include: a) the interior of the structure; b) the land lying within the curtilage of the structure; c) any other structures lying within that curtilage and their interiors, and d) all fixtures and features which form part of the interior or exterior of the above structures.

- 6.2.3. Chapter 3 refers to Architectural Conservation Areas (ACA) and an ACA is a place, area, group of structures or townscape, taking account of building lines and heights, that is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or that contributes to the appreciation of a protected structure, and whose character it is an objective of a development plan to preserve. ACA policies should be supported by, and be consistent with, other policies of the development plan especially those relating to development control. The guidance outlines measures for identifying areas for protection and identifying the character of the area.
- 6.2.4. Chapter 13 refers to Curtilage and Attendant Grounds and the guidelines does indicate that curtilage is not defined by legislation, but for the purposes of these guidelines it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure; it should be noted that the meaning of 'curtilage' is influenced by other legal considerations besides protection of the architectural heritage and may be revised in accordance with emerging case law and that in many cases the curtilage of a protected structure will coincide with the land owned together with it but this is not necessarily so and the extent of the curtilage will need to be determined on a case-by-case basis. Reference is also made to the attendant grounds of a structure which are lands outside the curtilage of the structure but which are associated with the structure and are intrinsic to its function, setting and/or appreciation.
- 6.2.5. Section 13.5 refers to development within the Curtilage of a Protected Structure and that proposals for new development within the curtilage of a protected structure should be carefully scrutinised by the planning authority, as inappropriate development will be detrimental to the character of the structure and paragraph 13.5.2 refers to where a formal relationship exists between a protected structure and

its ancillary buildings or features, new construction which interrupts that relationship should rarely be permitted. There may be a designed vista between a building and a built or landscape feature within its gardens or a less formal relationship between a house and its outbuildings. Similarly, the relationship between the protected structure and the street should not be damaged. New works should not adversely impact on views of the principal elevations of the protected structure. Section 13.7 outlines criteria for assessing development within the attendant grounds. Section 13.8 outline criteria in relation to considering other development affecting the setting of a protected structure or an architectural conservation area.

- 6.2.6. Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (DoE 1996) refers to national guidelines for consideration in relation to Telecommunications Antennae and Support Structures for Planning Authorities prepared by the Department of the Environment, July 1996.

6.3. Natural Heritage Designations

None relevant. The site is not within a Natura Site or directly connected with a Natura Site.

7.0 Responses to the Referral

7.1. Towercom Limited c/o McCutcheon Halley Planning Consultants in a response dated the 1st July 2025 to the referral in summary refer to;

- 7.1.1. In relation to the matter of section 4(1)(g)

- The works involve the removal and replacement of telecommunications apparatus that has been in place for over 20 years and the works involve the removal of the existing wooden antennae structure and replacement with a steel antennae structure and the existing structure is 15 metres (12 metre pole with antennae) and in place since 1999.
- The Wellington Road exchange is connected to the Vodafone national fibre network which allows Vodafone to offer high speed data to any connected site.
- It is contended that the provisions of 4(1)(g) were intended to ensure that “*any works for the purpose of...*” essential services and infrastructure provided by

statutory undertakers required to support employment and residential uses could be repaired, renewed or altered without the need for planning consent and maintaining essential communication services is critical to supporting the economy and residential amenity.

- Should ACP consider that the provisions of 4(1)(g) are not applicable the provisions of Class 31(j) of the Planning and Development Regulations 2001 as amended will apply.

7.1.2. In relation to the matter of statutory undertaker;

- Reference is made to precedent in relation to the question of statutory undertaker in ABP302441-18 where it was noted that telecommunication rights are controlled by Comreg which issues general authorisation for the provision of telecommunications under licence. Vodafone Ireland Limited (VIL) is a statutory undertaker and the works are being undertaken by Towercom who are contractually responsible to VIL and the ABP precedent establishes that exempted development provisions extend to the contractor undertaking works on behalf of a statutory undertaker. Other statutory undertakers frequently contract works out including exempted development works.
- Reference is made to a legal submission in support of this.

In relation to the issue of a protected structure;

- In planning terms, it is important to recognise that the level of impact to be assessed is the development to be undertaken and not the principle of a new telecommunication pole in the location which has been established for well over 20 years.
- The assessment must be assessed in terms of a minor relocation of the existing pole 3.2 metres northeast of the existing pole and at a level 0.6 metres higher than the existing pole; the change in the width of the pole from 320mm to 508mm at its widest point and the reduction of the number of dishes from 6 to 5.
- The site of the proposed development is not within the curtilage of Trinity Presbyterian Church and therefore section 57 does not directly apply and if it were considered it was within the curtilage the proposed replacement would

not materially affect the church or any element contributing to its special interest.

7.1.3. In relation to impact on the ACA;

- In context the site is located in a highly urbanised environment where utility structures are everyday parts of the city.
- The importance efficient telecommunications is noted in paragraph 9.26 of the CDP.
- While the CDP seeks to protect ACAs there is no restriction in the plan to provision of utility infrastructure or replacement or repair of existing infrastructure,
- Section 8.23 refers to restricting development which would impact negatively on the public realm. The works however are outside of the public realm within the boundary of a long established telephone exchange.
- A report in relation to impact on the ACA is submitted in support of this.

7.1.4. In relation to the requirement of EIA;

- The proposed works and development is not an Annex I or Annex II project.
- The guidance referred to in the third party submission to the planning authority it is not legally binding in member states and reference is made to *Ryan v An Bord Pleanála* 2025 IEHC 111, it refers to a recommendation and was drafted in respect of ensuring the timely and cost-effective deployment of telecoms infrastructure, the guidance has not been transposed to legislation.
- If it were the subject of EIA it would be screened out and the benefit of an exemption in section 4(1) of the Act or the Regulations is only lost where EIA is required not where an EIA screening is required section 4(4) of the Act.

7.1.5. In relation to unauthorised works;

- The issue of non-compliance referred to in documentation is in relation to a technical or engineering non-compliance as the existing pole is structurally unsound.

- The original pole was erected when the 1994 regulations were in place and permitted antenna support structures with the condition and limitation that it not exceed 15 metres and the existing structure is therefore authorised.
- It is therefore contended that section 4(1)(g) applies.
- If it is considered that section 4(1)(g) does not apply the provisions of Class 31(j) apply as it is a replacement of an existing antenna support structure and none of the conditions and limitations apply and these are outlined.
- None of the Article 9 restrictions are applicable to the proposed development.

7.1.6. In relation to compliance with planning strategy;

- Reference is made to Policy 11.253 of the current CDP.
- The new replacement antennae structure is in complete accordance with the relevant planning policy, a monopole design has been adopted similar to the structure to be replaced, there is an absence of protected views of the site and there is no impact on the ACA or setting of the adjacent protected structure.

7.1.7. The submission also includes a number of submissions including from;

William Fry Solicitors which restates many of the matters raised in relation to statutory provisions and the issues of statutory undertaker.

From Vodafone (VIL) that the replacement equipment is in compliance with ICNRP Guidance, that VIL is the owner of the structure in place since 1999 and Towercom Limited are contractually responsible for the upkeep and maintenance of the masts, Vil will be the owner of the replacement mast and VIL is a statutory undertaker.

An architectural report in relation to the impact of the mast with reference to the protected structure, the curtilage of the protected structure (Trinity Presbyterian Church), impact on the protected structure and also impact on the ACA. Based on considering these matters the replacement mast will not materially affect the structure or the ACA and that the proposed works are exempted development.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000 as amended

Section 2(1) – Interpretation

“architectural conservation area” shall be construed in accordance with section 81(1).

“attendant grounds”, in relation to a structure, includes land lying outside the curtilage of the structure;

“development” has the meaning assigned to it by section 3 and ‘develop’ shall be construed accordingly.

“exempted development” has the meaning specified in section 4;

“protected structure” means (a) a structure, or (b) a specified part of a structure, which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition; “protection”, in relation to a structure or part of a structure, includes conservation, preservation and improvement compatible with maintaining the character and interest of the structure or part.

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to— (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport, (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34, 37G or 37N of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) – Development

In this Act, except where the context otherwise requires, "development" means—

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,

Section 4– Exempted Development

Section 4(1)

The following shall be exempted developments for the purposes of this Act—

(g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of

the structures as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is— (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and (b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.

Section 5 (1), If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(4) Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

Section 57 Works affecting character of protected structures or proposed protected structures.

(1) Notwithstanding section 4 (1) (a), (h), (i), (ia) (j), (k), or (l) and any regulations made under section 4 (2), the carrying out of works to a protected structure, or a proposed protected structure shall be exempted development only if those works would not materially affect the character of—

(a) the structure or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Development in architectural conservation areas.

Section 82. (1) [Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

8.2. Planning and Development Regulations, 2001 as amended

8.2.1. “Article 6 (1) –

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

8.2.2. Article 9 (1) –

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would (relevant excerpts referenced)

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

8.2.3. **Schedule 2, Part 1: Exempted Development —General**

Class 31

The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of—

(b) overhead telecommunications including the erection of poles or other support structures or the use of existing poles or other support structures,

Conditions and Limitations

1. Poles or other support structures carrying overhead lines shall not exceed 12 metres in height.
2. Poles or other support structures carrying other equipment shall not exceed 12 metres in height and 0.6 metres in diameter measured at the widest point, where “other equipment” means 2 transmitting or receiving dishes (the diameter of which shall not exceed 0.6 metres), or 1 panel antenna (the dimensions of which shall not exceed 0.85 metres in length x 0.65 metres in width x 0.2 metres in depth) used for the provision of a specific telecommunications service and the provision of which would otherwise require an additional pole route carrying overhead wires.
3. Where a pole or poles or other support structures carry radio transmitting or receiving apparatus, the field strength of the non-ionising radiation emissions from that installation shall not exceed the limits specified by the Commission for Communications Regulation.

(h) the attachment of additional antennae to an existing antenna support structure,

Conditions and Limitations include;

1. (a) For structures under 15 metres antennae to an existing in height, the total number of antenna support structure, such antennae shall not exceed 12, of which not more than 8 antennae shall be dish type (whether shielded or not).
2. (a) The dimensions of any such antenna provided shall not exceed the greatest length, width or depth of any antenna for mobile telephony of corresponding type already attached to the structure.
(b) In any other case, the dimensions of any such antenna provided shall not exceed—
 - (i) in the case of any panel type antenna, 3 metres in length x 0.6 metres in width x 0.2 metres in depth,
 - (ii) in the case of any co-linear type antenna, 5 metres in length x 0.1 metres in diameter, and
 - (iii) in the case of any dish type antenna (whether shielded or not), 1.8 metres in diameter.
4. The attachment of such antennae may be carried out by way of a platform only where the antenna support structure already incorporates a platform.
5. The height of the existing structure (including any antenna thereon) shall not be exceeded.

(j) an antenna support structure in place of an existing antenna support structure

Conditions and Limitations

1. The replaced structure shall be removed no later than 4 weeks following its decommissioning.
2. Were, for reasons of the integrity of the network or other operational reasons, the structure to be replaced remains in use during the construction of the replacement structure, the replacement structure shall be located as near as possible to the existing structure having regard to construction activity and safety requirements and, in any case, no replacement structure shall be located more than 20 metres from the replaced structure (measured from the base).

3. (a) The height of the replacement structure shall not exceed the height of the replaced structure.

(b) (i) Subject to sub-paragraph (ii), the width of the replacement structure shall not exceed the width of the replaced structure. (ii) Where the replaced structure was 2 metres or less in width, the width of the replacement structure may not be more than twice the width of the replaced structure, all measurements to be taken at the widest point. (c) Where the replaced structure did not incorporate an antenna platform, the replacement shall not incorporate such a platform.
4. (a) Subject to sub-paragraphs (b) and (c), the antennae to be attached to the replacement structure shall not exceed the number of antennae on the replaced structure.

(b) For structure under 15 metres in height, an additional 12 antennae for mobile telephony may be attached to the replacement structure, of which not more than 8 of the additional 12 antennae shall be of the dish type (whether shielded or not).

(c) For structures of 15 metres or over in height, an additional 18 antennae for mobile telephony may be attached to the replacement structure, of which not more than 12 of the additional 18 antennae shall be of the dish type (whether shielded or not).
5. (a) The dimensions of any additional antenna for mobile telephony shall not exceed the greatest length, width or depth of any antenna for mobile telephony of corresponding type on the replaced structure.

(b) In any other case, the dimensions of any antenna provided shall not exceed: (i) in the case of any panel type antenna, 3 metres in length x 0.6 metres in width x 0.2 metres in depth, (ii) in the case of any co-linear type antenna, 5 metres in length x 0.1 metres in diameter, and (iii) in the case of any dish type antenna (whether shielded or not), 1.8 metres in diameter.
6. The replacement of an antenna support structure together with any replaced or additional antenna shall not result in the field strength of the non-ionising radiation emissions from the radio installations on the site exceeding the limits specified by the Commission for Communications Regulations.

(k) and (l) do not apply as they relate to attachment to existing structures which are specified.

NOTE; amendments were made in relation to the exemptions under of S.I. No. 31 of 2018 Planning and Development (Amendment) (No. 3) Regulations 2018 where provisions of Class 31 were substituted by article 4 (1) of the 2018 Regulations.

8.2.4. **S.I. No. 86/1994 - Local Government (Planning and Development) Regulations, 1994**

8.2.5. Second Schedule Part 1 Exempted Development – General

8.2.6. Class 29

The carrying out, by Bord Telecom Éireann — The Irish Telecommunications Board, or by any person to whom a licence under section 111 of the Postal and Telecommunications Services Act, 1983 has been granted, of development consisting of the provision of—

(f) antenna support structures,

Conditions and Limitations

The height of any structure shall not-

(a) If constructed or erected on the ground shall not exceed 15 metres.

8.2.7. **European Communities (Electronics Communities Networks and Services) (Authorisation) Regulations 2011** outlines procedures in relation to the authorisation and regulation of electronic communications networks and services and that any undertaking that intends to provide an electronic communications network or an electronic communications service shall, before doing so, notify the Regulator of its intention to provide such a network or service.

9.0 Assessment

9.1. The purpose of this referral is not to determine the acceptability or otherwise of the development referred to in the question but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

- 9.1.1. The primary issue in relation to the question relates to the issue of whether the works proposed in relation to the assembly of a replacement support structure and the attachment of antennae and other telecommunications infrastructure constitutes exempted development and within the scope of exempted development as provided for in the Planning and Development Regulations 2001 as amended.
- 9.1.2. In considering the matters I have reviewed documentation submitted, statutory provisions and local and national guidance where relevant to considering the question.

9.2. Is or is not development.

- 9.2.1. Having regard to the definitions of 'development' and 'works, as set out under Sections 3(1) and 2(1) respectively of the Planning and Development Act 2000, as amended, I consider that the works involved are such to constitute development within the meaning of the Act. As such it constitutes development

9.3. Is or is not exempted development

- 9.3.1. Therefore, the remaining question in this case is whether or not the assembly of a replacement support structure and the attachment of antennae and other telecommunications infrastructure are exempted development.
- 9.3.2. It is noted that the third party submissions refer to the development present on the site is an unauthorised development and by virtue of being unauthorised development any exemption would be precluded where it is deemed to be unauthorised development.
- 9.3.3. In relation to the issue of unauthorised development documentation submitted would indicate that in 1999 a wooden pole antennae support structure was erected. The structure as erected was in compliance with the Planning Regulations operative at that time S.I. No. 86/1994 - Local Government (Planning and Development) Regulations, 1994 which in relation to exempted development in Class 29 Second Schedule Part 1 Exempted Development – General provided for an exemption of antenna support structures where if constructed or erected on the ground shall not exceed 15 metres with no differentiation specific to a pole structure only.

- 9.3.4. Various submissions refer to a 12 metre pole and antennae to an overall height of 15 metres but at the time the pole was erected a height of up to 15 meters was permitted as exempted development. Subsequent amendments to the planning regulations have changed the conditions and limitations and current planning regulations indicate poles or other support structures carrying other equipment shall not exceed 12 metres in height but 15 metres was the permitted maximum height in 1999 as exempted.
- 9.3.5. The pole has remained in situ from 1999 and the issue of unauthorised development raised in submissions in relation to the pole structure does not I consider arise as the current support structure was erected in accordance with the exempted development provisions which applied when it was erected.
- 9.3.6. I would also note that current provisions of the planning regulations make addition provisions not just in relation to the actual support structure but also provide for in condition and limitation 2 of poles or other support structures carrying other equipment where “other equipment” means 2 transmitting or receiving dishes (the diameter of which shall not exceed 0.6 metres), or 1 panel antenna (the dimensions of which shall not exceed 0.85 metres in length x 0.65 metres in width x 0.2 metres in depth) used for the provision of a specific telecommunications service and the provision of which would otherwise require an additional pole route carrying overhead wires which was not specifically provided for in the 1994 regulations but would apply to a replacement structure.
- 9.3.7. The proposal is for the assembly of a replacement support structure and the attachment of antennae and other telecommunications infrastructure which I consider is an authorised structure.
- 9.3.8. In relation to this, Class 31(j) of the Planning and Development Regulations 2001 as amended provides for an antenna support structure in place of an existing antenna support structure subject to conditions and limitations.

In relation to the conditions and limitations;

- Class 31(j) condition 2 provides for were, for reasons of the integrity of the network or other operational reasons, the structure to be replaced remains in use during the construction of the replacement structure, the replacement structure shall be located as near as possible to the existing structure having

regard to construction activity and safety requirements and, in any case, no replacement structure shall be located more than 20 metres from the replaced structure (measured from the base).

In relation to this condition this would be adhered to.

- In relation to condition 3(a) the height of the replacement structure does not exceed the height of the replaced structure and in relation to (b) this condition would also appear to be adhered to.
- In relation to condition 4 the number of antennae will be reduced.
- In relation to condition no .5 the nature, width and dimensions of antennae can be provided in a manner to adhere to the limitations of this condition.

9.3.9. Submissions received refer to provisions as stated in Sections 57 and 82(1) of the Planning and Development Act 2000 as amended to preclude exempted development.

9.3.10. Section 57(1) refers to works affecting character of protected structures or proposed protected structures and that notwithstanding section 4 (1) (a), (h), (i), (ia) (j), (k), or (l) and any regulations made under section 4 and (2), the carrying out of works to a protected structure, or a proposed protected structure shall be exempted development only if those works would not materially affect the character of (a) the structure or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

9.3.11. In relation to Section 57, I would note that section 4(1)(g) is not specifically referenced in section 57(1) and even if 57(1) applied, taking into consideration what is outlined in section 57(2) it would be an assessment as to whether in relation to the proposed protected structure whether replacing a similar structure as proposed would be considered to materially affect the character of the structure. I would note that divergent submissions are made in relation to this matter and also in relation to the issue of curtilage and attendant grounds.

9.3.12. From my own observation the grounds of the protected structure when initially developed would have included the telephone exchange site (they were within the same ownership). Historical mapping indicates a vacant area on the Wellington

Road frontage and a boundary line corresponding approximately to the area where the current exchange building and site is indicated. The fall in level illustrated by an escarpment which would appear to have existed and which would appear to indicate a separation of the lands immediate to Wellington Road from the church grounds site. There is no conclusive evidence to suggest that the exchange site forms an integral part of the curtilage of the church. The northern area of the site which currently has the telephone exchange building is effectively its own site orientated to Wellington Road and the church is largely orientated to the south which is why it is considered a landmark building.

The subject is at a different and higher level to the retained church grounds. The current pole adjoins the telephone exchange building and is removed from the church and other buildings on the church site. The pole is not visible from the south and is screened by the church and is only visible from primarily from a section of Wellington Road. It is also not of necessity that the curtilage of a protected structure will coincide with the land owned and the extent of the curtilage needs to be determined on a case-by-case basis as indicated in national guidance and also in relation to circumstances which have led to changes in an area from when the protected structure was constructed and the later development of the telephone exchange building is a significant intervention in this regard. Given the change arising from the erection of a telephone exchange building and that a mast type structure of similar dimensions is replacing an existing I do not the works as proposed would not materially impact on the character or setting of the protected structure.

9.3.13. In relation to the ACA Section 82 refers to notwithstanding section 4 (1) (a), (h), (i), (ia) (j), (k), or (l) and any regulations made under section 4 and (2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

9.3.14. Similar to section 57 I would note that section 4(1)(g) is not specifically referenced in section 82 and it would be an assessment in relation to whether the works would materially affect the character of the area. I note that divergent submissions are made in relation to this matter.

9.3.15. From my own observation the site and the wider Wellington Road ACA has a varied range of architectural styles in what is a modern urban landscape and streetscapes. The existing pole on the site is visible in proximity to the site as are overhead wires and other pole type structures. It is essentially a replacement of a similar height and dimension in very close proximity to the structure it is replacing and there is no compelling case I consider that a replacement support structure would materially affect the character of the area and that the development which is the subject of the question would materially affect the character of the area. I would also consider that the designation of an ACA does not preclude development but does require assessment in the context of its presence in an ACA

9.3.16. EIA

Reference is made to the issue of EIA and that the works require EIA due to significant effects on the protected structure and ACA and reference is made to EU published updated guidance on the EIA Directive in October 2024 concerning infrastructure in urban areas and that telecommunications masts require EIA screening and that such structures constitute a class of development set out in Schedule 5, Part 2 of the Regulations.

In this regard it is noted that the proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

9.3.17. Statutory Undertaker

In relation to the issue of statutory undertaker the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 outlines procedures in relation to the authorisation and regulation of electronic communications networks and services and that there is a statutory regulatory body Comreg which oversees this. The site is occupied and leased by Vodafone and Towercom are undertaking the works as a subcontractor and within a contractual arrangement with Vodafone details of which were furnished in documentation.

The question of whether Towercom is a statutory undertaker is a matter for the regulatory authority but I would note that works on a wide range of infrastructure on

telecommunication infrastructure and other forms of infrastructure are carried out by subcontractors for and on behalf of statutory undertakers and that any undertaking that intends to provide an electronic communications network or an electronic communications service would be within the remit of the Regulator Comreg to regulate how to provide a service in relation to Telecommunication infrastructure. There is nothing to suggest that Towercom would not meet the definition of Statutory Undertaker based on a contractual arrangement with Vodafone who is a Statutory Undertaker.

10.0 EIA Screening

- 10.1.1. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside.

11.0 AA Screening

- 11.1.1. I have considered the proposal which is relation to the construction of an extension to the rear of an existing dwelling house in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located on an established residential site and within an established residential area.
- 11.1.2. The proposed development comprises in effect a relatively minor development for the replacement of an existing mast structure. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows; the nature of the development, the distance to designated sites and the absence of pathway to these sites.
- 11.1.3. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects and likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

12.0 Recommendation

12.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the assembly of a replacement support structure and the attachment of antennae and other telecommunications infrastructure is or is not development and, if development, whether or not the works are exempted development. AND

WHEREAS Cork City Council requested a declaration on this question from An Coimisiún Pleanála on the 17th April 2025 in relation to a request for a declaration to Cork City Council from Eugene Glendon, Sylvia Glendon, John Hegarty and Gemma Desmond c/o Peter Thomson Planning Solutions on the 19th March 2025: AND

WHEREAS An Coimisiún Pleanála, in considering this referral, had regard particularly to

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended;
- (b) Section 3 of the Planning and Development Act, 2000 as amended;
- (c) Section 4 of the Planning and Development Act, 2000 as amended;
- (d) Section 5 of the Planning and Development Act, 2000 as amended;
- (e) Section 57 of the Planning and Development Act, 2000 as amended;
- (f) Section 82 of the Planning and Development Act, 2000 as amended;
- (g) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended;
- (h) Class 31, Part 1 of the Schedule 2 to the Planning and Development Regulations, 2001, as amended;
- (i) Class 29 Part 1 of the Second Schedule Exempted Development – General Local Government (Planning and Development) Regulations, 1994.
- (j) European Communities (Electronics Communities Networks and Services) (Authorisation) Regulations 2011;
- (k) the planning history of the site;
- (l) existing buildings on the site;

(m) the pattern of development in the area:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) the assembly of a replacement support structure and the attachment of antennae and other telecommunications constitutes development as defined under section 3(1) of the Planning and Development Act 2000 (as amended);
- (b) The existing telecommunications support structure development is an authorised structure having regard to the exempted development provision which applied at the time of its erection and construction;
- (c) The development proposed in the question is a replacement structure which comes within the scope of the provisions as set out in Class 31(j) of the Planning and Development Regulations 2001 as amended.
- (d) There are no provisions in relation to restrictions on exempted development stated in the Planning and Development Act 2000 as amended or in the Planning and Development Regulations 2001 as amended which would apply to preclude exempted development.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act (as amended), hereby decides that the assembly of a replacement support structure and the attachment of antennae and other telecommunications infrastructure

is development and is exempted development

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.

Derek Daly
Planning Inspector

3rd December 2025

Form 1 - EIA Pre-Screening

Case Reference	322335-25
Proposed Development Summary	Whether the assembly of a replacement support structure and the attachment of antennae and other telecommunications infrastructure.
Development Address	EIR Exchange Site, Wellington Road, Cork City T23E302.
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?	<input type="checkbox"/> it is a 'Project'.
	X No , No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> it is a Class specified in Part 1.	
<input type="checkbox"/>	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
X No , the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
No , the proposed development is of a Class and meets/exceeds the threshold.	
Yes , the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2)	

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?

Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No X <input type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: Derek Daly Date: 3rd December 2025