

15th February 2021

The Secretary
 An Bord Pleanála
 64 Marlborough Street
 Dublin 1
 D01 V902

AN BORD PLEANÁLA
 LDG-035622-21
 ABP
 15 FEB 2021
 Fee € 220 Type: de aise
 Time: 1300 By: Ann Y

Ref. No.: 4/21
 Question: Is the erection of antennae, aerials, and support truss on the main house and the erection of high level wires linking the wireless infrastructure to the unauthorised shed and 2 no. 10 metre high radio antennae poles in the rear garden exempt development?
 Decision: 20th January 2021
 4 Weeks: 16th February 2021

SECTION 5 REFERRAL

Dear Sir or Madam,

Please find enclosed a section 5 referral on behalf of **Raymond O'Malley, [redacted]**, high level wires extending from the roof of No. 12 Stepaside Park to the currently unauthorised shed and antennae poles at the rear of the garden. I attach a cheque for € 220 in respect of the referral fee and a copy of the Council's decision on my² declaration to their office.

[redacted] is owned by [redacted], I own [redacted], which is two houses from No. 12 but it is subject to injurious residential and visual amenity impacts from the works at No. 12.

The purpose of this section 5 referral is to determine the planning status of the numerous antennae, aerials, and other telecommunication works that have taken place at [redacted] I do not agree with the Council's decision for the reasons set out in section 4, below. Neither this referral nor the declaration to the Council relates to the shed and antennae poles in the rear garden of No. 12 that are currently subject of a first party planning appeal to An Bord Pleanála (ABP-308847-20 refers).

¹ The Board will note that the declaration decision is erroneously addressed to Kieran O'Malley and not Raymond O'Malley or to Kieran O'Malley & Co. Ltd. I requested that the Council correct the initial administrative error and I was issued with a revised acknowledgement that was correctly addressed. However, the decision issued is incorrectly addressed to Kieran O'Malley.

The background to this referral is an enforcement case (see 1. ENF 20520 below) and a subsequent retention planning application (see 2. Reg. Ref. D20B/0280) that is currently under appeal to An Bord Pleanála (see 3. ABP-308847-20 below). The Council's decision on the declaration can be summarised as follows:

- (i) One of the antennae at No. 12 Stepaside Park is not exempt development on the basis that it would not comply with the condition and limitation relating to height;
- (ii) All other antennae and aerials (those in place and previously in place) are exempt development as they comply with Class 4(a) of the exempt development provisions; and
- (iii) The high level wires are not exempt development as they do not comply with any class of exempt development.

I largely agree with the Council on points (i) & (iii) above but I do not accept that multiple antennae and any aerials at No. 12, Stepaside Park are exempt development in accordance with Class 4(a) or 4(b). The grounds of this referral are set out below and largely follow the declaration submission to the planning authority.

1. ENF 20520

Following numerous complaints to the planning authority including one from me in June 2020, the Council opened enforcement file ENF 20520 in respect of the installation of antennae to the roof and the erection of a shed type structure in the rear garden. By letter dated 4th August 2020 (copy attached), the Council wrote to John Holland at No. 12 stating that it considered "no such antenna as attached to the property exceeds this [6 metres] limitation and as such are considered exempt" but that the shed exceeded the floor area limit and there was no exemption for the 2 freestanding antenna to the rear of the shed structure.

The 4th August 2020 letter has only come to our attention because Mr. Holland has included it with his appeal to An Bord Pleanála. For the reasons set out below, we dispute the Council's assessment that the antennae, aerials and other structures attached to the main house constitute exempt development in accordance with Class 4. Further, the Council appears to have neglected to consider the high level wires that were in place at No. 12 in June 2020. Based on the 4th August 2020 letter, Mr. Holland then proceeded to file a retention application to the Council for the shed and freestanding antennae only.

2. Reg. Ref. D20B/0280

This was a retention planning application submitted to the Council on 17th September 2020 in respect of the shed structure and two 10 m high radio antennae at No. 12 Stepaside Park. No reference was made in the application papers in respect of the antennae on the main house or the high level wires linking the main house to the unauthorised shed and antennae. As of late October/early November 2020, the site description section of the planning officer's report provides a full account of the various aerials, antennae, and other telecommunication infrastructure that were in place on the main dwelling at No. 12 and the high level wires that link that infrastructure to the unauthorised shed and rear antennae poles that are subject of the retention application.

Of significance, it is noted that the planning officer only states that the aerials, antennae and other wires may fall within the Class 4 exemption. This is not consistent with the opinion expressed in the Council's 4th August 2020 letter to Mr. Holland and in part is likely due to the additional antennae including the umbrella

Photo No. 7 was taken 8th January 2021 from St. Patrick's Park and it shows a very high antenna pole rising from the chimney/gable elevation of the house and the substantial umbrella aerial and support truss that is affixed to the rear elevation of the house. The other aerials and antenna pole no. 2 appear to have been removed, which is presumably been done to misrepresent the true extent of antennae, aerials and other wireless infrastructure at this property.

persons entering the development at Enniskerry Road - see Photo No. 6.

As stated above, Mr. Holland continued to erect aerials and antennae at his property and a substantial umbrella type aerial and truss was constructed to the rear elevation of his house in September prior to filing his retention application - see Photo No. 5. I understand this is a retractable or adjustable truss, so the umbrella aerial is currently in the retracted position (see Photo No. 7) because otherwise it is visible to all

the unauthorised shed and antennae poles in Photo Nos. 1, 2 and 3.

ones submitted of the retention application in Photo No. 2, and the high level wires from the main house to Council in June 2020 that show aerials and antennae in Photo No. 1, an antenna radio pole very similar to the Board can understand the timeline of the various works. I attach photographs that were submitted to the taken place and are subject of this referral. I have added the dates each photograph was taken so that the own the property subject of this referral, I have to rely upon photographs to reference the works that have unauthorised shed and 2 no. 10 metre high freestanding radio antennae poles in the rear garden. As I do not multiple aerials, antennae, a support truss, and high level wires linking the house infrastructure to the Extensive works have taken place to the main house at No. 12 Stepaside Park comprising the erection of

4. Section 5 Referral

to Mr. Holland's first party appeal.

The applicant, Mr. John Holland, filed an appeal to the Board on 7th December 2020 in respect of the Council's split decision. In his appeal, Mr. Holland clearly believes that ALL aerials, antennae, support structures and wires that he erected on his main house and linking the house to the unauthorised shed are exempt development by virtue of Class 4 of the exempt development provisions. Despite the Council's 4th August 2020 letter, that question hadn't been tested by way of a declaration or referral. As stated above, it is necessary to do so to determine the planning status of those works on the main dwelling and between the main dwelling and the unauthorised shed. Based on the Council's decision on the declaration, it is now of the considered opinion that further unauthorised works have taken place at No. 12 that are now subject of the retention application or appeal to the Board. As the Board's file will confirm, I have filed an observation to Mr. Holland's first party appeal.

3. ABP-308847-20

The Council issued a split decision on the retention application; granting permission for the shed and refusing permission for the 10 metre high radio antennae poles citing the visual cluster, depreciation of property in the vicinity and seriously injure the visual amenities of the area.

aerial that were erected at the property between the 4th August 2020 and filing the retention application on 17th September 2020.

If an argument is made to suggest that the umbrella aerial is Class 4(b), it clearly breaches condition and limitation in respect of the diameter of the antenna and in any event, Mr. Holland has already erected a standard satellite tv dish on the gable elevation (see Photo No. 8).

Class 4(a) relates to placing antenna "on the roof of a house". The Board is referred to photo Nos. 1, 2, 3 and 5 attached that shows several of the antennae and aerials including the substantial umbrella aerial (which is still in place) were or are clearly attached to the rear elevation of the house and not on the roof of the house. On Photo Nos. 2, 3 and 5, I have added a red box to highlight the fixings to the first floor rear elevation of the house. Irrespective of whether these are described as an antenna or aerial, none of them are on the roof of the house and therefore as a matter of fact, it does not come within the description of development for Class 4(a).

From the Council's 4th August 2020 letter and their declaration decision, the works to the main house were assessed under Class 4(a). That being so, it is our position that the aerials, antennae, truss, and high level wires are not exempt development in accordance with Class 4(a) for the following reasons:

Column 1 Description of Development	Column 2 Conditions and Limitations
CLASS 4 (a) The erection of a wireless or television antenna, other than a satellite television signal receiving antenna, on the roof of a house. (b) The erection on or within the curtilage of a house, of a dish type antenna used for the receiving and transmitting of signals from satellites.	The height of the antenna above the roof of the house shall not exceed 6 metres. 1. Not more than one such antenna shall be erected on, or within the curtilage of a house. 2. The diameter of any such antenna shall not exceed 1 metre. 3. No such antenna shall be erected on, or forward of, the front wall of the house. 4. No such antenna shall be erected on the front roof slope of the house or higher than the highest part of the roof of the house.

Per the Council's correspondence dated 4th August 2020, the planning officer's report on Reg. Ref. D20B/0280, and the Council's assessment of the declaration, it is accepted that the erection of aerials, antennae, support trusses and the high level wires constitute development per the Planning and Development legislation. The outstanding question is therefore, whether or not those works are exempt development in accordance with Class 4, which is as follows:

Finally, I have added photo no. 8 taken on 3rd February 2021 that shows the gable elevation of No. 12 which includes a standard TV satellite dish. There appears to be pattern whereby the owner of No. 12 is erecting and removing the various antennae, aerials, and other equipment on the house in order to misrepresent the true extent of unauthorised works that have been on-going. I note the Council considered all antennae, aerials, etc. placed on the main house as part of its assessment and the Board is requested to do likewise.

2. Class 4(a) only relates to a single wireless antenna and not multiple antennae (as shown in Photo No. 2) that have been placed on the roof. This is reinforced in the condition and limitation that clearly refers to "the antenna" i.e. singular. By way of comparison, the Council is referred to the terminology used in the Class 31 exemption that envisages multiple poles, antennae, etc. through the use of plural and not singular language.
3. The Council reference to the lack of a condition and limitation that expressly limits the number of antennae to one is not sustainable. Any decision must be made having regard to what is contained within the description of the development and the condition and limitation. A decision cannot be made on the basis of information that is not contained within the Regulations. The purpose of Class 4(a) is not to create a scenario that has arisen at No. 12 Stepside Park where Mr. Holland has erected multiple antennae and aerials.
4. The height of the radio antenna pole, antenna no. 1, pictured in Photo Nos. 2, 6 and 7 is clearly above the roof of the house by more than 6 metres. This pole appears to be the same as the 2 no. 10 metre high radio antennae poles subject of the retention application, so it is puzzling as to why the local authority thought otherwise. Further, as evidenced by condition and limitation 4 that applies to class 4(b), the 6 metres above the roof does not relate to being above the highest part of the roof i.e. the ridge height.
5. It is the Council's position that the 6 metres height applies to that part of the antenna above the ridge height of the roof but that one of the antennae nevertheless breaches that height restriction. The condition and limitation does not refer to the ridge height nor does it state the highest part of the roof, so it should follow that the 6 metre height is above the roof.
6. The description of development in Class 4(a) does not include aerials of which at least three have been erected on the roof of the main house at No. 12 - see Photo nos. 1, 2, 3, 5 and 7. Only one, the large umbrella aerial is currently in place.
7. A review of the Planning Regulations will confirm that Class 4 was split into Class 4(a) and 4(b) in the Local Government (Planning and Development) Regulations 1994 from those stated in the 1977 version. The description of development for Class 4 in 1977 was "the erection of a wireless or television aerial on the roof of a dwellinghouse". From 1994 onwards, the description for Class 4(a) & 4(b) referred to antenna and not aerial, which would have been a deliberate distinction for the legislators to make. The Council hasn't distinguished between antenna and aerial in its assessment, instead treating all equipment as antenna.
8. The high level wires do not come within the description of development per Class 4(a) or 4(b). There is no class of exemption that permits these wires as exempt development and again, it is puzzling why the enforcement section of the local authority thought otherwise.
9. If the Board elects to consider the multitude of aerials, antennae, and wires under Class 4(b), it is immediately obvious that what has been erected on the roof of No. 12 Stepside Park breaches

2 This text is a minor clarification to what was considered by the planning authority

Enclosures

ROM: rom

Kieran O'Malley & Co. Ltd.

Raymond O'Malley
Raymond O'Malley

Regards,

Please acknowledge receipt of this section 5 referral and direct all future correspondence to our office.

1. A cheque for € 220 in respect of the statutory fee.
2. A copy of the local authority declaration decision.
3. A copy of DLRC letter dated 4th August 2020.
4. A copy of 8 no. photos.

The following plans and particulars are submitted in support of this declaration:

development and it is not exempt development.
confirms the erection of all antennae, aerials, support truss, and high level wires at No. 12 Stepaside Park is
the exempt development provision. The Board is therefore requested to issue a referral decision that
level wires at No. 12 Stepaside Park do not come within the description of development in class 4(a) or (b) of
For the reasons set out above, it is submitted to the Board that all antennae, aerials, support truss, and high

***is the erection of antennae, aerials, and support truss on the main house (roof and rear elevation?)
and the erection of high level wires linking the wireless infrastructure to the unauthorised shed and
2 no. 10 metre high radio antennae poles in the rear garden exempt development?***

The section 5 referral question to the Board is as follows:

condition and limitation nos. 1 (more than one has been erected), 2 (the diameter exceeds 1 metre)
and 4 (at least 2 antennae are higher than the highest part of the roof). Also, there is a tv satellite
dish on the side elevation of No. 12 (see Photo No. 8), so that would use the exempt development
provision at class 4(b).

Planning Department
Rannóg Pleanála
Registry Section
Ciara Carolan
Asst. Staff Officer
Direct Tel: 01 2054863



Kieran O'Malley
[Redacted]
[Redacted]
[Redacted]
Co. Dublin.

Reference No: Ref421
Application Type: Declaration on Development and Exempted Development Act
– Section 5, Planning & Development Act (as amended)
Registration Date: 08-Jan-2021
Decision Date: 20-Jan-2021
Location: 12 Stepaside Park, Stepaside, Dublin 18, D18 YD60
Development Works:

Is the erection of antennae, aerials and support structures on the main house and high level wires extending from the roof of no. 12 Stepaside Park to the currently unauthorised shed and antennae poles at the rear of the garden.

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Act, 2000 (as amended), Dún Laoghaire-Rathdown County Council has, by Order No. REF08/21 Dated 20-Jan-2021 decided to issue a Declaration pursuant to Section 5 of the Planning & Development Act 2000 (as amended), to, Kiaran O'Malley St Helliers, Stillorgan Park, Blackrock, Co. Dublin. that:

The erection of an antenna fixed to the chimney of the house and high-level wires extending from the rear of the house are works that constitute **DEVELOPMENT** that is **NOT EXEMPTED DEVELOPMENT** and the erection of antennae and aerials fixed to the rear elevation of the house are works that constitute **DEVELOPMENT** that is **EXEMPTED DEVELOPMENT**.
Is hereby approved.

Dated: 20-Jan-2021
Signed: *Ciarán Carolan*
For Senior Executive Officer.

NOTE: Where a Declaration is issued under Section 5, any Person issued with such a Declaration, may, on payment to An Bord Pleanála, 64, Marlborough Street, Dublin 1, of a fee of €220, refer the Declaration for review, within 4 weeks of the date of issue of the Declaration.

Appeal-ref-D20B-0280



Comhairle Contae County Council

Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halls an Chontae, Dún Laoghaire, Co. Dubhlin, 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.dlr.co.ie

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

Date: 04-August-2020
Ref: ENF 20520

John & Katie Holland
12 Stepaside Park
Stepaside
Dublin 18
D18 YD60

Re: 12 Stepaside Park, Stepaside, Dublin 18, D18 YD60

Dear Mr. & Ms. Holland,

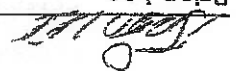
I refer to previous correspondence regarding the above-mentioned location, including the warning letter issued for:

- The installation of antenna to the roof of the premises which may exceed the conditions and limitations attached to Class 4 of the Planning and Development Regulations 2001, (as amended)
- The erection of a shed type structure to the rear of the premises which may exceed the conditions and limitations attached to Class 3 of the Exempt Development Regulations 2001, (as amended)

I wish to advise you that the Planning Authority carried out an inspection at the above premises on the 24th of July, 2020. At this time it was noted that the shed-type structure erected to the rear garden measured 8.65m x 3.85m, this giving a structure size of 33.3 sqm. Accordingly, the shed-type structure does not comply with the conditions and limitations attached to Class 3 of the exempt development regulations and thus constitutes unauthorised development. In relation to the antenna, Class 4 of the exempt development regulations exempts the erection of wireless/TV antenna on the roof of a house, provided that the height of such antenna does not exceed 6 metres. No such antenna as attached to the property exceeds this limitation and as such are considered exempt. However, there is no planning exemption that would cater for the 2 free standing antenna positioned to the rear of the newly erected shed structure – Class 4(b) of said regulations relates only to dish type antenna within the curtilage of the house.

The Planning Authority now requires the submission of proposals aimed at regularising the identified unauthorised development, this to be submitted within 4 weeks of today's date. Our file will be reviewed on the 1st of September, 2020.

Yours sincerely,



Brian Lee

Enforcement Section
Planning Department

Tel: 2054864

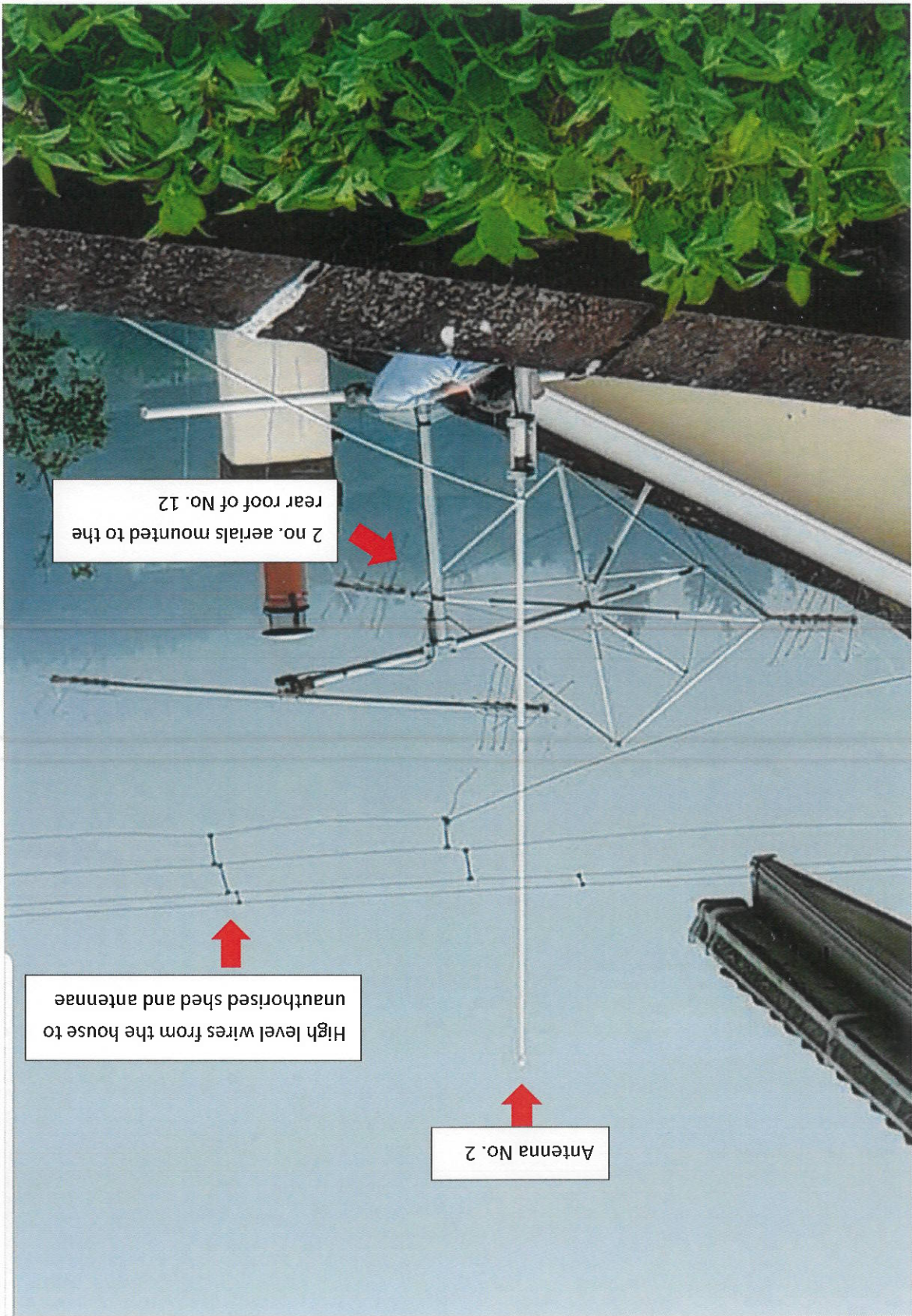


Photo No. 1: 2 no. aerials and an antenna erected at No. [REDACTED] over the weekend of 13th June 2020. Only one of the three aerials appears to be fixed to the roof of the house.

Photo No. 2: Antenna no. 1 exceeds the height of the roof by more than 6 metres. Photo taken on 8th June 2020. Antenna no. 2 and the aerial behind it are clearly not fixed to the roof of the house; instead they are fixed to the rear elevation of the house.

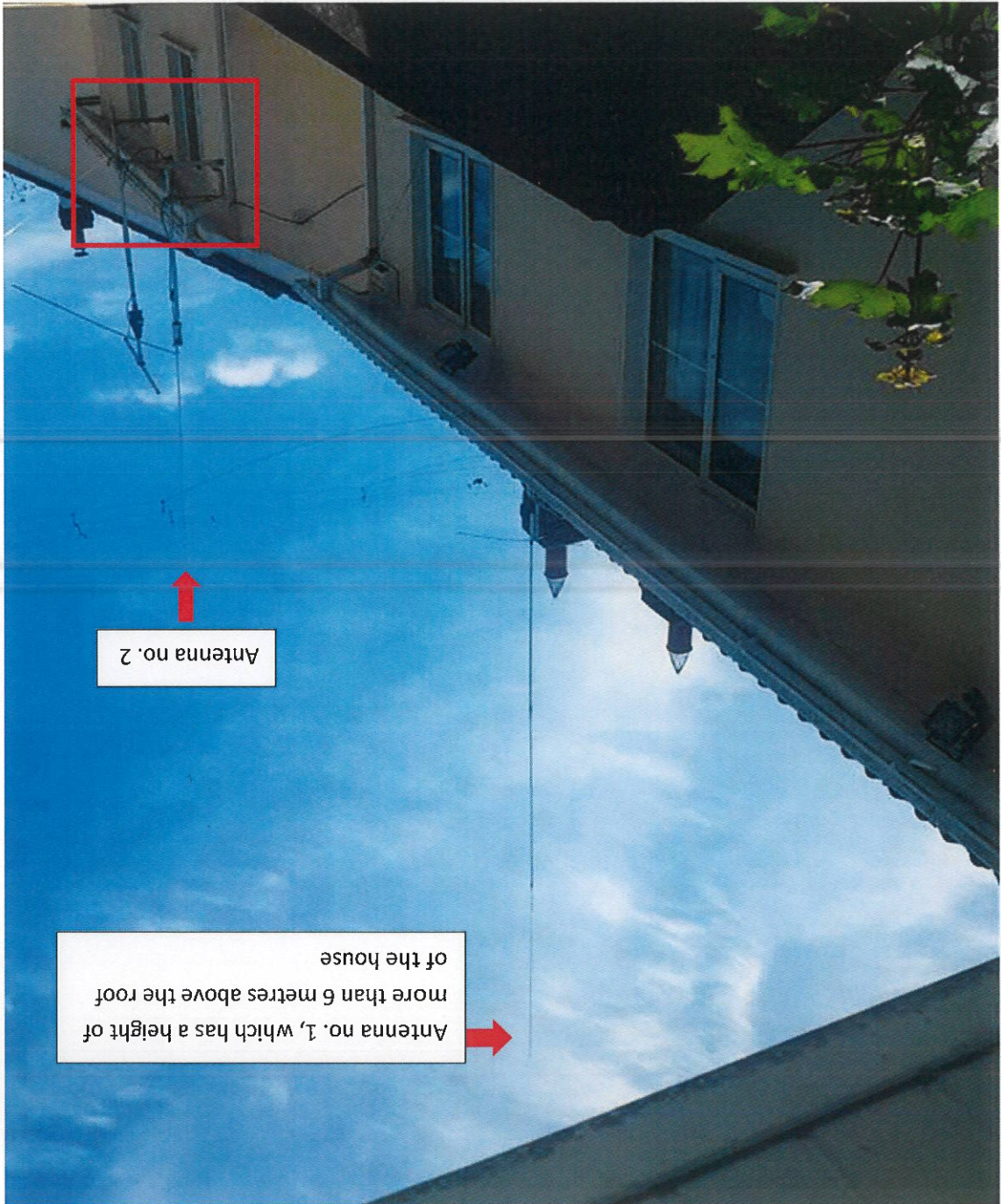
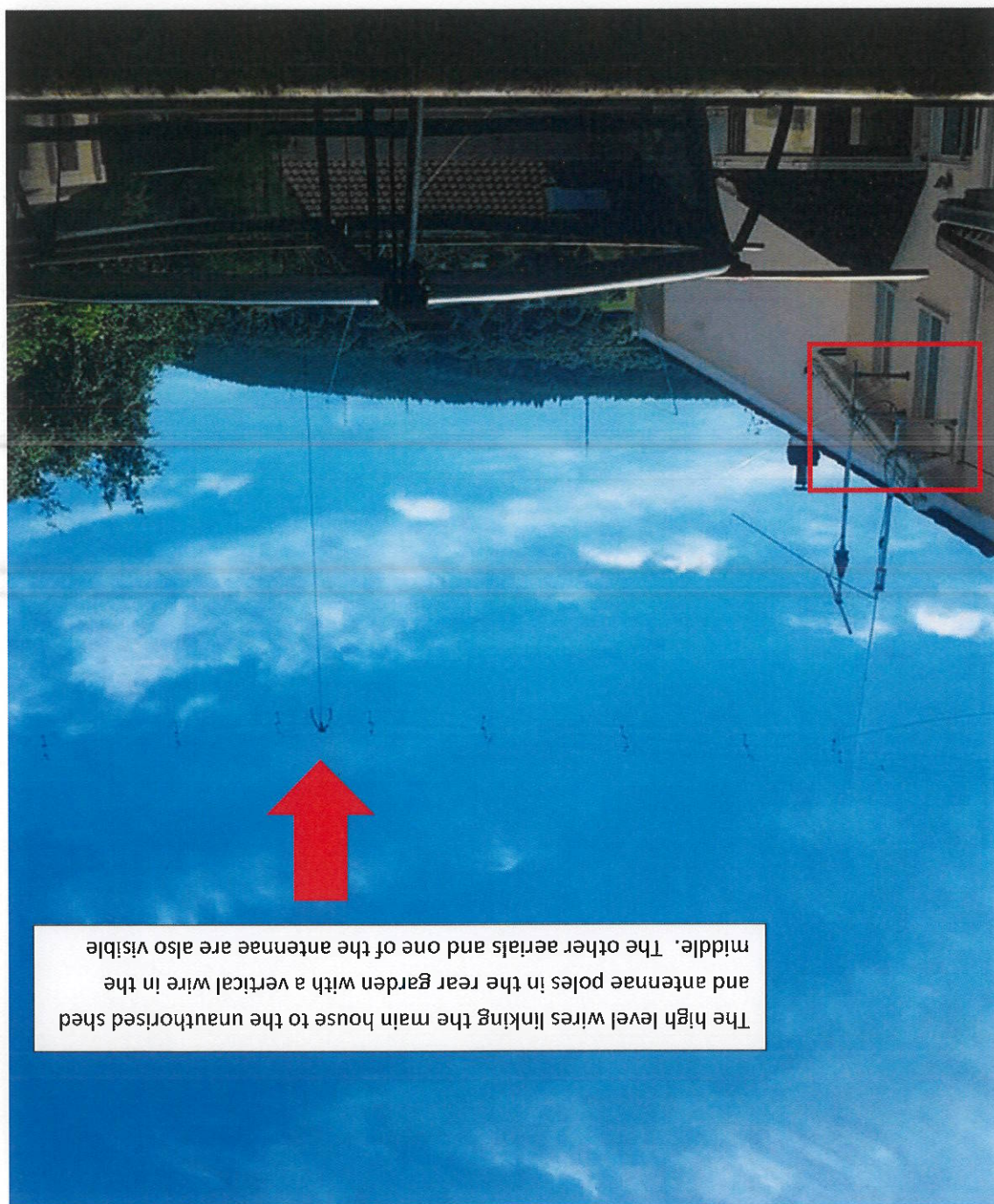


Photo No. 3: Antennae linked from the house to the building in the rear garden. Photo taken on 8th June 2020. Similar to photo no. 2, the antenna and aerial visible are fixed to the rear elevation of the house and not the roof as required by Class 4(a).



The high level wires linking the main house to the unauthorised shed and antennae poles in the rear garden with a vertical wire in the middle. The other aerials and one of the antennae are also visible

Photo No. 4: Substantial shed/building under construction in the rear garden. This shed is subject of retention application that is under appeal to your office. Photo taken 13th June 2020.



Photo No. 5: Umbrella aerial and lattice truss fixed to the rear elevation of the main house. The high level wires linking other wireless radio infrastructure to the unauthorised shed and antennae in the rear garden are also visible. Photo taken on 13th September 2020.

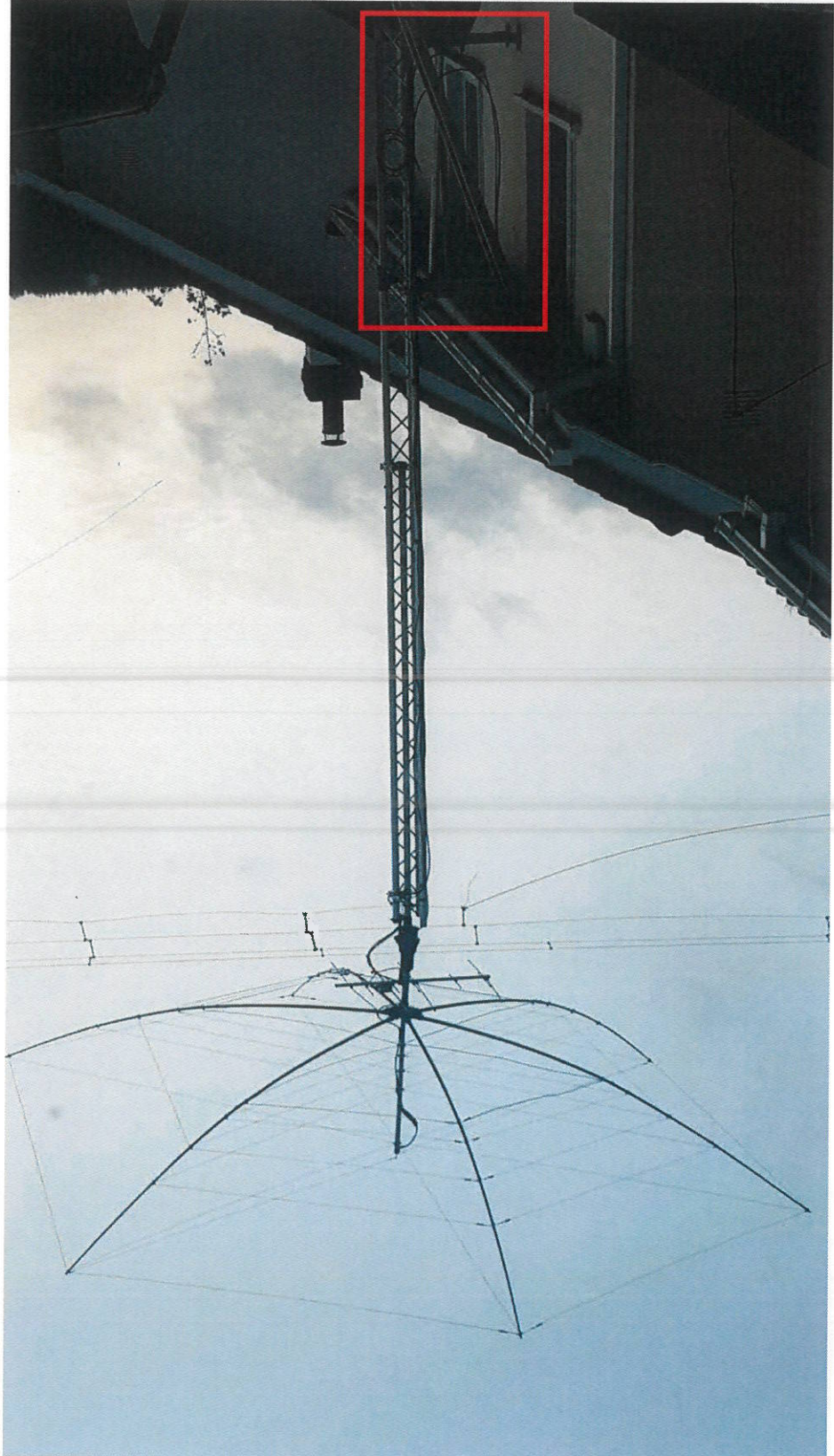




Photo No. 6: This is a view of the umbrella aerial from the public road as you enter Stepaside Park from Enniskerry Road. Due to complaints, the owner temporarily lowered this aerial and from correspondence issued by him to all observers to his planning application, he is proposing to erect it on an adjustable truss putting it up when he is using his radio equipment and lowering it when the equipment isn't being used.

Antenna no. 1 on the roof is also visible in this photo, which we have highlighted for ease of viewing.

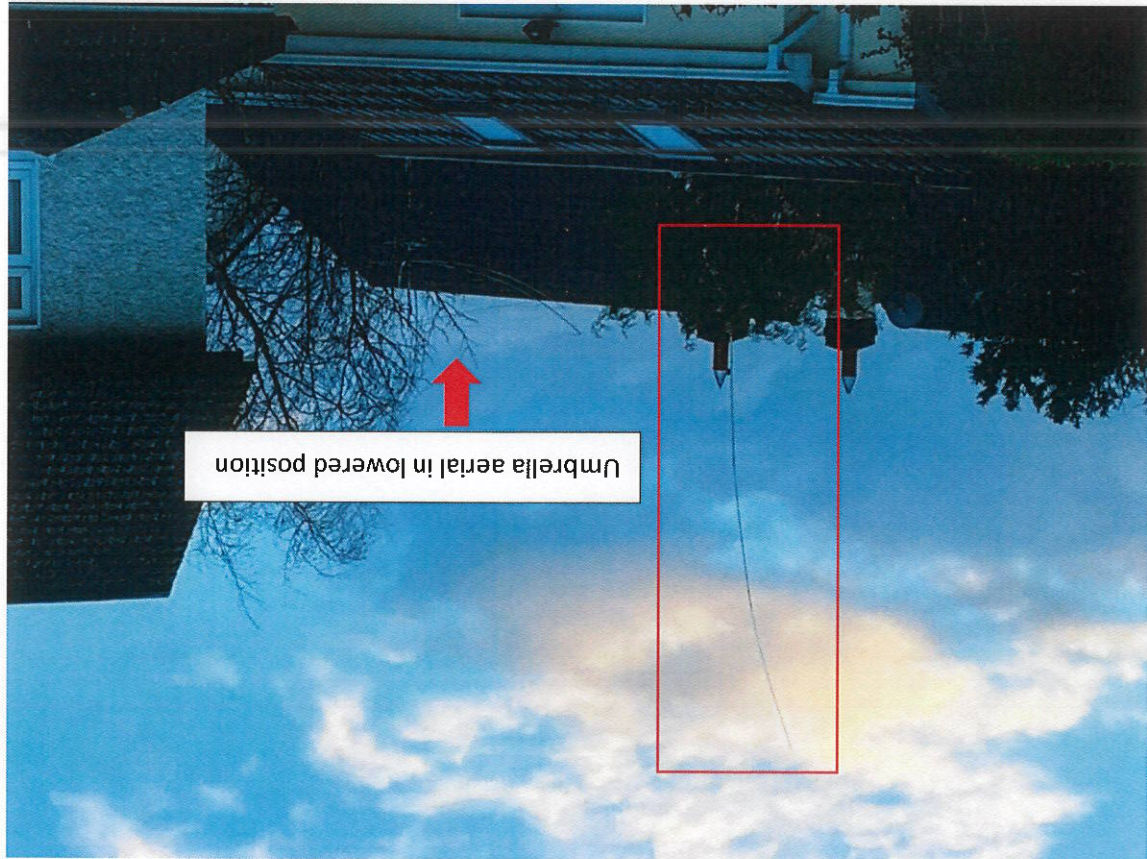


Photo No. 7: Taken from St. Patrick's Park on the morning of 8th January 2021 towards the rear roof of No. 1. Pole antenna no. 1 is clearly visible (but highlighted) and also the umbrella aerial is visible but in a lowered position. The high level wires remain in place but are not clear in this photo. Other antenna and aerals that were on the roof have been removed; this is most likely in response to complaints and to present a misleading picture to An Bord Pleanála.

Photo No. 8: This photos taken on 3rd February 2021 shows the gable elevation to No. 12 (on the left hand side) with the antenna extending up from the chimney and the high level wires linking to the unauthorised development at the rear. There is also a television satellite dish on the gable elevation.



