Image A: 2017 View along Monkstown Road of Original lampost

Image B: 2018 View along Monkstown Road with new telecommunications mast

1st August 2018

PHOTOGRAPHS SHEET 1 OF 4

CPR Architects - Section 5 Declaration Submission on Telecommunications Mast erected on Monkstown Road at the junction of Alma Road & Montelier Parade

Image C: 2017 View from Alma Road of Original lampost

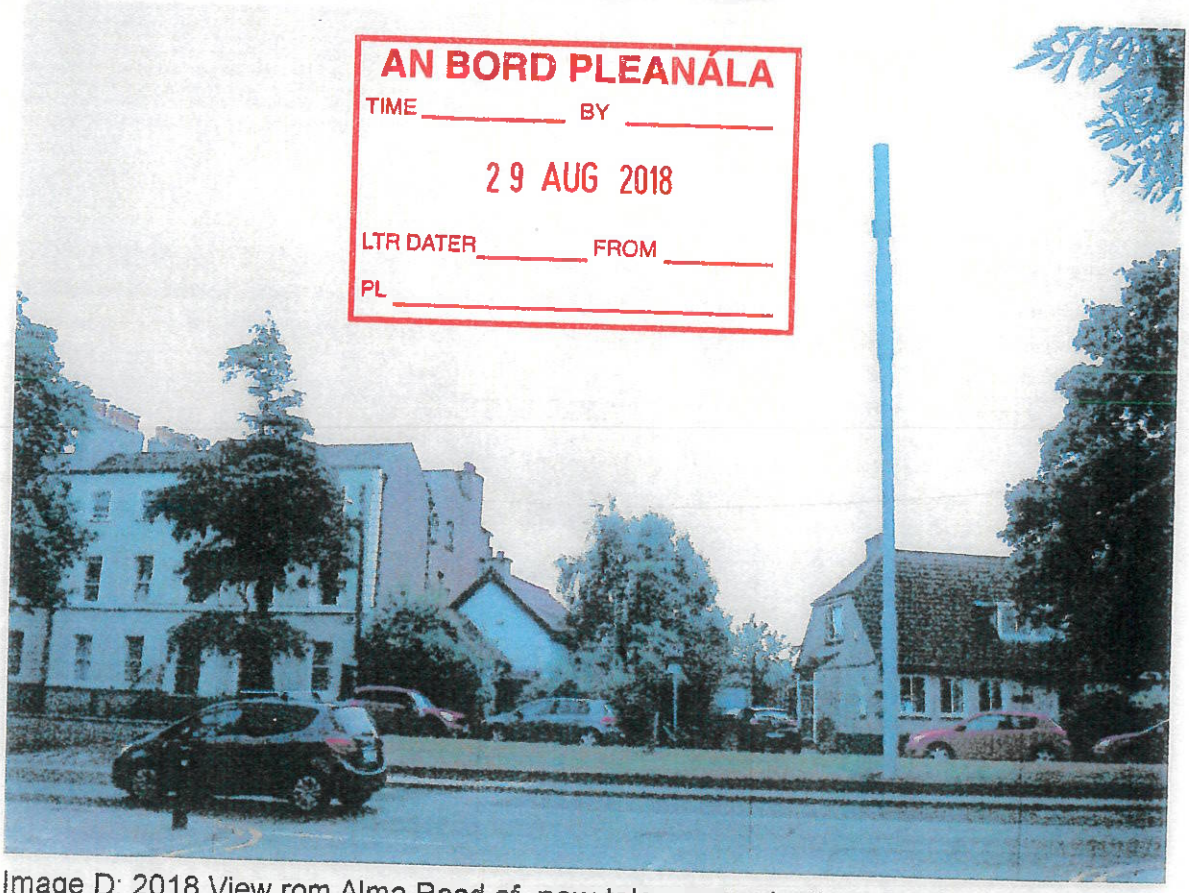


Image D: 2018 View rom Alma Road of new telecommunications mast

1st August 2018

PHOTOGRAPHS SHEET 2 OF 4

CPR Architects - Section 5 Declaration Submission on Telecommunications Mast erected on Monkstown Road at the junction of Alma Road & Montelier Parade

Image E: 2017 View towards Alma Road of Original lampost

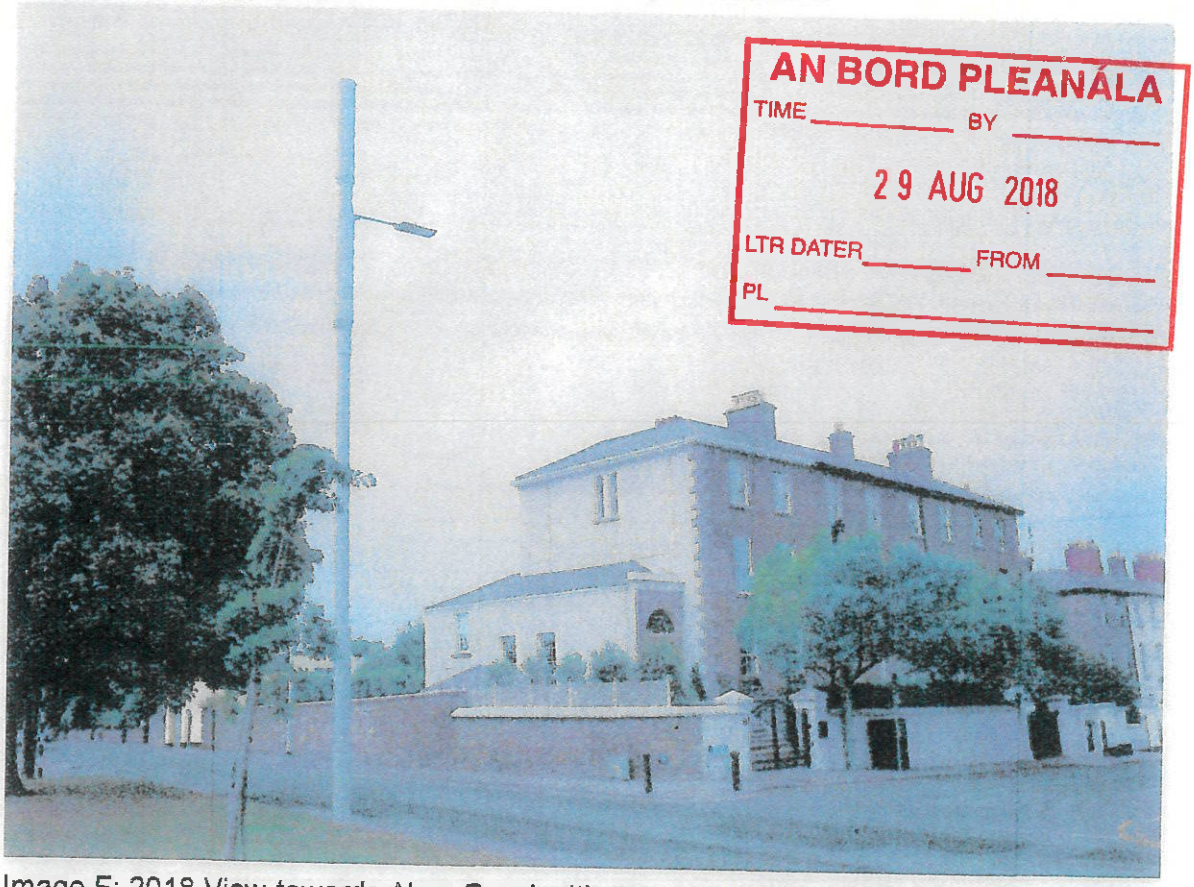


Image F: 2018 View towards Alma Road with new telecommunications mast

1st August 2018

PHOTOGRAPHS SHEET 3 OF 4

CPR Architects - Section 5 Declaration Submission on Telecommunications Mast erected on Monkstown Road at the junction of Alma Road & Montelier Parade

Image G: . 2017 View towards Montpelier Parade of Original lampost

Image H: 2018 View towards Montpelier Parade of new telecommunications mast

1st August 2018

PHOTOGRAPHS SHEET 4 OF 4

CPR Architects - Section 5 Declaration Submission on Telecommunications Mast erected on Monkstown Road at the junction of Alma Road & Montelier Parade

Submission of Angela O'Floinn on referral under section 5 of the Planning and Development Act 2000

1.0. Executive Summary

1.1. This submission relates to the development of a telecommunications antenna along side a major heritage area of architectural and urban planning significance in Monkstown, County Dublin.

1.2. The site of this development is immediately alongside the site of an almost identical (albeit less visually intrusive) development in respect of which permission was refused by An Bord Pleanála.

1.3. The development in question is not an exempted development pursuant to Part 1 Schedule 2 Class 31 of the Planning and Development Regulations 2001 because only *"statutory undertakers"* can rely on Class 31 and the developer, Cignal Infrastructure Ltd ("Cignal") is not a 'statutory undertaker'.

1.4. Further, the development is not exempted development pursuant to s 4(1)(f) of the Planning and Development Act 2000 (as amended) because it was not carried out, as required by s 4(1)(f),

a. *" pursuant to a contract"* entered into by Dún Laoghaire Rathdown County Council ("DLR")
b. *"on behalf of, or jointly or in partnership with"* DLR and
c. in compliance with article 81 of Part 8 of the Planning Regulations 2001 which requires the carrying out of a notice and consultation process unless the cost of the development cost did not exceed €126,000

1.5. Even if the requirements of s 4(1)(f) had been met (which is not the case) the courts have held that a local authority is a creature of statute and can only carry out functions conferred on it by statute. Any development carried out outside statute is *ultra vires ie* outside its powers. Local authorities do not have a statutory function to provide telecommunications infrastructure so DLR would have had no authority to enter into a contact with Cignal to erect this development even if it sought to so do.

1.6. Even if DLR had statutory authority to enter into telecommunications development (which is not the case) relying on s 4(1)(f) in order to facilitate a private developer in the erection of a telecommunications development would

be an improper use of its powers. DLR ought reasonably to be aware that it cannot facilitate private development of this kind under the cloak of an exemption conferred on the local authority. Indeed, were DLR knowingly to facilitate unauthorised and unlawful development under s 4(1)(f), it would be guilty of misfeasance of public office.

1.7. DLR, in permitting this development, is in contravention of its Development Plan, made pursuant to section 178 of the Planning and Development Act, 2000, in that the development was carried out, as noted above, on the boundary of an architectural conservation area ("ACA") where planning permission had been refused for a similar development on an adjoining light stanchion in 2015 on conservation grounds. Despite the greater visual intrusiveness of this development, in comparison with the previous one, and its impact on the ACA, no consideration was given to this fact by DLR.

1.8. The development is a pilot project with the potential to result in telecommunications antenna all over Dublin on local authority property in residential areas in contravention of planning legislation requirements.

2.0. Background

2.1. On 16 December 2015, planning permission was refused by DLR and on appeal by An Bord Pleánala, for a development (Planning File D 15A/0373) for the installation of a mobile telephone antenna and light stanchion. The development was to be located on part of a public footpath at the junction of Eaton Square and Monkstown Road (adjacent to Montpelier Parade), Monkstown Co. Dublin. Specifically, it was to have consisted of *"the replacement of an existing 10 m streetlight with a 13 m Street works Pole incorporating a streetlight at the existing height of 10 m with telecommunications antennae enclosed by a shroud above, maximum height not to exceed 30 m above adjacent ground level, with associated telecommunications equipment cabinet, power distribution board and all associated works and development at the junction of Eaton Square and Monkstown Road (adjacent to Montpelier Parade), Monkstown Co Dublin"* Email A. O'Neill to M. Hegarty 12:44 **Tab A)**

2.2. Central to the refusal of planning permission was the fact that the proposed development impacted adversely on an ACA. This was appropriate, since the

adjoining terrace (Montpelier Parade) is historic and is one of the most architecturally important vistas in Ireland. The adjoining streets have well-preserved terraces, squares and numerous original buildings and streetscapes.

2.3. Despite the refusal in 2015 of permission for such a development, in November/December 2017, a telecommunication antenna was developed on (quite literally) the adjoining light stanchion to the one for which permission had been refused. Large, associated cabinets were also erected. This development took place on the green open space adjacent to the junction at Alma Road and Monkstown Road, Monkstown, Co Dublin. The development was not preceded by a site notice or any other indication on site that such work was being contemplated. This visually intrusive activity was all the more extraordinary given that planning permission had been refused two years ago for a similar combined light stanchion and telecommunications antennae (as described above) for the adjoining light stanchion on the same side of the Monkstown Road.

2.4. It was also extraordinary given the fact that the development impacted on the ACA to a greater extent than the one for which permission had been refused. It was no exaggeration to say that the visual impact of the development in this area of nationally-important heritage is severe. Whereas the 2015 refusal had been in respect of a stanchion which was screened by mature trees, the current development is in an open space and intrudes on the vista of Montpelier Parade for all those who are using the Monkstown Road. Given this fact and given health and safety concerns, a number of complaints were immediately made to DLR by numerous residents in the area.

2.5. On 22 January 2018, following investigation of the complaints, the Planning Department of DLR issued warning letters pursuant to section 152 (1) of the Planning and Development Act 2000 (as amended) on Cignal and on its company secretary. Cignal is a company that erects telecommunications infrastructures. The warning letters were issued in respect of alleged unauthorised development consisting of *"the erection of a telecommunications mast and associated structures without the benefit of a valid planning permission and which does not constitute exempt development"* **(Tab B)**.

2.6. The warning letters were copied to the residents who had complained of the development.

2.7. On 7 March 2018, after nearly three months, the Planning Department of DLR emailed the residents who had complained to say that *"(f)ollowing enquiries, it is now clear that this project has been undertaken with the consent and approval of the Council, thereby constituting development which is exempt from the requirement to seek or obtain planning permission. In these circumstances, this is not a matter that can be pursued from a planning enforcement perspective and accordingly the enforcement file in relation to the matter is now closed"* **(Tab C)**

2.8. This was a very puzzling *volte face*. When it was brought to the attention of the Mr McHugh of Municipal Services in DLR in March 2018 by Ms O'Floinn, a local resident, that an identical development on the same side of the road, had been refused by DLR (which refusal had been upheld by An Bord Pleanála) Mr. McHugh responded that he had no knowledge of this refusal or application.

2.9. Having received the email of 7 March 2018 from DLR, residents objected to the attempt by DLR to confer exempted status on a development simply by consenting to it. Enquiries were made of DLR as to the origins of the development and its status and an FOI request was submitted. Documentation was received on foot of the request at the end of May 2018.

2.10. The enquiries made with DLR and the documentation received on foot of the FOI request, make it clear that the development described above is not exempted development and that it should be removed immediately

3.0. Alleged Legal Basis of the Development

3.1. When Planning Enforcement in DLR examined this matter upon receipt of complaints in December 2017, they sent internal emails seeking details of any provider given permission by Public Lighting Section to attach telecom equipment to DLR's lighting pole *" [a]s they did not notify the Planning Authority prior to installation in accordance with the Planning regulations for such installation"* (email 13th of December 2017 **(Tab D)**

3.2. Planning Enforcement in DLR received an internal email reply to the effect that it was (i) a "*pilot project done under the Smart Dublin Framework and national Broadband Plan*" , that (ii) *"the queries about planning from the*

developer were forwarded to planning in 2014..." and that (iii) it was "*exempted development under the 2001 Regulations as "telecommunications network" means the whole of the telecommunications infrastructure and any associated physical infrastructure of any network operator"* (email T.Langan to Planning Enforcement 13th December 2017 **Tab E**)

3.3. This exchange is significant since it shows that, ***at the time the development of the light stanchion was undertaken by Cignal***, DLR were not considering the appropriate legislation and its requirements but were instead of the view that it was the Planning and Development Regulations 2001 which conferred exempted status on the development. This was clearly at odds with the legislative framework.

3.4. Planning Enforcement in DLR obviously did not agree that the development was exempt under the 2001 Regulations because the following month, it saw fit to issue the warning letters described in paragraph 5 above.

3.5. Cignal replied to the warning letters (through CMC Planning Consultants 12 February 2018 (**Tab F**) clearly reflecting that it had relied on the 2001 Regulations and more specifically, Part 1 Schedule 2 Class 31 of the 2001 Regulations, to carry out the development.

3.6. In its reply to the warning letters, Cignal set out that:

(i) "*the Cignal development comprises of telecommunications equipment installed on a lamppost with internal cabling continuing underground to adjacent exchange cabinets. There are six antennae facilitated behind shrouds, providing mobile and high-speed broadband services of two operators to local residents and business users. These antennae are located above and below the lantern and are completely detachable from the lamppost The antennae are connected via underground ducting to equipment cabinets, abutting an existing wall at 30 m distance from the lamppost...*"
(Note that the development is described as a ***"Cignal development"*** **and that the lamp stanchion and antennae are independent of each other, with the latter attached to the former)**

(ii) the structure was "*installed by the local authority under their powers and the fully functional lamppost remains in the ownership of the local authority*"

(It is unclear how Cignal came to this view as it had already described the development as a " *Cignal development*" (para (i) above) and further, the evidence clearly shows it was Cignal alone who installed the lampost and attached the antennae. Indeed, the Council itself questioned this statement by highlighting it and placing a question mark beside it).

(iii) the provision of public lighting *"is a function of the local authority and is installed under Part 8 of the Planning and Development regulations".*
(Part 8 concerns local authority development in partnership with a third party where public consultation is required. There was no public consultation here.)

(iv) an official in the Public Lighting Section of DLR had "*confirmed that the lamppost was installed and replaced under their internal processes*".
(It is not clear what internal processes are being referred to here and this would seem to contradict (v) below).

(v) the telecommunications equipment attached to the light stanchion was installed under Part 1 Schedule 2 Class 31 of the Planning and Development Regulations 2010 to 2015 and *"the statutory undertaker is Cignal on behalf of two licensed operators, Meteor and Vodafone".*
(Only *"statutory undertakers"* can rely on Class 31 to carry out exempted telecommunications development and Cignal is not a statutory undertaker. This point was picked up on by the Council, who questioned Cignal's statement by commenting *"Cignal a statutory undertaker?"* They were correct to do so, since *"Statutory undertaker"* is defined under the Planning Acts as *"a person, for the time being, authorised by or under any enactment or instrument under an enactment to... (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services..."* Cignal's reliance on Class 31, however, shows it clearly accepts that the development is its alone because Class 31 does not include local authorities within its remit. The importance of this will become apparent below when the legal understanding of the transaction is analysed).

3.7. As pointed out above, it is significant that ***at the time the development of the light stanchion was undertaken by Cignal***, the Council seems to have shared Cignal's view that Class 31 gave the development exempted status (**Tab E**) It

was only later, when the development was challenged, that DLR shifted their position.

3.8. When challenged, DLR came to the view that s 4(1)(f) of .the Planning Acts ***and not Class 31*** made it an exempted development. In April 2018, when asked for the legal basis of the development, DLR responded that s 4(1)(f) of the Planning Act 2000 (as amended) is the statutory basis for the development (See email from DLR Planning Enforcement 1 May 2018 at **Tab G).**

3.9. It seems extraordinary that DLR have now come to this view as Cignal did not refer at all to s 4(1)(f) **(Tab F)** Section 4(1)(f) applies to Council development carried out jointly with a third party. Is the Council now saying that Cignal did not know it was developing jointly with the Council?

3.10. DLR cannot retrospectively apply s 4(1)(f) to the development and change the footing of the development in this way - circumventing the legal provisions which would ordinarily apply and circumventing the planning requirements which had been applied in refusing an almost identical development a few metres away in essentially the same urban context. In any case, s 4(1(f) does not save the development from being an unauthorised development for the reasons given below.

4.0. Why Section 4(1)(f) does not save the Development

4.1. "Development" is defined in s 3 of the Planning Acts as meaning "*except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land*" Section 4(1)(f) provides that :

> *"development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity"*
>
> is exempted development.

4.2. In *Cronin (Readymix) Ltd v An Bord Pleanála* (17 May 2017) the Supreme Court cited with approval the dicta of Finlay CJ in *Dillon v Irish Cement Ltd* (unreported Supreme Court 26th of November 1986), where he held that

regulations granting exemptions *"should be strictly construed"* and a developer must *"clearly and unambiguously"* come within the exemption.

4.3. The Court in *Cronin* also cited with approval *South Dublin County Council v FallowVale Limited* (unreported High Court McKechnie J April 20, 2005) where it was held that there was a clear preponderance of authority for the proposition that where development is sought to be excused as exempted development *"then the onus of establishing this point is on he who asserts"*

4.4. The Court in *Cronin* also pointed out that *" the fact that the Department of Environment has issued specific guidelines for planning authorities in relation to telecommunications antennae and equipment does highlight the importance and significance which planning authorities do attach to developments of this nature"*. It is up to DLR then to show that s 4(1)(f) *" clearly and unambiguously"* applies and that is all the more important given that telecommunications development is highly regulated given its nature.

4.5. In the matter to hand, this development, described by Cignal itself as comprising *"telecommunications equipment installed on a lamppost with internal cabling continuing underground to adjacent exchange cabinets. There are six antennae facilitated behind shrouds, providing mobile and high-speed broadband services of two operators to local residents and business users. These antennae are located above and below the lantern and are completely detachable from the lamppost The antennae are connected via underground ducting to equipment cabinets, abutting an existing wall at 30 m distance from the lamppost..."* (CMC Planning Consultants submission to Council February 2018 at page 2 **Tab F**) was erected on DLR Council property.

4.6. The development was described by DLR as a *"pilot"* project which *"involved swapping out an existing light and replacing it with a new light while incorporating technical elements in the new light and connecting these technical elements underground to the local fibre"* (Memo from DLR to its Solicitor 16th of January 2018 **Tab H**) . The project *"will provide an annual income for the Council ..."* and if this 'pilot' is successful, it appears to be the intention that it will be the first of many similar developments all over Dublin - absolving, it is hoped, Cignal and other commercial entities which are erecting such telecommunications structures from planning controls which are applied to ordinary citizens.

4.7. Based on the case law, section 4 (1) (f) of the Planning and Development Act 2000 (as amended) must be strictly construed and the onus of establishing it as a legal basis for exempt development is on DLR.

4.8. DLR cannot rely on s 4 (1) (f) because the development was **not** carried out *"behalf of, or jointly or in partnership with"* DLR and was **not** carried out *"pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity".*

4.9. *"On behalf of"* assumes the local authority will be the proprietor or occupier of the works, which is not the case. *"Jointly"* and *" in partnership with "* both imply a common interest in the carrying out of the development which is not the case. The Council may receive a fixed fee for allowing use of its land but that does not amount to joint development. That amounts to consenting to the use of its lands for the development which is an entirely different thing.

4.10. Further, in order to place reliance on s 4(1)(f), a local authority must also, in tandem, comply with the Planning Regulations 2001. These provide in Part 8 for a notice and consultation process to be carried out by a local authority where it intends to carry out, *inter alia,* a section 4(1)(f) development and where the estimated cost of the proposed development exceeds €126,000 (not being development consisting of the lane underground of sewers, mains, pipes or other apparatus) : Article 80(1)(k).

4.11. Not a single invoice can be seen on the file inspected by the applicant and DLR have confirmed that none exist (**Tab I**). There is no evidence of the value of the development: despite the fact that significant hours were spent in negotiating with Cignal, advices of various person sought and substantial works were carried out over many days in November/December 2017. Had it been the case that section 4(1)(f) was being relied upon and no notice and consultation process was to be carried out, precise costings and records of expenditure would presumably have been kept.

5.0. Requirements of Section 4(1)(f) not met.

5.1. Section 4(1)(f) is predicated on the existence of the development being *"pursuant to a contract."* It is accepted in law that a contract is a legally enforceable agreement. The only document setting out what was envisaged and signed by DLR and Cignal is not a contract but rather an 'understanding'

as to what was planned. This is the Memorandum of Understanding dated 3 April 2017 (**Tab J**)

5.2. The understanding proposed that DLR would *"own and maintain"* the *"replicate streetlight solution"*, Cignal would *"own and maintain"* the *"technical elements"*. Cignal proposed in the understanding to *"agree a process with the Council"* to ensure no impact to these *"technical elements"* when the Council is operating and maintaining *"the light"*.

5.3. The understanding anticipated that DLR would *"grant the right to Cignal to license the use of the "technical elements"* incorporated in the replicate streetlight solution. Cignal would *"be entitled to enter agreements with the MNOs [mobile network operators] to connect to and use the Technical Elements via a fibre location to be agreed with the Council"*. The fibre location would *"require a footprint of ground where Street cabinets can be located sufficient to accommodate MNO base station equipment"*. DLR *"will grant a lease of this footprint to Cignal who will in turn licence space for equipment to MNOs in conjunction with the licence to be entered in respect of the technical elements on the replicate light solution."*

Cignal *"will cover all costs associated with the design and installation of the replica light solution"* and *"will indemnify and keep indemnified the Council against any claims or demands arising from the works and produce a public liability insurance policy in the sum of €6,500,000"*.

The pilot period is 24 months and if the project is successful, DLR may agree a long term *"commercial agreement"* pursuant to which Cignal may continue to license the use of the *"technical elements"* within the *"Monkstown Road replicate light solution"*.

DLR *"may go to tender if it wishes for wider deployment of this replicate light solution should the pilot project prove successful"*.

5.4. The understanding is manifestly not a contract, as that term is used in section 4(1)(f). It is not called a contract, or even an agreement. No consideration is payable by Cignal. No binding obligation is conferred on either party. There was and is no intention to create legal relations as required in a contract. **Taken at its height, it is an outline of roles pending an agreement : an agreement to agree, if you will.**

5.5. The role of DLR is simply to accept the 'gift' of part of a new streetlight (the other part is owned by Cignal) and to allow Cignal enter on and use its land (with a view to entering a 'long term commercial agreement' with Cignal if the pilot is successful). So it was accurate to sum up DLR's involvement in the development as the Planning Enforcement of DLR did in the email of 7th March 2018 (**Tab C**): *"this project has been undertaken with the consent and approval of the Council....."* There is no joint development. Just consent to Cignal's development. That development would, in the ordinary course of events, require planning permission.

5.6. What happened here is that the developer has carried out two separate and distinct developments (one, a light stanchion and the other, a telecommunications structure with associated cabinets). The development is no different in quality to a local authority building with local authority office on the ground floor and a private apartment on the first floor. One cannot bypass the normal requirements of the planning regime by contrivances of this kind. Quite simply, it appears (i) the developer is seeking to erect an independent telecommunications structure on a light stanchion thereby hoping to obviate the need to apply for planning permission and (ii) DLR have consented in the hope that a long term commercial agreement will result.

5.7. There was no contract in place as required by s 4(1)(f). Indeed, DLR has confirmed that other than the Memorandum of Understanding

"there are no other agreements in place" and

"(t)he MOU looks to the Council licensing the technical elements that provide the enhanced broadband to mobile network operators but this is not in place" (Internal DLR email T. Langan to T. McHugh 22nd of March 2018 09:33 **Tab K**)

5.8. Further, DLR has confirmed that Cignal *"do not have any formal licence or agreement in place with the two mobile network operators currently providing services from the Monkstown installation.. The technology is being tested/trialled and a licence/legal agreement will follow if the operations are satisfactory"*

"Neither is there any lease in respect of the Street cabinets, it appears that the installation of such cabinets is managed through the road opening licence/permit system..." (Email TMcH to A O'Floinn 29th of March 2018 **Tab L)**

(The street cabinets were part of the development. If their installation "is *managed through the road opening licence/permit system ....*" how can such installation have taken place under s 4(1)(f) as claimed by the Council?)

5.9. An Bord Pleanála has made it very clear that section 4 (1) (f) cannot be relied upon in the absence of *"satisfactory evidence"* of a contract. (Section 5 Reference, 28.RL.3423) There is no satisfactory evidence of a contract here. Indeed, the road opening licence from DLR supports this interpretation.

5.10. The road-opening licence granted to Mr Colin Cunningham (CEO of Cignal) by DLR ran from 2nd November 2017 to 2nd December 2017 with three extensions of the licence (internal email DLR 5 April 2018 with accompanying documentation **Tab M**) being granted. Such licences are granted to utility companies or main contractors to excavate a specified section of the public road in accordance with s 101D of the Traffic Act 1961 (as inserted bys 9 of the Dublin Transport Authority (Dissolution) Act 1987). They are to facilitate third-party development rather than Council development.

5.11. It is noteworthy that the road-opening licence was granted to Mr Cunningham, the CEO of Cignal, rather than to Cignal itself. The licence required the applicant to have insurances in place to indemnify the Council *"against all claims in respect of injury to persons or property arising out of the opening of the street or footpath until completion of the maintenance period"* (***Tab M page 1.*** This reflects the fact that DLR was not the developer or joint developer as it would make no sense for a joint developer to seek this type of indemnification from his partner developer. (Interestingly, Dublin City Council clearly state online in a document of September 2012 that private individuals may <u>not</u> apply for road opening licences, so it is not clear why, in this case, the licence appears to have been granted to a private individual).

5.12. DLR's reliance on s 4(1)(f) is an improper use of its powers to facilitate a private developer. DLR ought to be aware that it cannot facilitate private development of this kind under cloak of an exemption conferred on the local authority. Were DLR to knowingly seek to facilitate unauthorised and unlawful development under s 4(1)(f), then it would be guilty of misfeasance of public office.

6.0. Statutory Framework

6.1. Even if there had been a contract (which it is submitted there was not), DLR is a creature of statute and cannot carry out any function other than that given it by statute. As Clarke J said in *Christian and Ors v Dublin City Council* [2013] 2 ILRM 466, "... *Local authorities are not possessed of inherent powers. The powers and functions of local authorities are "conferred by law" and are to be exercised and performed "in accordance with law". Instead, as creations of statute, they are subject to the terms of any statute which purports to confer any powers on a local authority*".

6.2. DLR has no statutory function to develop or provide statutory telecommunications infrastructure. Local authorities do not have powers to erect telecommunications structures for the benefit of mobile network operators. Any such power would have to be conferred by statute as it is a power which would need to be constrained by criteria concerning health and safety. The development of telecommunications structures is highly regulated showing that this type of development is no ordinary development. Indeed, even where it is exempt it is only to be carried out by statutory undertakers "*authorised*" to carry it out and subject to constraints (Part 1 Schedule 2 Class 31 Planning Regulations 2001 - 2015).

6.3. In further support of this proposition, it might be noted that in the *Esat Digifone* case, the Court, in finding that the attaching of telecommunications equipment to a public house was not exempted development also specifically said " *the fact that the Department of Environment has issued specific guidelines for planning authorities in relation to telecommunications antennae and equipment does highlight the importance and significance which planning authorities do attach to developments of this nature*".

6.4. The importance and significance of such developments is reflected in Paragraph 8.2.9.9 of the Dun Laoghaire Rathdown Development Plan 2016-2022 sets out that, in the consideration of proposals for telecommunications antennae and support structures, applicants will be required to demonstrate -

a. compliance with the Planning Guidelines for Telecommunications Antennae and Support structures (1996) and Circular letter PL 07/12 issued by the Department of the Environment and Local Government and to other publications and material as may be relevant

b. the location on a map of all existing telecommunications structures within a 1 km radius of the proposed site stating why, if not proposed , it is not feasible to share existing facilities having regard to the 'Code of Practice on Sharing of Radio Sites ' issued by the Commission for Communications Regulations

c. to what degree the proposal will impact on the amenities of occupiers of nearby properties or the amenities of the area eg visual impacts including on landscape screening .

d. that the beam of greatest intensity from a base station does not fall on any part of school grounds or buildings without agreement from the school and parents. Where an operator submits an application for a mobile phone base station, whether at or near a school or college, the operator must provide evidence that they have consulted with the relevant body of the school or college.

e. a statement from the operators of compliance with relevant non ionising radiation protection Guidelines published in 1998 and any amending Guidelines in order to reduce genuine public health and safety concerns

Further, it is provided that where telecommunications antennae and structures have the potential to adversely impact on the visual amenities of an area or on the existing structure, the planning authority would not normally grant permission. In cases where there is likely to be a visual impact, the applicant shall be required to submit a visual impact assessment.

6.5. The development to hand "*comprise(d) of telecommunications equipment installed on a lamppost with internal cabling continuing underground to adjacent exchange cabinets. There (we)re six antennae facilitated behind shrouds, providing mobile and high-speed broadband services of two operators to local residents and business users. These antennae (we)re located above and below the lantern and are completely detachable from the lamppost The antennae (we)re connected via underground ducting to equipment cabinets, abutting an existing wall at 30 m distance from the lamppost...* (CMC Planning Consultants submission to Council on behalf of Cignal February 2018 at page 2 **Tab F**)

6.6. Notwithstanding this, the matters set out in Paragraph 8.2.9.9 of the Dun Laoghaire Rathdown Development Plan 2016-2022 were not considered and the requirements were not complied with. As to the *Planning Guidelines for Telecommunications Antennae and Support structures (1996)* and *Circular letter PL 07/12* issued by the Department of the Environment and Local

Government ; there must be reasons given as to why it is not feasible to share existing facilities; there must be consideration of visual impact and impact on landscape; there must be consultation with schools as described and the beam of greatest intensity must not fall on the school as described; there must be compliance with relevant non ionising radiation protection Guidelines and where there is likely to be visual impact , a visual impact statement must be submitted. Indeed, where telecommunications antennae and structures *"have the potential to adversely impact on the visual amenities of an area or on the existing.....structure, the Planning Authority would not normally grant permission"*.

6.7. If planning permission had been sought for this development, all of these requirements would have to be met including those relation to visual impact (the replacement light stanchion is much taller and more visually intrusive that the one it replaced (see photos) and in relation to schools (there is a primary school Scoil Lorcáin, across the road in Eton Square). The simple granting of access to Council land does not obviate the need to apply for planning permission for any development and especially not for a development which is, in the normal course of events, highly regulated.

6.8. Indeed, even in relation to exempted telecommunications development by *"statutory undertakers"* under Class 31, there are extremely strict criteria regarding even what *"statutory undertakers"* can do. This includes setting down requirements concerning the size and diameters of equipment and antenna, the volume of cabinets, the field strength of antenna that legal requirement that no such equipment shall be situated within 10 metres of the curtilage of any house without the owner's consent. Similarly, *"permanent telecommunications exchange and radio station containers"* : Class 31(e)

6.9. The development is not exempt pursuant to Article 6 Class 31 but, even if it were so exempt, the developer would still have to have to meet all of the above requirements which are laid down by Class 31. The light stanchion development here is situated within 13 metres of houses. The light stanchion here is 13 metres high instead of the required 10 metres (Class 31(b) in November 2017)). The cabinets built as part of the development to house equipment necessary for its operation are less than 1 metre from the curtilage of the adjoining properties and are much more visually intrusive and numerous than the structures that they replaced. Local residents were not even put on notice that these structures were being erected, much less asked for their consent. The 2001 Regulations place obligations on statutory undertakers with

threat of enforcement and proceedings if the obligations are not met. Here, Cignal are not under any duty to abide by any legislation or regulation safeguards concerning this development as there has been no application for planning permission and neither is this exempted development.

6.10. Further, it appears that recent amendment to Class 31 by the Planning and Development (No 3) (Amendment) Regulations 2018 ((SI 31/2018) has laid down further constraints. In that regard, in its submission to DLR, Cignal refers to the amendment and clearly implies that it is not submitting that the development would be exempt under the new Class 31 but rather under the *"...Class 31....prevailing in October 2017"* (**Tab F** (end of page 2))

6.11. The project has the potential to result in telecommunications antenna being placed all over Dublin in residential areas in contravention of planning legislation requirements regarding telecommunications development. The commercial benefits offered by such development may seem enticing, but DLR cannot disapply planning requirements by allowing non statutory undertakers erect antenna on its land with a view to long term commercial benefits. The purpose of the Planning Acts is to ensure that rules apply to carrying out sustainable development in the interest of the citizen and proper planning.

7.0. Section 178 of the Planning and Development Act and the Monkstown Architectural Conservation Area

7.1. Section 178 prohibits a planning authority from carrying out any development in *"material contravention"* of the Development Plan. It is submitted that since the Development Plan clearly sets down the parameters and constraints on telecommunications development, DLR have materially contravened the plan in allowing this development take place. With regard to the interpretation of 'material contravention', the Court in *Byrne v Dublin City Council,* May 2017, High Court, Baker J) noted that materiality should be based on a local analysis of what was considered material.

7.2. For example, the Court considered that the mere fact that a large number of third party objections were made to the subject application *"would suggest that the grounds of objections were material from a planning point of view".* This development was preceded by an application for planning permission for a similar development in 2015 where a large number of objections were received. In this matter, there was no planning application so residents had no

notice to allow them object, which they would have done, in equally large numbers, given the opportunity.

7.3 As noted above, the development in this case has been carried out adjacent to and in the vicinity of an ACA. Cignal has written that they consulted with the Council on the implications of the development on the ACA *"while acknowledging that the Planning Authority would consider any perceived impacts as part of a planning application assessment [the officer consulted] could recall no section of the Act that would impact on the use of Exempted Development adjacent to an ACA"* .

7.4. It is clear that *"perceived impacts"* on the ACA were not considered in the course of the development and the view of the officer as above does not remedy that defect which has retrospective effect. The reason why this matter would have been considered if a planning application had been made is because it is a vital consideration where a development may impact on an ACA and further supports the contention that DLR is in 'material contravention' of the Development Plan.

7.5. It is highly significant, as noted above, that planning permission for an almost identical development had been previously refused on conservation grounds. Indeed, when DLR Planning Enforcement was looking into this development, a planning inspector sent an internal email saying *"I can confirm planning permission was refused by the planning authority and on appeal to An Bord Pleanala on 16 December 2015 for a very similar development under D 15A/0373. The development was located at a site comprising part of the public footpath....[and would] consist of the replacement of an existing 10 m streetlight with a 13 m Street works Pole incorporating a streetlight at the existing height of 10 m with telecommunications antennae enclosed by a shroud above, maximum height not to exceed 30 m above adjacent ground level, with associated telecommunications equipment cabinet, power distribution board and all associated works and development at the junction of Eaton Square and Monkstown Road (adjacent to Montpelier Parade), Monkstown Co Dublin."* **(Tab A)**

7.6. This development mars the local urban landscape and historic area. Were any planning application to be brought in respect of this particular development, the fact that the location of the development adjoined a Conservation Area would indeed be a relevant consideration for a planning authority before making a decision.

7.7. At page 53 of the Monkstown Architectural Conservation Area Character Appraisal and Recommendation document – "Landscape Protection" it is written *"the Monkstown ACA seeks to protect and enhance the special quality of Monks town, its natural environment, groups of trees, boundary treatments and associated hedgerow planting/periphery planting to individual plots, views and prospects and other intrinsic aspects of the ACA"*

7.8. In the Development Plan prepared by DLR, under Environmental infrastructure and management at page 134, it says *"the advantages of a high quality telecommunications network must, however, be balanced against the need to safeguard the rural and urban environment pertaining in sensitive areas for the impacts on residential amenity and visual amenity of areas need to be adequately assessed"*. This brings into sharp focus the lack of any apparent consideration of these important points in the course of this development and again supports , it is submitted, the contention that DLR acted in material contravention of the Development Plan.

8.0. Conclusion

An internal DLR email of 3 January 2018 (Email J. Brown to L. Walsh 16:24 **Tab N**) captures the matter in a troubling way. Planning Enforcement was investigating the complaints made in respect of the development and this email referred to the need to discuss the matter urgently but it also set out that *"there is a bigger (and contentious) issue afoot here…"*.

9.0. Summary

- The site of this development is immediately alongside the site of an almost identical (albeit less visually intrusive) development in respect of which permission was refused by An Bord Pleanála.

- The development in question is not an exempted development pursuant to Part 1 Schedule 2 Class 31 of the Planning and Development Regulations 2001 because only *"statutory undertakers"* can rely on Class 31 and the developer, Cignal Infrastructure Ltd ("Cignal") is not a 'statutory undertaker'.

- Further, the development is not exempted development pursuant to s 4(1)(f) of the Planning and Development Act 2000 (as amended) because it was not carried out, as required by s 4(1)(f),

a. " *pursuant to a contract*" entered into by Dún Laoghaire Rathdown County Council ("DLR")
b. "*on behalf of, or jointly or in partnership with*" DLR and
c. in compliance with article 81 of Part 8 of the Planning Regulations 2001 which requires the carrying out of a notice and consultation process unless the cost of the development cost did not exceed €126,000

Regarding a., there is no contract in place between the Council and Cignal, only a memorandum of understanding setting out plans for the development envisaged.
Regarding b., the development was carried out solely by Cignal rather than "*on behalf of, jointly with or in partnership with*" the Council. The Council's involvement was to consent to the development taking place on its lands and to grant a road opening licence to Cignal to carry out the development.
Regarding c., the Council has confirmed it has no invoices setting out the cost of the development. Had s 4(1)(f) been relied upon, precise costings and records of expenditure would presumably have been kept.

- Even if the requirements of s 4(1)(f) had been met (which is not the case) the courts have held that a local authority is a creature of statute and can only carry out functions conferred on it by statute. Any development carried out outside statute is *ultra vires ie* outside its powers. Local authorities do not have a statutory function to provide telecommunications infrastructure so DLR would have had no authority to enter into a contact with Cignal to erect this development even if it sought to so do. S 4(1)(f) is concerned with the Council entering into PPPs concerning the provision of, for example, waste facilities or road improvements.

- The erection of telecommunications infrastructure as exempted development is clearly only permitted by "*statutory undertakers*" as provided by Part 1 Schedule 2 Class 31 of the Planning and Development Regulations 2001. The Guidelines issued by the Department of the Environment apply to all others who seek to erect telecommunications structures in order to ensure matter such as health and safety, visual

impact, proximity to school and houses are addressed. Indeed, the Courts have referred to these guidelines as '*[highlighting] the importance and significance* "attached by planning authorities to this type of development (*Esat Digifone v South County Dublin County Council [2002] 3 IR 585)*

- Even if DLR had statutory authority to enter into telecommunications development (which is not the case) relying on s 4(1)(f) in order to facilitate a private developer in the erection of a telecommunications development would be an improper use of its powers. DLR ought reasonably to be aware that it cannot facilitate private development of this kind under the cloak of an exemption conferred on the local authority. Indeed, were DLR knowingly to facilitate unauthorised and unlawful development under s 4(1)(f), it would be guilty of misfeasance of public office.

- DLR, in permitting this development, is in material contravention of its Development Plan as prohibited by section 178 of the Planning and Development Act, 2000, in that the development was carried out, as noted above, on the boundary of an architectural conservation area ("ACA") where planning permission had been refused for a similar development on an adjoining light stanchion in 2015 on conservation grounds. Despite the greater visual intrusiveness of this development, in comparison with the previous one, and its impact on the ACA, no consideration was given to this fact by DLR. The High Court has held that in interpreting 'material contravention' materiality should be based on a local analysis of what is considered material. Monkstown area residents objected in prolific numbers in 2015 to an application for planning permission for a similar development on an adjoining light stanchion which was refused on conservation grounds. If they had been put on notice of the Cignal development , it must be assumed they would have objected again.

- The development is a pilot project with the potential to result in telecommunications antenna all over Dublin on local authority property in residential areas in contravention of planning legislation requirements.

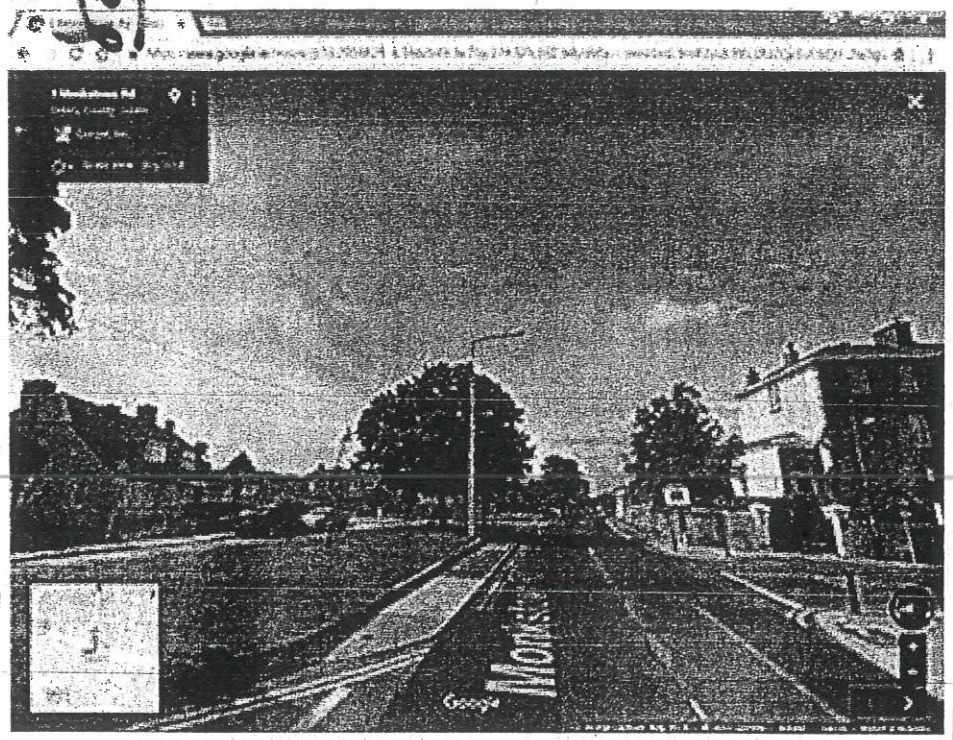
Relief sought:

For all of the foregoing reasons, we would request that An Bord Pleánala, pursuant to its powers under s 5 of the Planning Act 2000 (as amended) :

in considering this referral , exercise its powers to seek a copy of the contract that DLR are relying on for the purposes of s 4(1)(f)

in considering this referral, exercise its powers to seek a copy of any order of the Chief Executive or appropriately delegated officer of DLR purporting to enter what I am advised is an illegal contract

declare that the development in question is development and not exempted development



From: O'Neill Aonghus
Sent: 13 December 2017 12:44
To: Hegarty Mary <mhegarty@DLRCOCO.IE>; Planning Enforcement <planenforce@DLRCOCO.IE>; Langan Therese <tlangan@DLRCOCO.IE>; Blighe Aidan <ablighe@DLRCOCO.IE>; O'Grady Dennis <dogrady@DLRCOCO.IE>; Proctor Grainne <gproctor@DLRCOCO.IE>
Subject: RE: Enf Gen Cor 259-2017 - Alleged Mast at open space lands located adjacent to junction of Alma road and Monkstown road.

Hi all,

In relation to the above I can confirm, planning permission was refused by the planning authority and on appeal to An Bord Pleanala on 16th December 2015 for a very similar development under D15A/0373. The development was located at a site comprising part of the public footpath. The development will consist of the replacement of an existing 10m Street Light with a 13m Streetworks Pole incorporating a Street Light, at the existing height of 10m, with Telecommunications Antenna enclosed by a shroud above, maximum height not to exceed 13m above adjacent ground level, with associated telecommunications equipment cabinet, power distribution board and all associated works and development at the junction of Eaton Square and Monkstown Road (adjacent to Montpelier Parade), Monkstown, Co. Dublin.

Regards,

Aonghus Ó Néill, Planning Inspector

Planning Department, Dún Laoghaire - Rathdown County Council, County Hall, Marine Road, Dún Laoghaire, Co Dublin.
Main Tel: +353 1 205 4700 | Direct Line: +353 1 204 7289 | Fax: +353 1 280 3122 | E-mail: aoneill@dlrcoco.ie | Web: www.dlrcoco.ie

From: Hegarty Mary
Sent: 13 December 2017 12:23
To: Planning Enforcement <planenforce@DLRCOCO.IE>; Langan Therese <tlangan@DLRCOCO.IE>; Blighe Aidan

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Therese Langan
Transformation Project Manager
Corporate, Communications and Governance Department
Dún Laoghaire-Rathdown County Council, County Hall, Dún Laoghaire.
Direct Tel: 01 2054829
Mobile: 086-6074095
Fax: 01 2806969
Email tlangan@dlrcoco.ie
T. Langan, Oifigeach Feidhmiúcháin Sinsearach
An Rannóg Chorparáideach, Cumarsáide agus Rialachais
Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halla an Chontae, Dún Laoghaire.

From: Planning Enforcement
Sent: 13 December 2017 15:54
To: Langan Therese <tlangan@DLRCOCO.IE>; Gilligan Bernie <bgilligan@DLRCOCO.IE>
Subject: FW: Enf Gen Cor 259-2017 - Alleged Mast at open space lands located adjacent to junction of Alma road and Monkstown road.

Hi Therese, can you please take a look at the attached and let us know whether you're familiar with this. Mary Hegarty seems to think you may have had involvement previously; has it been authorised?
Regards, Dennis

From: O'Neill Aonghus
Sent: 13 December 2017 14:05
To: Planning Enforcement <planenforce@DLRCOCO.IE>
Subject: FW: Enf Gen Cor 259-2017 - Alleged Mast at open space lands located adjacent to junction of Alma road and Monkstown road.

Hi Grainne,

The attached photograph shows that a light standard was previously erected at this location.

Based on the attached photograph it is very unlikely that a local authority light standard erected on local authority lands would have been replaced without the consent of the property management and/or public lighting sections within the local authority.

Regards,

Aonghus.

dlr
Comhairle Contae County Council

Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halla an Chontae, Dún Laoghaire, Co. Átha Cliath, Éire. A96 K6C9
Dún Laoghaire-Rathdown County Council, County Hall, Dún Laoghaire, Co. Dublin, Ireland. A96 K6C9
T: 01 205 4700 F: 01 280 6969 www.dlrcoco.ie

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Planning and HR Department
An Rannóg um Pleanáil agus Acmhainní Daonna
Enforcement Section
Direct Tel: 01 2054864
Fax: 01 2803122
Email: planningenforcement@dlrcoco.ie

PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Warning Letter under Section 152(1)

ENF 2018

Warning Letter under Section 152(1) of the Planning and Development Act 2000 (as amended) in relation to lands at **Open space lands located, Adjacent to the junction of, Alma Road and Monkstown Road**

Trevor O'Rourke Company Secretary
Cignal Infrastructure Ltd.
Unit 309, Q House,
76 Furze Road,
Sandyford Industrial Estate,
Dublin 18

AN BORD PLEANÁLA
TIME _____ BY _____
29 AUG 2018
LTR DATER _____ FROM _____
PL _____

It has come to the attention of the Planning Authority that unauthorised development may have been carried out at the above lands. The alleged unauthorised development consists of **: the erection of a telecommunications mast and associated structures without the benefit of a valid planning permission, and which does not constitute exempt development.**

The matter is now under investigation by the Planning Authority. Any person served with this Warning Letter may make submissions or observations in writing to the Planning Authority regarding the purported offence not later than four weeks from the date of the service of this letter.

If, following investigation, the Planning Authority consider that unauthorised development has been carried out at the above named lands, an Enforcement Notice may be served under Section 154 of the Planning and Development Act 2000 (as amended), without further communication to you.

It is brought to your attention that officials of the Planning Authority may at all reasonable times enter on the above named lands for the purposes of inspection.

Under Section 151 of the Planning and Development Act 2000 (as amended) it is an offence to carry out unauthorised development. In this regard your attention is drawn

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to Section 156 of the aforementioned Act, which set out details of the penalties involved (copy enclosed).

You are hereby warned that any costs reasonably incurred by the Planning Authority in relation to the investigation, detection and issue of the enforcement notice concerned, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers, may be recovered from the person or persons on whom an enforcement notice is served or where court action is taken.

Please quote reference number: **ENF 2018** in any further correspondence or if you have any queries please contact a member of staff in the Enforcement Section at 01 2054864.

Date: 22nd January 2018 **Signed:** Dennis O'Leary
Administrative Officer

AN BORD PLEANÁLA
TIME _____ BY _____
29 AUG 2018
LTR DATER _____ FROM _____
PL _____

dlr
Comhairle Contae County Council

Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halla an Chontae, Dún Laoghaire, Co. Átha Cliath, Éire. A96 K6C9
Dún Laoghaire-Rathdown County Council, County Hall, Dún Laoghaire, Co. Dublin, Ireland. A96 K6C9
T: 01 205 4700 F: 01 280 6969 www.dlrcoco.ie

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Planning and HR Department
An Rannóg um Pleanáil agus Acmhainní Daonna
Enforcement Section
Direct Tel: 01 2054864
Fax: 01 2803122
Email: planningenforcement@dlrcoco.ie

PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Warning Letter under Section 152(1)

ENF 2018

Warning Letter under Section 152(1) of the Planning and Development Act 2000 (as amended) in relation to lands at **Open space lands located, Adjacent to the junction of, Alma Road and Monkstown Road**

Cignal Infrastructure Ltd.
Unit 309, Q House,
76 Furze Road,
Sandyford Industrial Estate
Dublin 18

AN BORD PLEANÁLA
TIME _____ BY _____
29 AUG 2018
LTR DATER _____ FROM _____
PL _____

It has come to the attention of the Planning Authority that unauthorised development may have been carried out at the above lands. The alleged unauthorised development consists of: **the erection of a telecommunications mast and associated structures without the benefit of a valid planning permission, and which does not constitute exempt development.**

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to Section 156 of the aforementioned Act, which set out details of the penalties involved (copy enclosed).

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Please quote reference number: **ENF 2018** in any further correspondence or if you have any queries please contact a member of staff in the Enforcement Section at 01 2054864.

Date: 22nd January 2018 **Signed:** Dermot O'Grady

pp **Administrative Officer**

AN BORD PLEANÁLA
TIME _____ BY _____
29 AUG 2018
LTR DATER _____ FROM _____
PL _____

dlr
Comhairle Contae County Council

Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halla an Chontae, Dún Laoghaire, Co. Átha Cliath, Éire. A96 K6C9
Dún Laoghaire-Rathdown County Council, County Hall, Dún Laoghaire, Co. Dublin, Ireland. A96 K6C9
T: 01 205 4700 F: 01 280 6969 www.dlrcoco.ie

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Planning and HR Department
An Rannóg um Pleanáil agus Acmhainní Daonna
Enforcement Section
Direct Tel: 012054864
Fax: 01 2803122
Email: planningenforcement@dlrcoco.ie

Our Ref: ENF 2018

Date: 07-March-2018.

[redacted] [redacted]

Re: Open space lands located, Adjacent to the junction of, Alma Road and Monkstown Road

[redacted]

I refer to previous correspondence in relation to the above matter.

Following enquiries, it is now clear that this project has been undertaken with the consent and approval of the Council, thereby constituting development which is exempt from the requirement to seek or obtain planning permission.

In these circumstances, this is not a matter that can be pursued from a Planning Enforcement perspective, and accordingly the enforcement file in relation to this matter is now closed.

Any further queries in relation to this project should be directed to Mr. Tom McHugh, Director of Municipal Services. Email tmchugh@dlrcoco.ie

Yours sincerely,

Bernie Gilligan
Senior Executive Officer
Planning and HR Department

AN BORD PLEANÁLA
TIME _____ BY _____
29 AUG 2018
LTR DATER _____ FROM _____
PL _____

[redacted]

[redacted]

[redacted]

Bannon Bridget

7

From: Hegarty Mary
Sent: 13 December 2017 12:23
To: Planning Enforcement; Langan Therese; Blighe Aidan
Cc: O'Neill Aonghus
Subject: RE: Enf Gen Cor 259-2017 - Alleged [redacted] to junction of Alma road and Monkstown road.

Hi Grainne,

The queries about planning from the developer were forwarded to planning in 2014.

Please contact Therese Langan and Aidan Blighe in relation to this installation as they are the Councils liasons with regards this project.

Thank you,

Mary [redacted]

From: Planning Enforcement
Sent: 13 December 2017 11:49 [redacted]
To: Hegarty Mary <mhegarty@DLRCOCO.IE>
Cc: O'Neill Aonghus <aoneill@DLRCOCO.IE>
Subject: FW: Enf Gen Cor 259-2017 - Alleged Mast at open space lands located adjacent to junction of Alma road and Monkstown road.

Hi Mary,

Planning Enforcement Section have received a complaint in respect of what appears to be telecoms equipment attached to an existing public lighting pole at the above location (see photographs hereunder).

Can you please advise as to whether Public Lighting Section have given permission to any telecoms provider to use the public lighting standard.

If permission has been given, can you please provided details as to provider, etc. As they did not notify the Planning Authority prior to installation in accordance with the Planning Regulations for such installations.

Yours sincerely,

Gráinne Proctor
Enforcement Section
Planning & H R Department
Ext 4513

From: Planning Enforcement
Sent: 13 December 2017 11:20
To: O'Neill Aonghus <aoneill@DLRCOCO.IE>
Subject: FW: Enf Gen Cor 259-2017 - Alleged Mast at open space lands located adjacent to junction of Alma road and Monkstown road.

Aonghus,

See response received from complainant hereunder.

Sincerely,

Gráinne

From: [redacted]
Sent: 13 December 2017 11:17
To: Planning Enforcement <planenforce@DLRCOCO.IE>
Subject: Re: Enf Gen Cor 259-2017 - Alleged Mast at open space lands located adjacent to junction of Alma road and Monkstown road.

The mast is to the left of photographs 3 and 4 below (which were taken by the enforcement officer) and one of the two new control boxes are at the extreme left of photograph one taken by the enforcement officer. I may be incorrect but it appears to be a combined telecoms mast and light stanchion of the same type in respect of which permission was refused. Certainly, it is a mast of a type and design that is unlike the adjoining light stanchions and is visually intrusive. Ben

From: Planning Enforcement <planenforce@DLRCOCO.IE>
Date: Wednesday 13 December 2017 at 09:35
[redacted]
Subject: Enf Gen Cor 259-2017 - Alleged Mast at open space lands located adjacent to junction of Alma road and Monkstown road.

[redacted]

I refer to your email complaint hereunder dated 12th December, 2017.

I wish to advise you that the Planning Inspector for the Area carried out an inspection of this location yesterday evening (see photographs hereunder) and could not locate the mast complained of.

The Planning Authority requests that you revert, confirming the location of the mast complained of.

Please include a photograph of the mast structure and its location.

On receipt of the above, the matter will be re-visited from a planning enforcement perspective.

Yours sincerely,

Gráinne Proctor
Enforcement Section
Planning & H R Department
DDI 01-2054 864

2. Under what provision of the Planning and Development Acts and Regulations have the works been carried out?

3. If works were carried out on foot of Part 1, Schedule 2, Class 31 (b) of the Planning and Development Regulations 2001, as amended, the Planning Authority will require information regarding the overall size and height of the structure.

or

4. Were works to erect the telecommunications mast carried out in accordance with Sections 4 and Part XI of the Planning and Development Acts and Part 8 of the Planning and Development Regulations 2001, as amended, being works carried on behalf or in partnership with the local authority the total cost of which did not exceed €126,000 and which comply with provisions of

Regards,

Aonghus.

From: Planning Enforcement
Sent: 14 December 2017 08:53
To: O'Neill Aonghus <aoneill@DLRCOCO.IE>
Subject: FW: Enf Gen Cor 259-2017 - Alleged Mast at open space lands located adjacent to junction of Alma road and Monkstown road.

From: Langan Therese
Sent: 13 December 2017 17:32
To: Planning Enforcement <planenforce@DLRCOCO.IE>
Subject: RE: Enf Gen Cor 259-2017 - Alleged Mast at open space lands located adjacent to junction of Alma road and Monkstown road.

Hi Dennis

This is a pilot project done under the Smart Dublin Framework and National Broadband Plan designed to improve broadband capacity in the area. It is exempted development under 2001 Regulations

as telecommunications network" means the whole of the telecommunications infrastructure and any associated physical infrastructure of any network operator;

Eir Vodafone and Eir mobile are commissioning tomorrow. It will greatly enhance broadband in the area where there have been a huge number of complaints. Public Lighting, Fergus Kelly (Broadband Officer) and Bridget Tracey (Parks) all gave their consent to this going ahead as did James Byrne from Roads Control.

All the best

Therese

Great news about Brid

CMC PLANNING CONSULTANTS

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The Secretary
Enforcement Section
Planning Department
Dún Laoghaire Rathdown Co. Council
County Hall
Dún Laoghaire

DÚN LAOGHAIRE RATHDOWN CO. CO.
SECRETARIAT SECT.
15 FEB 2018

RECEIVED
PLANNING DEPT

12th February 2018

RE: Warning Letter ENF 2018 issued by DLR in relation to street lighting installation on Monkstown Road adjacent to Alma Road Monkstown Co. Dublin

AN BORD PLEANÁLA
TIME _____ BY _____
29 AUG 2018
LTR DATER _____ FROM _____
PL

A Chara

Further to your warning letter under Section 152 (1) issued on January 22nd 2018 Ref ENF 2018; our client, Cignal Infrastructure Ltd. has requested that we respond to the matter on its behalf. According to the notice "*The alleged unauthorised development consists of: the erection of a telecommunications mast and associated structures without the benefit of a valid planning permission, and which does not constitute exempt development.*"

We wholeheartedly oppose the allegation that the telecommunications installation attached to the lamp post is unauthorised, as it is our understanding that it benefited from Exempted Development status at the time of installation. We would challenge the description of the support structure as a "*telecommunications mast*" and assert that the structure is first and foremost a lamp post, a functioning element of the public street lighting provision in the area.

Overview

We contend that the description "*telecommunications mast*" in this case refers to the an in-situ lamp post structure, which has been used to support telecommunications equipment. This structure was installed by the Local Authority under their powers and the fully functional lamp post remains in the ownership of the Local Authority. It is understood that the original lamp post was replaced prior to the telecoms installation and a LED lantern was reinstated at a height consistent with other lanterns on the road during the process. In general, the provision of Public Lighting is a function of the Local Authority and is installed under Part 8 of the Planning and Development Regulations. We spoke with Mary Hegarty of the Public Lighting Section of DLR who confirmed that the lamp post was installed and replaced under their internal processes. It is our understanding therefore that no application for planning permission was required for the lamp post structure to be considered authorised development.

3rd Floor Fumbally Exchange 5 Dame Lane Dublin 2

E: ciaramaguireconsultant@gmail.com P: 00353 86 8145134 VAT 5287108S

In relation to the attached antennas and supporting equipment cabinets; the installation was designed to facilitate the network requirements of licenced mobile & broadband service providers. The works commenced in October 2017 as part of the Smart City Project as described in the Smart Dublin Statement of Strategy 2017. This pilot project is part of a regional initiative across the four Dublin Local Authorities, designed to develop solutions to future challenges facing local authorities, in regard to increased urbanisation and reliance on smart devices. These challenges include connectivity, high speed good quality broadband, environmental and mobility issues.

Cignal worked in conjunction Therese Langan, SEO Corporate, Communications & Governance Dept. within DLR, to provide 4th generation localised telecom services, with an emphasis on ensuring the least possible impact on amenity. The deployment of antennas on to the lamp post, together with the resulting significant improvement in local wireless 4G data services, is an essential step to establish a model for future deployment of 5G data services, in both urban and rural locations in Ireland. In permitting operators to utilise its existing infrastructure rather than installing free standing mast sites within urban areas, the Local Authority is acting in harmony with the DLR Development Plan objectives and National and EU requirements for the delivery of high speed telecoms services in Ireland.

The Cignal development comprises of telecommunications equipment installed on a lamp post with internal cabling continuing underground to adjacent exchange cabinets. There are six antennas, facilitated behind shrouds, providing mobile and high-speed broadband services of two operators to local residents and business users. These antennas are located above and below the lantern and are completely detachable from the lamp post. The antennas are connected via underground ducting to two equipment cabinets, abutting an existing wall, at 30m distance from the lamp post. We note that the location was already in use for similar cabinets. We have attached As Built drawings, showing the extent of the development. The construction works were carried out to the highest standards, with records showing that all requirements for road opening licences etc. were complied with in full. We have attached images of the installation, which evidence the low-level impact of this development on the amenity of the area and the high standards of the design and construction. We maintain that the telecommunications installation was permitted under Part 2 Article 6 Class 31 Exempted Development as detailed below.

We note that Class 31 was revised on February 8th 2018 by the Department of Housing, Planning and Local Government (HPLG) under Planning and Development (Amendment) (No. 3) Regulations 2018. This amendment to the Regulations was subsequent to the Cignal installation which was completed in 2017 under the then relevant Class 31 (k) Exemption. Therefore, the recent changes to the Legislation have no bearing on the matter at hand.

Planning Legislation

It should be noted that the provision of Public Lighting is a function of the Local Authority and is installed under Part 8 of the Planning and Development Regulations. We understand that the Public Lighting Section of DLR is satisfied that the subject lamp post was installed under this legislation and we respectfully suggest that our client had no function in relation to that authorisation process.

In relation to the telecommunications equipment attached to the existing authorised structure, Cignal contend that the equipment was installed under Part 1 Schedule 2 Class 31 of the Planning and Development Regulations 2010-2015, prevailing in October 2017. Class 31 was designed to permit certain telecommunications installations to benefit from exemption in order to allow the industry to rapidly respond to network blackspots, without requiring substantial infrastructure such as a

Cignal a Statutory undertaker?

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monopole or tower structures. It is considered that this type of development is particularly beneficial in urban areas, such as Monkstown. When the development commenced in 2017, the Regulations permitted the attachment of telecommunications antennas to lampposts as exempted development, under Class 31 (k) and permits the installation of adjacent exchange cabinets under Class 31 (f). The statutory undertaker in this case is Cignal on behalf of two licenced operators; Meteor and Vodafone. At the time of installation, the regulations read as follows:

Class 31: The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of—

(f) cabinets forming part of a telecommunications system,

the volume above the ground-level of any such cabinet shall not exceed 2 cubic metres measured externally.

(k) antennae attached to the following existing structures-

(i) public or commercial buildings (other than education facilities, childcare facilities or hospitals) by way of attachment to roofs, facades, chimneys, chimney pots or vent pipes;

*(ii) telegraph poles, **lamp posts**, flag poles, CCTV poles;*

(iii) electricity pylons.

Subject to the following criteria;

1. The antenna shall be attached directly to the structure (other than a structure with a flat roof) and not by way of a supporting fixture.

2. In the case of a structure with a flat roof, a supporting fixture may be used provided that-

(a) the fixture does not exceed the height of any existing parapet or railing on the roof by more than 2 metres, and

(b) access to the roof is not available to any person other than a person authorised by the statutory undertaker.

3. Where an antenna is attached to the façade of a building or the exterior of a chimney or vent, the colour of the antenna shall match and blend with the colour of such façade, chimney or vent pipe.

4. Where the antenna is hidden inside a chimney pot the existing chimney pot may be replaced by a chimney pot in a suitable material which shall be the same colour, size and shape as the replaced pot, and the antenna shall not protrude beyond the top of the chimney pot.

5. The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any such structure at least 4 weeks before such attachment.

6. The field strength of any such antenna shall not result in the field strength of the non-ionising radiation emission from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation.

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According to Section 3.2.5 of the Architectural Heritage Protection Guidelines for Local Authorities; *"the boundaries of a candidate ACA should make physical, visual and planning control sense"*, and the Guidelines further recommend reference to the *"core characteristics of the area in order to establish the most appropriate boundary lines"*.

It is assumed therefore that in determining the boundaries of the ACA, the Local Authority specifically excluded certain sections of Monkstown Road from ACA protection. We plotted the location of the lamp post on Google Earth– see image 3 below. The image shows that the lamp post and cabinets are located outside of the designated area and as such the development is not impacted by Part 2 Article 9 (a) which pertain to structures located *within* an Architectural Conservation Area only.

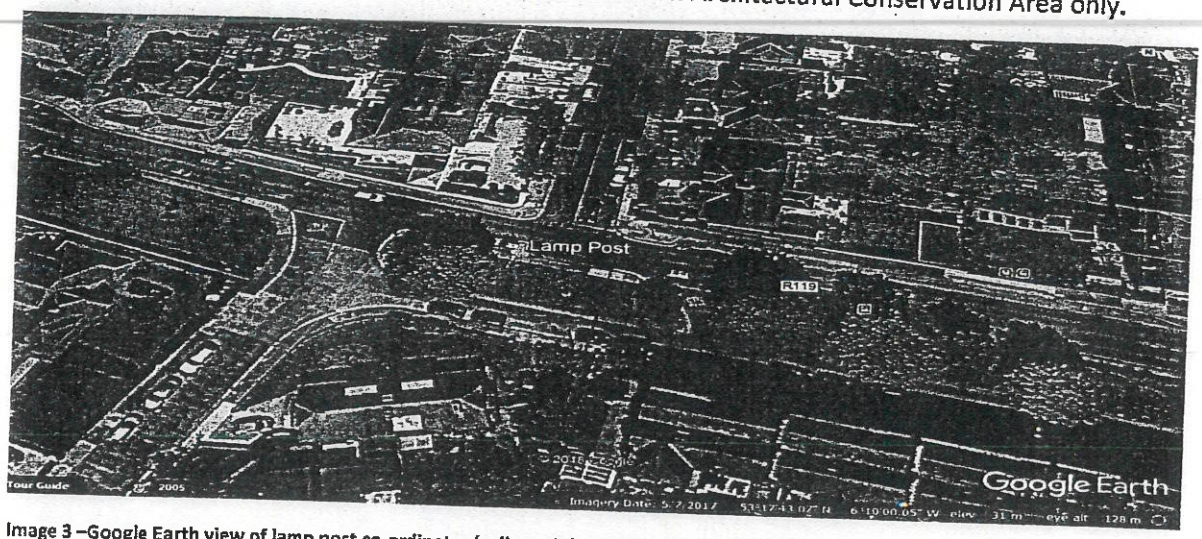

Image 3 –Google Earth view of lamp post co-ordinates (yellow pin) and ACA demarcation (red line)

In order to ensure that no other relevant legislation was overlooked, we consulted with Sinéad O'Hara – Conservation Officer with DLR on the implications of the ACA on adjacent development. While acknowledging that the Planning Authority would consider any perceived impacts as part of a planning application assessment, she could recall no section of the Act that would impact on use of Exempted Development adjacent to an ACA.

We are therefore satisfied that the location of the lamp post and ancillary cabinets, is outside the ACA demarcation line, and consequentially Cignal's ability to rely on Class 31 (f) and (k) would not be impacted.

Summary

In response to the allegation contained in the warning notice that our client Cignal carried out *"the erection of a telecommunications mast and associated structures without the benefit of a valid planning permission, and which does not constitute exempt development."*; we wish to reiterate our position that the lamp post development was installed under Part 8 and the telecommunications equipment was legitimately installed, under the auspices of then applicable Class 31 (k) Exempted Development Regulations.

The fact the Regulations dealing with this type of development has been re-worded, in the last seven days, does nothing to alter our client's ability to rely on Class 31 (k) of the Regulations current to the construction period. It should also be noted that the installation of antennas on lamp posts is still permitted under Class 31 (i) of the Regulations 2018, albeit with revised criteria.

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We contend that the installation was sensitively designed and intentionally located away from the nearby designated areas. There is also no question that the development is required to facilitate customers on two networks and we are encouraged by the fact that the majority of local residents and businesses have not complained or sought its removal. We suggest that the principle of using existing infrastructure to support telecommunications development in urban settings is germane to the assessment of this case. The fact remains that this type of development is permitted by the Regulations, required by the Operators, supported by the Department of HPLG and essential to the Smart City Project – an initiative of the four Local Authorities in Dublin. The support of these Bodies surely advocates in favour of the development and we respectfully request that the Planning Authority takes the overwhelming ratification of this type of telecoms solution into consideration when assessing this case.

In summary;

- The development is in line with the Smart Dublin Statement of Strategy 2017
- The lamp post is authorised development as it was installed under the auspices of the Local Authority's Part 8 process.
- The telecommunications equipment was Exempted Development under Class 31 (k) of the Planning and Development Regulations at the time of installation.
- The installation of telecommunications equipment on lamp posts is still permitted under Class 31 (i) Exempted Development, under the Planning and Development (Amendment) (No. 3) Regulations 2018
- The installation of ancillary cabinets is Exempted Development under Class 31 (f) of the Planning and Development Regulations.
- The location of the pole and cabinets is outside the designated area of Monkstown ACA and as such Part 2 Article 9 (a) (xii) restrictions do not apply.

We trust that the information provided is sufficient to support our declaration of Exempted Development and consequentially that the Local Authority can set aside any further Enforcement Action in this case

Is mise le meas

AN BORD PLEANÁLA
TIME _____ BY _____
29 AUG 2018
LTR DATED _____ FROM _____
PL _____

Ciara Maguire BSc Surveying

on behalf of Cignal Infrastructure Ltd Suite 309 Q House 76 Furze Road Sandyford Industrial Estate Dublin 18 D18 T9N1

CC. Ms Therese Langan Corporate, Communications and Governance Department Dún Laoghaire Rathdown County Council County Hall Dún Laoghaire

ENCLOSURES: As Built Drawings and Photographs of In-situ Development

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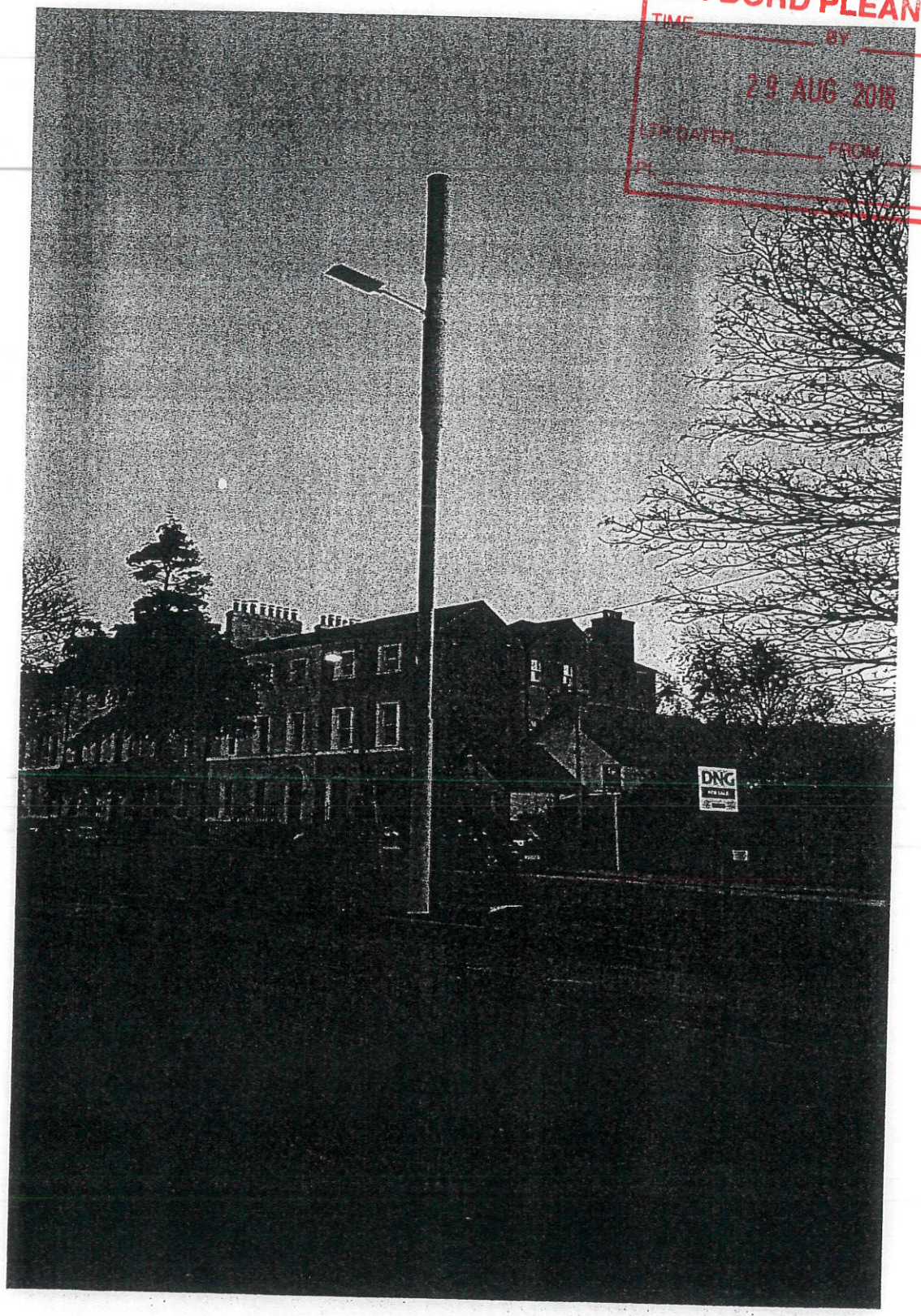
In Situ Monkstown Lamp Post Broadband Solution



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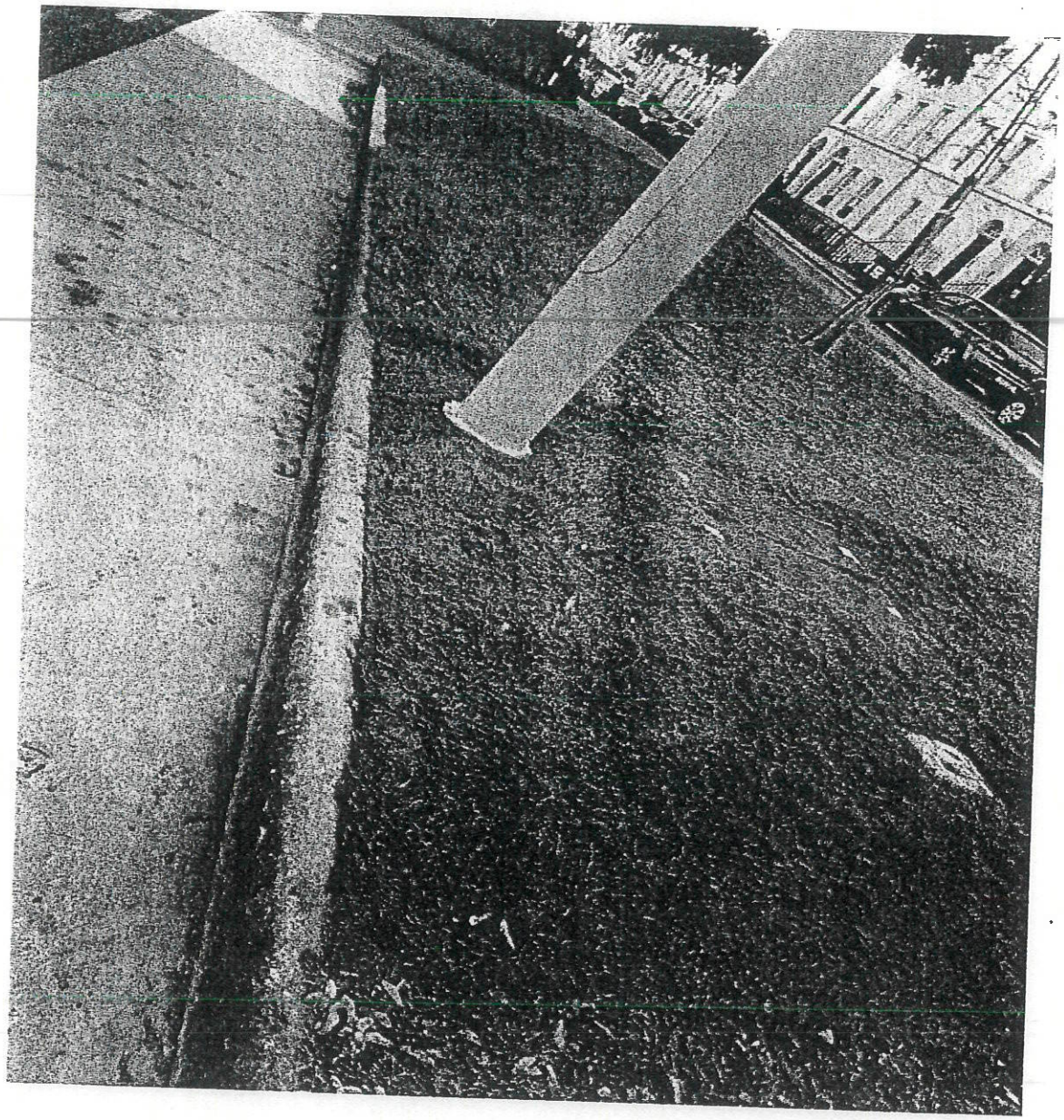

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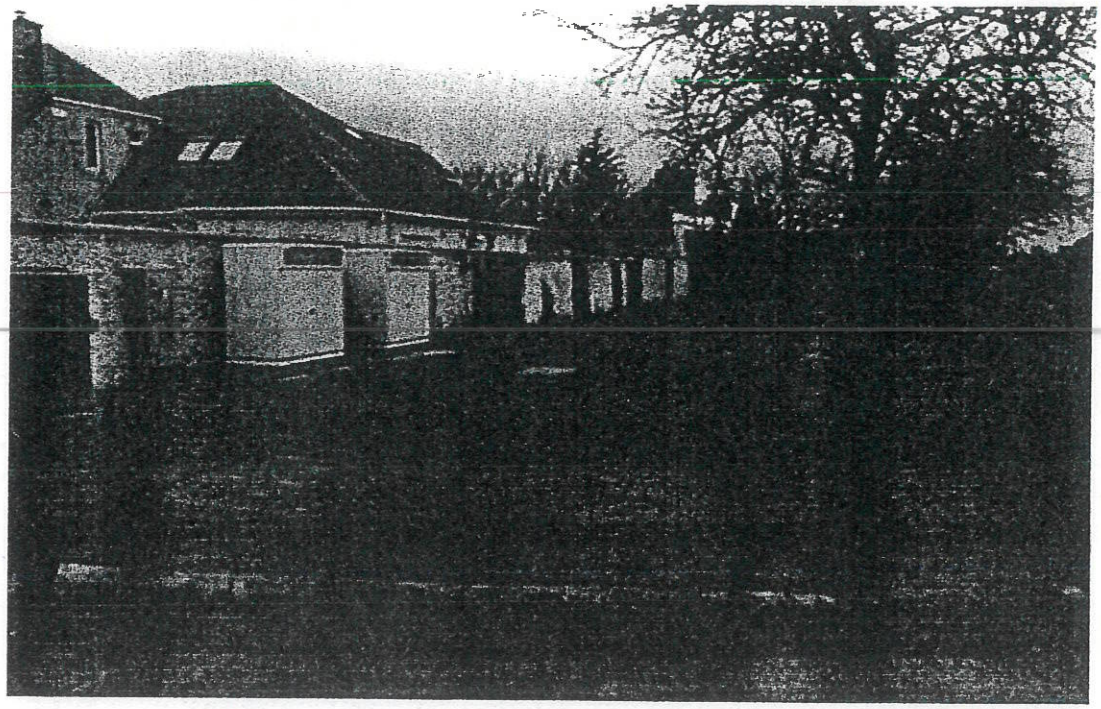

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